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RESEARCH ARTICLE

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT 2009 - CRITICAL ANALYSIS AND CHALLENGES IN ITS IMPLEMENTATION

\*Prof. R. J. Jawale

Ismailsaheb Mulla Law College, Satara, Maharashtra, India

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ABSTRACT

Education brings excellence, enriches the mind and illuminates the spirit. It prepares a child for good citizenship. It liberates the from ignorance, superstition, prejudices and ultimately unfolds the vision and truth. Ignorance is the mother of weakness and helplessness, whereas education brings light of knowledge and knowledge in itself is power. Education is the process of getting knowledge. Right to education is a part and parcel of right to life and personal liberty. This right flows directly from right to life. A good quality education is the birth right of every child. Education is a necessary condition for the development of any country. It directs the political, social, cultural and economic life into desirable channels. Education shall be directed to the full development of the human personality. Right to Education is the basic fundamental human Right and it should be properly protected and promoted in India. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facility at all levels to its citizens. In 2002, the 86th amendment to the Constitution introduced Article 21-A making the right to education a fundamental right. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution.

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INTRODUCTION

One day god said to his child "listen my son, accept what I say, and the years of years, life will be many, I guide you in the way of wisdom and lead you along straight paths, when walk, yours steps will not be hampered. Do not forsake wisdom and knowledge and it will protect you wisdom is supreme, therefore get wisdom. Esteem it and it will honor you"<sup>1</sup>. Knowledge is the power and so that it should be given to everyone. Education is the process of getting knowledge. Right to education is a part and parcel of right to life and personal liberty. The right to education flows directly from right to life. According to Roscoe pound Right means Right which is recognized, protected and guaranteed by law. Right based notion has been individual, while goal based notion is collective one, part IV represent goal based. Education is like foundation of all civilized states and it is a fundamental duty on the part of state to provide it and because of which the parliament of India had passed the right of child free and compulsory education Act 2009.

\*Corresponding author: Prof. R. J. Jawale,  
Ismailsaheb Mulla Law College, Satara, Maharashtra, India.

<sup>1</sup> Wisdom is supreme-bible, international version.

International Standards<sup>2</sup>

The Universal Declaration of Human Rights states, "Everyone has the right to education." In addition, it says that it shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Higher education shall be equally accessible to all on the basis of merit, and technical and professional education shall be made generally available. The UDHR also stipulates that education should be directed towards the full development of the human personality and strengthen respect for human rights. Finally, it acknowledges that parents have a prior right to choose the kind of education that shall be given to their children.

The International Covenant on Economic, Social and Cultural Rights

Articles 13 and 14 of the ICESCR set out detailed formulations of the right to education. Article 13 contains a general statement that everyone has the right to education and that edu-

<sup>2</sup> CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, Center for human Rights and Global Justice working paper, Economic, Social and Cultural Series Number, 4, 2004.

<sup>3</sup> CENTER FOR HUMAN RIGHTS AND GLOBAL JUSTICE, Center for human Rights and Global Justice working paper, Economic, Social and Cultural Series Number, 4, 2004.

cation should contribute to the full development of the human personality

### Convention on the Rights of the Child (CRC)

Articles 28 and 29 of the CRC deal with the right of the child to education. Article 28 is similar to the provisions contained in ICESCR. In addition, it states that school discipline should be administered in a manner consistent with a child's human dignity. Article 29 stipulates that the education of the child shall be directed towards the development of the child's personality, talents, and mental and physical abilities to their fullest potential.

### The CESCR, in its General Comment 13

identifies four elements of the state's obligations with respect to the right to education. These are (1) availability, (2) accessibility, (3) acceptability and (4) adaptability.

#### 1. Availability

The duty to provide compulsory and free primary education is undoubtedly a prerequisite for the realization of the right to education.

