

RIGHT TO EDUCATION: A CRITICAL EVALUATION OF THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009 IN THE LIGHT OF 4 A'S FRAMEWORK

Mr. Ravindra Kumar*

Dr. Preeti Misra**

Abstract

It is said that 'mother and that father are enemies, who do not give education to their children'. Right to education means that these rights-holders can stand up and that something can be done. Right to education for all is one of the biggest development challenges faced by the International and National community today. Right to education is the most important part of the human development. It is the foundation of free and fulfilled life. Education plays an important role in building a good society; it also promotes good governance and transparency in a state. The growth and development of a state is primarily dependent upon the quality of education given to the people. Right to education has been universally recognised since the UDHR and has since been enshrined in various international conventions, treaties, constitution and development plans. In some cases, the right exists along with the assumption that the user should pay for this right, undermining the very concept of a right. On the other hand, the right exists in theory, but there is no capacity to implement this right in ground reality. Right to Education is facing various hindrances like, teachers, buildings infrastructure, water and government support. The fulfillment of right to education can be assessed using the 4A's which asserts that for education to be meaningful right; it must be available, accessible, acceptable and adaptable. The question is whether right to education is available, accessible, acceptable and adaptable? This paper analytically evaluates right to education under RTE Act, 2009 in the light of 4A's framework. The methodology of this paper is purely doctrinal.

Keywords: Right, Education, Availability, Accessibility, Acceptability, Adaptability.

* Ph.D. Scholar, Department of Human Rights, School of Legal Studies, Babasaheb Bhimrao Ambedkar (A Central) University, Lucknow.

** Associate Professor, Department of Human Rights, School of Legal Studies, Babasaheb Bhimrao Ambedkar (A Central) University, Lucknow.

“Politics without principles, Education without character, Science without humanity, and Commerce without morality are not only useless, but also positively dangerous.”

- Anonymous

More than 3300 years back a poet¹ had said, “The parents who do not educate a child are his enemies since he is humiliated in an assembly of learned men like a crane among swans. In the recent past Nelson Mandela² had proclaimed, “Education is the most powerful weapon which you can use to change the world.”

Education is considered essential for a man to live with human dignity.³ Every human infant comes into the world lacking of the facilities characteristic of fully-developed human beings. This does not mean simply the ability to see clearly, to move around, to feed oneself, etc.; above all, it means he is devoid of reasoning power—the power that differ man from animals. But the crucial difference between the baby and other animals is that these powers, in particular the ability to reason, are potentially within him. The process of growing up is the process of the development of the child’s facilities.⁴

What is the Right to Education?

Education is a dynamic process that starts from birth. It is the most important element for growth and prosperity of a nation.⁵ Education in its real sense is the pursuit of truth. It is an endless journey through knowledge and enlightenment. Such a journey opens up new vistas of development of humanism.⁶ Education is the manifestation of perfection already in man. It is the one that lends dignity to a man. Education is keystone for self-sustaining and livelihood and the education is life insurance for all children.

¹ Baddena, Neeti Saara or Neeti Sastra, Baddena a Telugu poet (1220-1280 AD) was the composer of the most famous “Sumathi Satakam” as well as “Niti Sastra”, available at: https://en.wikipedia.org/wiki/Neeti_Sastra

² South African Statesman First Democratically Elected State President of South Africa (1994), available at: https://en.wikiquote.org/wiki/Talk:Nelson_Mandela

³ Francis Coralie v. Union Territory of Delhi, AIR 1981SC746.

⁴ Murray N. Rothbard, “Education: Free & Compulsory” (Ludwig Von Mises Institute, Auburn, Alabama, 1999, p.1)

⁵ A.P.J. Abdul Kalam, ‘The Pursuit Of Truth’ - President A.P.J. Abdul Kalam's address to the nation on the eve of 58th Independence Day In NCMP-DMPR - Facilities (MPISG. New Delhi, Archi texturez Imprints, 2004), available at: http://architexturez.net/doc/az-cf-21863_ (Visited on Dec. 05, 2015).

⁶ A.P.J. Abdul Kalam and Y.S. Rajan, “Beyond 2020: A Vision for Tomorrows India” (Penguin Books Ltd, 2014)., and S. Vijay Kumar “Dr. A.P.J. Abdul Kalam's Vision For The Nation” The Hindu, Sep. 5, 2013, available at: http://www.thehindu.com_ (visited on Dec. 05, 2015) and see Ibid.

