

# Myths and Realities of Right to Education Act

## Abstract

The free elementary education to every child is implied in the 'right to life' under Article 21 of the Constitution of India. In fact, right of every child to basic education was one of the core values of our freedom movement. It, therefore, appeared in our Constitution as one of the Directive Principles of State Policy. The Constitution (Eighty-Sixth Amendment) Act, 2002 inserted Article 21-A as a fundamental right to education for every child aged 6-14 years. This Act of Parliament came into force with effect from April 1, 2010.

**Keywords:** Right To Education, Common School System, Neighbourhood Schools, General Agreement On Trade In Services (GATS), Right To Life

## Introduction

It is wrong to infer that recognition of the fundamental right to basic education is in any way concerned with the generosity of corporated globalisation or the benevolence of market forces. It actually emanated from the core or ethos of our freedom movement against the British imperialism. It, therefore, figured invariably in the Constitution of independent India. It is thus neither the market nor the corporate social responsibility but the Constitution that catalysed the judiciary to uphold free elementary education to every child, which is a facet of 'right to life' under Article 21 of the Constitution. Providing free and compulsory education in a neighbourhood school till the completion of elementary and secondary education is intended to allow children to live with human dignity.

The Supreme Court of India declared in 1985 that the right to life included the 'finer graces of human civilization'.<sup>1</sup> It implied that the canopy of Article 21, the right to education was instinctively present. However, in 1992 the Supreme Court explicitly held that the right to education was concomitant to fundamental rights enshrined under Part III of the Constitution. The ruling passed therein says that 'every citizen has a right to education under the Constitution.'<sup>2</sup> In 1993, the Apex Court revisited the above-mentioned landmark judgment and explicitly held, "though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21.....(and) must be construed in the light of the Directive Principles of the Constitution.' Thus, 'right to education, understood in the context of Article 45 and 41 means : (a) every child/citizen of this country has a right to free education until he (she) completes the age of fourteen years and (b) after a child/citizen completes 14 years, his (/her) right to education is circumscribed by the limits of the economic capacity of the State and its development.'<sup>3</sup> It can now safely be concluded that the right to education has categorically been declared a fundamental one by the Supreme Court in the light of Article 21 that guarantees and protects life and personal liberty of a citizen. Life does not merely connote the physical act of breathing. It should be meaningful, spirited, creative, innovative and cultured. Education is an integral facet of life. Education should not be confused with literacy. It is simply a means and not an end. Gandhi observed, "By education I mean an all-round drawing out of the best in child and man—body, mind and spirit. Literacy is not the end of education nor even the beginning. It is only one of the means whereby man and woman can be educated. Literacy in itself is not education."<sup>4</sup> The ultimate aim is the highest development of the mind, the heart and the soul.

## Aim of the Study

In this paper, an attempt has been made to enumerate the lacunas in the provisions of the Right to Education Act.



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**The Constitution (Eighty-sixth Amendment) Act, 2002**

The judgment delivered by the Supreme Court in the Unnikrishnan's case empowered the people with a legal weapon to demand for a fundamental right to education. High Courts were flooded with public interest litigation petitions seeking to enforce the judgment in letter and spirit both. Non-governmental Organisations (NGOs), mass action groups, social activists, public-spirited intellectuals and awakened citizens started mobilising people to assert on the government to move a constitutional amendment bill to include the right to education as a fundamental right. Alok Saxena writes, "This created a tremendous pressure on the Parliament and thereafter a proposal for a constitutional amendment to include the right to education as a fundamental right was made in 1996. Accordingly, the Constitution (Eighty-third) Amendment Bill was introduced in the Rajya Sabha in July, 1997. The 83rd Amendment proposed that Article 21-A be introduced (as a fundamental right to education for every child aged 6-14). Article concerning the Directive Principle of State Policy regarding free and compulsory education be deleted and Article 51-A (k) be introduced as a fundamental duty of the parents. Between 1997 and 2001, due to change in governments the political will that was required to bring about the amendment was absent. In November 2001, however, the Bill was re-numbered as the 93<sup>rd</sup> Bill and the 83<sup>rd</sup> Bill was withdrawn. The 93<sup>rd</sup> Bill proposed that Article 45 be amended to provide for early childhood care and education instead of being deleted altogether. This Bill was passed in 2002 as the 86<sup>th</sup> Constitutional Amendment Act."<sup>5</sup> The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution, which states, "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."<sup>6</sup>

**Free and Compulsory Education vis-a-vis Corporate-led Globalisation**

In the light of Article 21-A that was inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, Parliament passed an Act in the name of providing free and compulsory education to all children in the age of six to fourteen years that came into force with effect from April 1, 2010. This Act of Parliament is known as the Right of Children to Free and Compulsory Education Act, 2009 which is embedded in Article 21-A of the Constitution.

Article 21-A as well as its offshoot Right to Education Act in the present form actually do not lay the foundation of the common school system wherein all schools right from pre-primary stage upto higher secondary/intermediate/pre-university level including unaided private educational institutions too, will be neighbourhood schools in the real sense of the term. They shall have requisite and equitable infrastructure, instructional, pedagogical and curricular/co-curricular norms, standards and facilities. According to Prof. Anil Sadgopal, "This implies that all schools shall have a neighbourhood specified under law and all families residing in this area shall be required to send their

children to this school, irrespective of class, caste, religion, gender, language or any kind of disability, physical or mental. It means that the children of MPs, MLAs, ministers, bureaucrats and technocrats, police officer and corporate executives will study and socialise together with those of clerks, industrial labour, hawkers, plumbers and electrician, agricultural labour and other workers of the unorganised sector."<sup>7</sup>

The Right to Education Act has been designed under the framework of General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO). Therefore on the one hand it not only legitimises the multi-layered discriminatory education system, but also paves the way for corporatisation, commercialisation and privatisation of education on the other hand. It is continuation of Structural Adjustment Programmes (SAPs) imposed on our country by the World Bank (WB) and the International Monetary Fund (IMF).

SAPs mandated by the WB-IMF regime are already being implemented in the field of elementary education. They were institutionalised here in forms viz, the District Primary Education Programme (DPEP) and the Sarva Shiksha Abhiyan (SSA). In the meantime, governments started to shirk their constitutional obligations for universalising elementary education. The government-sponsored school education system is in a shambles. The governments have pushed policies of privatisation, commercialisation and corporatisation of school education via Public-Private-Partnership (PPP). They are solely focusing their attention on schools of specified categories like model schools, Navodaya Vidyalayas, Kendriya Vidyalayas, etc. These elite schools are basically not meant for children belonging to lower strata of society. In the name of philanthropy, government schools are being adapted by corporate houses or foreign-funded NGOs. Governments are also inviting competitive bids for auctioning, selling or leasing out school compounds, campuses or fields. Private commercial entities are being wooed to come forward as bidders.

The neo-liberal Right to Education Act can be summed up in the words of Prof. Anil Sadgopal, "The Act fails to guarantee (a) free education; (b) neighbourhood schools of equitable quality; (c) dignified socio-economic status for schools teachers; (d) freedom from *ad-hoc* fee hikes and profiteering by private schools, (e) pre-primary and secondary education; (f) education through the medium of mother tongue as well as proficiency in English language; (g) quality education to the disabled in regular schools; (h) required public funding; and (i) justifiability of Fundamental Right to Education."<sup>8</sup>

**Conclusion**

The Right to Education Act is far from providing free and compulsory education to children in common education system. It has been designed in the framework of General Agreement on Trade in Services (GATs) of the World Trade Organization (WTO).

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