#### 2. Accessibility

The second state obligation relates to accessibility. At a minimum, governments are obligated to ensure the enjoyment of the right to education through guaranteeing access to existing educational institutions by all on the basis of equality and nondiscrimination.

#### 3. Acceptability

The Special Reporters has said that "the State is obliged to ensure that all schools conform to the minimum criteria which it has developed as well as ascertaining that education is acceptable both to parents and to children."

#### 4. Adaptability

Normally, what a child learns in school should be determined by his or her future needs as an adult. However, the Convention on the Rights of the Child requires that the best interests of the child be given prominence. Thus, the education system should remain adaptable, taking into account the best interests of the child.

### Judicial trend in the field of right to education in India

In case of *Mohini Jain V State of Karnataka*<sup>4</sup>, the Supreme Court held that right to education is fundamental right under Article 21 of the Constitution. The right to education springs from right to life. The right to life under Article 21 and the dignity of the individual cannot fully be appreciated without the enjoyment of right to education. The Court observed:

Right to life is compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the fully range of conduct which the individual is free to pursue. .... The right to life under Article 21 and the dignity of the individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to provide educational facilities at all levels to its citizens.

### In case of *Unnikrishnan v State of A P*<sup>5</sup>

Held that the directive principles contained in Article 45 has been raised to the status of a fundamental rights. It has been held that children from the age of 6 to 14 years have fundamental right to free and compulsory education. the Supreme Court was asked to examine the decision of *Mohini Jain's* case. In the present case the Apex Court partly overruled given in the *Mohini Jain* case. The Court held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 and must be interpreted in the light of the Directive Principle of State Policy contained in Articles 41, 45 and 46.

### The Apex Court, however, limited the State obligation to provide educational facilities as follows

- (i) Every Citizen of this Country has a right to free education until he completes the age of fourteen years;
- (ii) Beyond that stage, his right to education is subject to the limits of the economic capacity of the state.

**Spurred by the Unnikrishnan judgment and a public demand to enforce the right to education, successive governments from 1993 worked towards bringing a constitutional amendment to make education a fundamental right. That led to the 86<sup>th</sup> amendment in December 2002 which inserted the following articles in the Constitution<sup>6</sup>**

1. Insertion of new article 21A- After article 21 of the Constitution, the following article shall be inserted, namely:-  
"21A. 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."
2. Substitution of new article for article 45- For article 45 of the Constitution, the following article shall be substituted, namely:- Provision for early childhood care and education to children below the age of six years.  
"45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."
3. Amendment of article 51A- In article 51A of the Constitution, after clause (J), the following clause shall be added, namely:-  
"(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."

<sup>4</sup> (1992) 3 SCC 666.

<sup>5</sup> (1993) 1 SCC 645

<sup>6</sup> <http://righttoeducation.in/faq>.

The Founder Fathers of the nation recognizing the importance and significance of right to education made it a constitutional goal, and placed it under chapter IV Directive Principle of State Policy of the Constitution of India. Article 45 of the Constitution requires state to make provisions within 10 years for free and compulsory education for all children until they complete the age of 14 years.

#### Article 14 and Article 21

#### Maneka Gandhi V Union of India<sup>7</sup>.

It was held by the honorable court that we cant deviate from the Rule of law. Now, right to equality is also under the preview of rule of law, which is dealt in our constitution under article 14, it contains many thing with equality. Right against any type of arbitrary action is also included in it. If we take specifically about education and educational institution then the admission procedure must be fair.

**Article 45** - had been given much importance as education is the basic necessary of the democracy and if the people are denied their right to education then democracy will be paralyzed; and it was, therefore, emphasized that the objective enshrined under Article 45 in Chapter IV of the Constitution should be achieved within ten years of the adoption of the Constitution

**Article 46** - declares that the state shall promote with special care the educational and economic interests of the weaker section of the people....