Education is essential for the development of human potential, the enjoyment of full range of human rights and respect for the rights of others.

The right to education is a human right. A right is something, which one is entitled to and which one can claim. Having a right means that someone else has an obligation. If someone has the right to free education, then the government or school cannot demand one to pay to access education. As well as, being a right in itself, the right to education is also an enabling right. Education “creates the ‘voice’ through which right can be claimed and protected”⁷, and without education people lack the capacity to “achieve valuable functioning as part of the living”.⁸ If people have access to education they can develop the skills, capacity and confidence to secure other rights. Education gives people the ability to access information detailing the range of right that they hold, and government’s obligations. It supports people to develop the communication skills to demand these rights, the confidence to speak in a variety of forum, and the ability to negotiate with a wide range of government officials and power holders.⁹

The right to education obligates governments to ensure the satisfaction of basic learning needs for all. The World Declaration on Education for All 1990 finds that: “These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions and continue learning.”¹⁰

Rights

The Oxford English Dictionary defines a ‘right’ as a justifiable claim on legal or moral grounds to have or to obtain something, to act in a certain way. Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and

⁷ Kelvin Watkins, “The Oxfem Education Education Report” (Oxfem GB In Association With Oxfem International In 2000, 1st edn., 2000).

⁸ Amartya Sen, “Capability and Well-Being” in Martha Nussbaum and Amartya Sen (eds.), “The Quality of life” (Oxford University Press, 1993).

⁹ Amartya Sen, “Capability and Well-Being” in Daniel M. Hausman (eds.), *The Philosophy of Economics An Anthology* 370 (Cambridge University Press, 3rd edn., 2008).

¹⁰ World Declaration on Education for All Meeting Basic Learning Needs: A Vision For The 1990’s, Jomtein Thailand, 5-9 March 1990.

deontology.¹¹ ‘Ubi jus ibi remedium’ an ancient legal maxim says that where is right there is remedy. Lawyers have not pronounced the reason why this correlativity is so significant. Perhaps to them, it has been apparent.¹² There are various rights and at the same time moral and values that need not be stated in terms of rights. Jurisprudence is concerned only with such rights are enforced by law.¹³

Right is an interest recognized and protected by law. ‘Rights’ are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture and the history of social conflicts can be found in the history of each right and its development. The specific enumeration of rights has differed greatly in different periods of history. In many cases, the system of rights promulgated by one group has come into sharp and bitter conflict with that of other groups.

Education

‘Education’ narrowly refers to formal institutional instructions. Generally, international instruments use the term education in a narrow sense. Education has defined the term “education” to mean “all types and levels of formal education, including access to education, the standard and quality of education, and the conditions under which it is given.”¹⁴

In a broader sense, education may describe “all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable the group to subsist.” The wider meaning of education has been recognized in Article

¹¹ Naushad Husain, “The Right To Education – A Conceptual Framework” in Naushad Husain (ed.), *Right To Education – Retrospect And Prospects* (Shipra Publications, Delhi, 2014, p.58).

¹² Michael Freeman, “Moral Status of Children - Essays on the Rights of the Child (Martinus Nijhoff Publishers, London, 1977, p.23)

¹³ Sir Thomas Erskine, *The Elements of Jurisprudence*, (Universal Law Publishing Co. Pvt. Ltd., Delhi, 2001, p.83)

¹⁴ Article 1(2) of the UNESCO’s Convention against Discrimination in Education (1960) The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 14 November to 15 December 1960, at its eleventh session, Recalling that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that every person has the right to education, Adopts this Convention on the fourteenth day of December 1960, entered into force on 22 May 1962.

1(a) of UNESCO's 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms. The Article states that education implies: "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge." There is no absolute agreement as to how to define the right to education, but the aims and objectives of education, as defined in the international covenants, treaties and Supreme Court decisions, includes as below following:

- Education is special manifestation of man;
- The development of human personality, a sense of dignity of individual talent, mental and physical ability;
- Education is the treasure which can be preserved without the fear of loss;
- Enable people to participate effectively in a free society;
- The promotion of understanding, tolerance, friendship among all groups, and to maintain peace;
- Education secure honour at the hands of the State, not money.

Importance of Education

The importance of education has come to be recognised by various thinkers and in judicial decisions. The significant of education was very well explained by Chief Justice 'Earl Warren' of U.S. Supreme Court¹⁵ in following words: "Education is perhaps the most important function of state and local governments. It is the very foundation of good citizenship. It is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms".

After that the importance of education was emphasized by Supreme Court of India in the following words: "Education is the special manifestation of man; Education is the treasure which can be preserved without the fear of loss; Education secures material

¹⁵ Brown v. Board of Education of Topeka, US Supreme Court Report 98 Law., Ed. 347 U.S. 483, 873 (1954), available at: <http://www.legalcrystal.com>

pleasure, happiness and fame; Education is the teacher of the teacher; Education is God incarnate; Education secures honour at the hands of the State, not money; A man without education is equal to animal".¹⁶

International Legal Basis of Right to Education

Right to education is codified in the Universal Declaration of Human Rights,¹⁷ Article 26 of the UDHR in the following terms: 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.¹⁸ 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 maintenance of peace.¹⁹ Parents have prior right to choose the kind of education that shall be given to their children.²⁰

International Covenant on Civil and Political Rights 1966, International Covenant on Economic, Social and Cultural Rights 1966, the Convention on the Elimination of All Forms of Discrimination against Women 1979 and convention on the rights of the child 1989. The International community reaffirmed the right to education at the World Education Forum in 2000.²¹ The UNESCO has, therefore, place the right to education at the forefront of its activities and the Education for All 1990 is high on its agenda. The Dakar Forum agreed on six goals, which were considered to be essential, attainable and affordable, given strong

¹⁶ Bhartruhari, Neethi Shatakam (First Century B.C.), (As cited in Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others, AIR1993SC2178, para. 178, available at: http://www.legalcrysal.com_ (visited on Jan. 05, 2015)

¹⁷ The right to education is one of the fundamental rights proclaimed in the Universal Declaration of Human Rights 1948 under Article 26. It is considered by the Declaration not only as a right in itself but also as a means of promoting peace and respect for human rights and fundamental freedoms generally.

¹⁸ *Ibid*, Article 26(1).

¹⁹ *Ibid*, Article 26(2).

²⁰ *Ibid*, Article 26(3).

²¹ The World Education Forum, which took place in Dakar, Senegal, April 2000, was the first and most important event in education at the dawn of the new century. By adopting the Dakar Framework for Action, the 1100 participant of the Forum reaffirmed their commitment to achieving Education for All by the year 2015.

international commitment and resolved.²² The six goals are as follows: (1) expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children; (2) ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality; (3) ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programs; (4) achieving a 50 per cent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults; (5) eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls' full and equal access to and achievement in basic education of good quality; (6) improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills.

The Constitution of UNESCO expresses the belief of its founders in “full and equal educational opportunities for all”. The Dakar Framework for Action committed governments to strengthening national and regional mechanisms to ensure that Education for All was on the agenda, inter alia, of every national legislature. It also emphasized that at the national level concrete measures are to be taken so that legal foundations of the right to education are strengthened in national systems. To make poverty history the international community realized that there is a need to provide financial support to develop poverty stricken states for complete removal of poverty. A target has been fixed to achieve this goal by the UN General Assembly and the UN Millennium Declaration was adopted in September 2000²³ in which states agreed to endeavor their best to eradicate poverty, promote human dignity and equality and, thereby, achieve peace, democracy and environmental sustainability.²⁴ In particular, the international community committed, in the Millennium Development Goals, to cut extreme poverty by half by 2015 and to banish extreme

²² The Dakar Framework for Action, Education for All: meeting our Collective Commitments, adopted by the World Education Forum (Dakar, Senegal, 26-28 April 2000), available at: <http://www.unesco.org> (visited on 13 April 2015).

²³ 189 States adopted the UN Millennium Declaration 2000, General Assembly resolution, A/RES/55/2, 55th session, 18 September 2000. available at: <http://www.undp.org> (visited on 26 April 2005)

²⁴ *Ibid.*

poverty by 2025.²⁵ The international community has set a target that by 2015 children everywhere, both boys and girls, will be able to complete a full course of primary schooling.

Fulfilling the Right to Education 4A's framework:

At International level the ICESCR²⁶ devoted Articles to the right to education, namely; Article 13 and 14. Article 13 comprises the wider provision in the ICESCR, and is the most wide ranging and comprehensive article on the right to education in international human rights law. Article 13(1) of the ICESCR, The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

The fulfillment of right to education can be assessed using the 4A's framework, which asserts that for education to be a meaningful right, it must be available, accessible, acceptable and adaptable.²⁷ The 4A's framework proposes that government, as the prime duty-bearers, have to respect, protect and fulfill the Right to Education by making education available, accessible, acceptable and adaptable. The framework also places duties on other stakeholders in the education process: the child, who as the privileged subject of the right to education has the duty to comply with compulsory education requirements, the parents as the 'first educators' and professional educators, namely teachers. The 4A's have been further explained as follows:

Availability

The availability of the educational institutions and programs has to be in sufficient quantity within the jurisdiction of the state party. All institutions and programs are likely to require buildings

²⁵ *Ibid.*

²⁶ International Covenant on Economic, Social and Cultural Rights 1666, Adopted and opened for signature, ratification and accession by General Assembly, resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27.

²⁷ Progress report of the Special Rapporteur on the Right to Education, Katarina Tomasevski, submitted in accordance with the Commission on Human Rights Resolution 1999/25, E/CN.4/2000/6 of 1 February 2000.

with adequate facilities of sanitation facilities for sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and soon; while some will also require facilities such as a library, computers and information technology.²⁸

In this regard it is worth recalling Article 13(2)(e) of the ICESCR: “The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved”.

Availability includes safe building; school in the village; sufficient number of teachers; free textbooks and uniforms; sanitation facilities; and appropriate transport. Funded by the government education is universal free and compulsory.

Accessibility

The educational institutions and programs have to be accessible to everyone, without discrimination, within the jurisdiction of the state party. Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination. The educational institution has to be within safe physical reach, by attendance at some reasonably convenient geographic location. Education has to be affordable to all. This dimension of accessibility is subject to the differential wording of Article 13(2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”. States parties are required to progressively introduce free secondary and higher education.²⁹

Accessible means no child labour; no gender discrimination; no disability discrimination; affirmative action to include the most marginalized in school; and school within reasonable distance. All children should have equal access to school service regardless of gender, race religion, ethnicity or socio-economic status. Efforts should be made to ensure the inclusion of marginalized groups including children of refugees, the homeless or those with disability. This includes ensuring the proper laws are in place against any child labour or exploitation to prevent children from obtaining primary or secondary education.

²⁸ General Comment No. 13 on the Right to Education (Article 13 of the Covenant) adopted by the UN Committee on Economic, Social and Cultural Rights at its 21st session in 1999.

²⁹ *Ibid.*

Acceptability

Acceptable means providing quality education and quality teaching that is relevant and pluralistic. The quality of education provided should be free of discrimination, relevant and culturally appropriate for all students. Student should not be expected to conform to any specific religious or ideological views. Methods of teaching should be objective and unbiased and materials available should reflect a wide array of ideas and beliefs. Health and safety should be emphasized within schools including the elimination of any forms of corporal punishment. Professional of staff and teachers should be maintained.

The form and substance of education, including curricula and teaching methods, have to be acceptable to students and, in appropriate cases, parents; this is subject to the educational objectives required by Article 13(1) and such minimum educational standards as may be approved by the state according to Articles 13(3) and 13(4). Article 13(3) provides, The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. Article 13(4) provides, No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.³⁰

Adaptability

Adaptable includes meeting the specific needs of the children in the local context; meeting the changing needs to society; and contributing to gender equality. Educational programs should be flexible and able to adjust according to societal changes and the needs of community. Observance of religious or cultural holidays should be respected by school in order to accommodate students,

³⁰ General Comment No. 13 on the Right to Education (Article 13 of the Covenant) adopted by the UN Committee on Economic, Social and Cultural Rights at its 21st session in 1999.

along with providing adequate care to those students with disabilities.

It is important for the states parties, while considering the appropriate application of these “interrelated and essential features”, to have the best interests of the student as a primary consideration.

Probable Questions Vis-A-Vis The 4A’s Framework

In this way it is clear that all the above description about to right to education, there are many probable questions that can take place in the mind and we must determine the satisfactory responses of these questions. The questions are related to availability, accessibility, acceptability and adaptability as follows:

- Is the right to education free and compulsory?
- Is the government plan to achieve free and compulsory education within reasonable time?
- Are school buildings safe like sanitation, drinker water and library etc.?
- Is education accessible to all children without any type of discrimination? Are existing laws preventive, which need to be enforced to accessibility?
- Is right to education within safe reach and appropriate transport facilities?
- Are textbooks and uniforms affordable for all children?
- Have obstacles like as need for a birth certificate, been abolished?
- Is education acceptable and pluralistic?
- Is education non-discriminatory and culturally appropriate?
- Is education following minimum standards and school management committee properly working government and unaided private schools?
- Is school providing violence free and healthy environment?
- Are there sufficient trained teachers to an appropriate standard?
- Are the schools able to adept provisions related to specific needs of children?
- Is there a similarity between school leaving age and other age like marriage, employment, etc.?
- Does school protect and increase children’s rights and prevent them from social evils?

Analysis of the Right of Children to Free and Compulsory Education Act, 2009 in the View of 4A's Framework

As discussed earlier in the paper that every country should make the elementary education system serve the needs of the learners. It should be available, accessible, acceptable and adaptable to the learners as mentioned in the 4A's framework. In order to know if the Right Of Children To Free And Compulsory Education (RTE) Act, 2009³¹ of India has the core elements of 4A's framework, an analysis was done and in this analysis, those sections of the RTE Act, 2009 were identified that can be categorized into the four fold framework of 4As. In other words, those sections of the RTE Act, 2009 were identified that make the elementary education system of India available, accessible, acceptable and adaptable to the learners.

Availability

1. Right of child to free and compulsory education: - RTE Act provides that, the every child of the age of six to fourteen years free shall have a right to free and compulsory education in a neighborhood school till completion of elementary education. Act expressly states that no child will be liable to pay any kind of fee or charges, which may prevent him or her from pursuing elementary education.³² Under the provisions of the RTE Act, a school established by the Government or local authority will provide free and compulsory elementary education to all admitted children. Moreover, all unaided schools are required to provide free education to at least 25% of children from weaker sections of society residing in their neighborhood.³³ In the *Society for Un-Aided Private School Of Rajasthan v. Union of India & Anr.* Supreme Court mandate the constitutional validity of the Right to Education Act, 2009, which mandates 25% free seats to the poor in government and private unaided schools uniformly across the country.³⁴

³¹ The Right Of Children To Free And Compulsory Education Act, 2009 (Act No. 35 of 2009). The following Act received the assent of the President on The 26th August 2009 and Act Published in the Gazette of India (Extraordinary) Part II Section 1 dated 27th August 2009, Pp. 1-13, Ministry of Law and Justice (Legislative Department). The Act came into force on 01 April, 2010 as a fundamental right in India.

³² *Ibid*, Section 3(1) and 3(2).

³³ *Ibid*, Section 12 (g).

³⁴ *Society for Un-Aided Private School of Rajasthan v. Union of India & Anr.*, (2012) INSC.248 (12 April, 2012), available at: http://www.advocatekhaj.com_ (visited on 13 April 2015).

2. Norms and standards for recognition of schools³⁵: - The RTE Act prescribes norms and standards (appended in the schedule to the Act) for a school, highlighting the key parameters such as:

- The ideal pupil-teacher ratio.
- Guidelines related to school building.
- Minimum number of working days.
- Instructional hours in an academic year.
- Minimum number of working hours per week for teachers.
- Library facility.
- Guidelines on teaching or play material.

Likewise under Section 18(1) of the RTE Act, no school will be able to operate without obtaining a certificate of recognition from a competent local authority, subject to conformity with Section 19 of the RTE Act. If a school is found in contravention of the conditions of recognition, the authority will withdraw recognition.

Section 19 (2) of the Act requires schools, established before the commencement of the Act and which do not conform to the norms and standards specified in the Schedule, to undertake steps to fulfill such norms and standards at their own expense within a period of three years from the commencement of the Act.

3. Establishment of additional schools: - Section 6 of the RTE Act requires establishment of a school in areas/ neighborhood, where any such provision is non-existent, within a stipulated period from commencement of the Act. According to Section 7(1), both the Central Government and the State Governments will have concurrent financial responsibilities for undertaking the provisions of the Act. As per Section 7(2), the Central Government will prepare estimates of capital and recurring expenditure required for the implementation of the Act.³⁶

4. Appointment of qualified teachers: - Section 23(1) of the RTE Act states that any person with minimum qualifications as laid down by the academic authority authorized by the Central Government will be eligible for appointment as a teacher. Section 23(2) also enables the Central Government to relax minimum qualifications (for a period not exceeding five years) for appointment as a teacher in states that do not have adequate number of institutions offering courses of training in teachers' education.

³⁵ *Ibid*, Section 18(1) and 19(2).

³⁶ *Ibid*, Section 6, 7(1) and 7(2).

Moreover, Section 23(2) allows, teachers, who do not have the minimum qualification required at the time of commencement of the Act, to acquire this within a period of five years.³⁷

Accessibility

1. Disallowing capitation fees and screening procedure: - Section 13(1) of the RTE Act expressly disallows any school or person from collecting any capitation fee and subjecting a child or his/her parents or guardian to any screening procedure. Moreover, Section 2(o) calls for the use of only random procedures for admitting a child to a school. Under the random procedure, a lottery system is to be used to fill the seats if the number of children applying to a particular school exceeds the available seats.³⁸
2. Provision for special training: - Section 4 of the RTE Act also requires admission of a child above six years, who has neither been admitted to any school nor has been able to complete his or her elementary education to an age appropriate class. It specifies that any such child will also have the right to receive special training.³⁹
3. Admission of students belonging to weaker and disadvantaged groups: - Section 12(1c) of the RTE Act, private unaided schools will have to admit students belonging to weaker and disadvantaged groups to the extent of at least 25% of their class strength. Section 12(2) of the RTE Act states that private unaided schools will be reimbursed their expenditure to the extent of the lesser of either per-child expenditure incurred by the Government or the actual amount charged for the child.⁴⁰ In *Society For Un-Aided Private School Of Rajasthan v. Union Of India & Anr.*⁴¹ The Supreme Court upheld that validity of provisions of the law that made the Right to Education a fundamental right of children in the age group of 6 to 14 years. The Right to Education law was brought by introducing Article 21A in the Constitution which says the state shall provide free and compulsory education to all children between 6 to 14 years in such a manner as the state may, by law, determine.

Supreme Court Bench of Chief Justice S.H. Kapadia and Justice Swatanter Kumar upheld the constitutional validity of Section 12(1c) of the RTE Act that provides 25 percent

³⁷ *Ibid*, Section 23(1) and 23(2).

³⁸ *Ibid*, Section 13(1) and 2(o).

³⁹ *Ibid*, Section 4.

⁴⁰ *Ibid*, Section 12(1c) and 12(2).

⁴¹ *Supra* note 25.

reservation for students from weaker sections of society. The Supreme Court of India upheld the constitutional validity of the RTE Act, 2009, which mandates 25% free seats to the poor in government and private unaided schools uniformly across the country.⁴²

4. Balanced representation on the school management committee:
- Section 21(1) of the RTE Act, schools are required to constitute a 'School Management Committee' considering of elected representatives from the local authority, parents or guardians of children admitted mid teachers. It further states that three-fourths of the members of such a committee will be parents or guardians, with proportionate representation given to the parents or guardians of children belonging to disadvantaged groups and weaker sections of society. Moreover, it states that 50% of the members of any such committee will be women. This Section of the Act is not applicable to an unaided school, which is not receiving any aid or grants from the Government or local authority.⁴³

Acceptability

1. Development of national curriculum: - Section 7(6a) of the RTE Act, the Central Government is expected to develop the framework of a national curriculum with the help of academic authorities appointed by the state governments. In a notification dated 31 March 2010, the Central Government authorized the National Council of Educational Research and Training (NCERT) as the academic authority under Section 29 of the RTE Act that would lay down the curriculum and evaluation procedure for elementary education. This is a significant development, since the previous practice of the NCERT preparing the National Curriculum Framework (NCF) was purely advisory in nature.⁴⁴ Under the RTE Act, its role has become mandatory and will also involve state governments. Under the Act, state governments will also specify academic authorities that will lay down curriculum and evaluation procedures at the state level. However, state curriculums must be prepared according to certain common principles described in Section 29(2) of the RTE Act. In fact, the Act legalizes the principles shared in the NCF 2005.

⁴² *Ibid.*

⁴³ *Ibid.*, Section 21(1).

⁴⁴ *Ibid.*, Section 7(6a) and 29(2).

2. Prohibition of holding back and expulsion or physical punishment and menial harassment: - The RTE Act states that no child admitted to a school will be held back in any class or be expelled till the completion of his elementary education. It also states that no child will be subjected to physical punishment or mental harassment.
3. Duties of teachers:- With a view of enhancing the professionalism of teachers, Section 24 of the RTE Act describes the key duties of teachers, including maintenance of regularity and punctuality, completion of the entire curriculum within a specified time, accessing the learning ability of each child and providing suitable instruction, including supplementary instruction, if necessary. Teachers are also required to hold regular meetings with parents and guardians to apprise them of key details relating to their wards' progress.⁴⁵

Adaptability

1. Admission of students belonging to socially disadvantaged groups.
2. Right of transfer to a school: - Section 5(1) provides right of transfer to another school to any child pursuing elementary education in a government or government-aided school.

Conclusion and suggestions

The plentiful awaited RTE Act, 2009⁴⁶ which has just been passed by the parliament would play an important role in achieving universal elementary education in India. The success and failure of RTE would largely depend on consistent political attention. Budgetary allocation of funds should be sufficient in this respect. Every literate person should also come forward and spread the usefulness of education to illiterate parents who are unable to appreciate the relevance of education in curbing the social evils. Social inequalities and monopolization by any group should not be permitted at any cost. Education which is free of cost up to a certain level must be accessible to all.

Education is the responsibility of the Government. RTE needs to apply first to the Government schools. The Act clearly states that the State Government is responsible for ensuring adequate number of schools and the infrastructure. The RTE is an effective tool that the Government has to use to improve enrolment and

⁴⁵ *Ibid*, Section 24.

⁴⁶ *Supra* note 28.

quality of education in fully aided schools first. We have seen in this paper that the Right to Education is now a Fundamental Right for all children in the age group of six to fourteen years. In simple word, it means that the Government will be responsible for providing education to every child up to the eight standards, free of cost, irrespective of class and gender. Part III of the Indian Constitution gives all force to every child to get free and compulsory education through Article 21, and insertion of Article 21-A by the 86th Amendment Act⁴⁷ is also a landmark in this respect.

The 4A's are to be respected, protected and fulfilled by the government, as the prime duty-bearer, but there are also duties on other actors in the education process: the child as the privileged subject of the right to education and the bearer of the duty to comply with compulsory education requirements; the child's parents, who are the 'first educators'; and professional educators, namely teachers. By using a participatory process, this framework of the 4A's can become a tool to enable people to think through what the right to education means to them and compare their current reality to this ideal context.

It cannot be said that nothing is done towards realization of right to education in India but something more is necessary. The 86th Amendment Act failed to recognize that the period from 3-5 years is very crucial from the point of view of mental and physical growth of the child. It is the important age of mental as well as physical growth of the child. So there are some suggestions as follows:

1. Right to education should be right education, quality education.
2. Article 21-A of the Constitution and RTE Act, 2009 should be immediately amended and include the age group of 3 - 5 years of children for education as fundamental rights.
3. There is an urgent need to amend Article 21A of the Indian constitution and to amend the RTE Act, 2009 for inclusion of four more years that is from 9th -12th class in the free and compulsory education.
4. The free and compulsory education should be provided for the age group from 3 to 18 years.

⁴⁷ The following Act of Parliament received the assent of the President on the 12th December 2002 and Act Published in the Gazette of India (Extraordinary) Part II Section 1 dated 13th December 2002, Ministry of Law and Justice (Legislative Department).

5. The optimum age for the right to free and compulsory education should be same the age of right to vote (18th year), age of majority, right to work and right to marriage, etc.
6. The school management committee should also be established in unaided private schools to safeguard the children who are from weaker sections and disadvantaged groups.
7. Those parents, who fail to admit their child to a school for obtaining elementary education, should be debarred from availing all government facilities like ration card, water, electricity, LPG, job card, etc.
8. The elementary education syllabus of pattern of all government aided and unaided private schools should be nationalized under the RTE Act.
9. The primary schools need to be made aware of the provisions made for 25% seats for the economically, socially weaker sections and disadvantaged groups of children of the society and the role of school managing committees in this regard.
10. The teachers' performance of the most challenging input in field of right to education. Well qualified and highly motivated teachers are the key to effective implementation of the curriculum. They give incentive to the teaching learning process.
11. The State should also clearly impose the fees for a child in unaided schools for obtaining elementary education. Otherwise the private unaided school management would fix the fee arbitrarily and exorbitantly.