**Article 15 (5) and 93<sup>rd</sup> constitutional amendment 2006- Provision for reservation of B.C, S.C and S.T Classes including Private Educational Institutions. The Amendment has been enacted to nullify the effect of the three decisions of the supreme courts<sup>8</sup>**

The new clause 5 provides that nothing in the Article 15 or in Art. 19 (1) (g) shall prevent the State from making any provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the scheduled caste or the Scheduled Tribes in so as such special provisions relate to admission to educational institutions including private educational institutions. Whether aided or unaided by the State, other than the minority educational institutions referred to in Art. 30 (1).

#### Case Law - In T. M. Pai Foundation V State Of Karnataka<sup>9</sup>

It has been held that the State cannot make reservation of seats in admissions in privately run educational institutions. There the admissions can be done on the basis of common admission test conducted by the State or these institutions and on the basis of merit.

This case overruled the Unni Krishnan and Held – the scheme relating to admission and the fixing of fee were not correct and to that extent they are overruled.

#### Case Law

The court held that the State can fix quota for admissions to these educational institutions but it cannot fix fee and also admission can be done on the basis of common admission test and on the basis of merit.

#### Case Law

The court had overruled the Islamic Academy ruling to the effect that the State could fix the quota for admissions to private professional educational institutions. Reservation in private educational institution (majority or minority) is violative of Article 30 and 19 (1) (g).

#### The court decision can be summaries as follows

1. **Reservation** in aided private professional institution (both Minority or Majority, the court held that scheme for reservation of seats is violative of Article 30 and 19 (1) (g).
2. **Admission Procedure** – the court held that there is nothing wrong in having centralized entrance test being held for one group of institutions imparting same or similar education. Admission to be made from list of successful candidates and there object was first, serving students free from exploitation and secondly insuring merit best admission.
3. **Fee Structure** – it was held that every institution is free to devise its own fee structure. Subject of the limitation that there can be no profiteering and no capitation fee directly or indirectly or in any form is charged. Fee structure can be regulated for preventing profiteering. The right to establish and administer an institution within the meaning of Article 30 (1) of the Constitution includes the right to fix reasonable fee structure.
4. **Capitation** – the charging of capitation fee is not to be permitted. ‘Profession’ has to be distinguished from ‘Business’ or a mere ‘Occupation’. While in business, and to some extent in occupation, there is a profit motive, ‘Profession’ is primarily a service to society wherein earning is secondary or incidental.

This Amendment enables the State to make provision for reservation for the above categories of classes in admission to private educational institutions. **Case Law In T. M. Pa**

The Amendment keeps the minority educational institutions out of its per view.

#### Impact of Judicial Decisions On The Right of Children to Free and Compulsory Education (RTE) Act, 2009 The following are the important highlights of the Act

<sup>7</sup> AIR 1978 SC 597.

<sup>8</sup> The Constitutional Law of India by Dr. J. N. Pandey – 47<sup>th</sup> Edition, Central Law Agency.

<sup>9</sup> AIR 2003 SC 355.

<sup>10</sup> AIR 2003 SC 3724.

<sup>11</sup> AIR 2005 SC 3226.

**Right of Child to free and compulsory education<sup>12</sup>:**

Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. This Act provides the scope to pursue and complete the elementary education without any kind of fee or charges or expenses.

**Special Provisions for children not admitted to or who have not completed elementary education<sup>13</sup>:**

The child above six years of age has not admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or age. The Act provides a right to receive special training, if the child is directly admitted in a class appropriate to his or her age.

**Right of transfer to other school<sup>14</sup>:**

The Act provides a child shall have a right to seek transfer to any other school within state or outside state to pursue further completion of elementary education by obtaining transfer certificate.

**Duty of appropriate government or local authority to establish school<sup>15</sup>:**

The Act Provides the appropriate Government and the local authority shall establish a school, where it is not so established, within a period of three years from the commencement of this Act.

**Sharing of financial and other responsibilities<sup>16</sup>:**

The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act. The Central Government shall develop a framework of national curriculum with the help of academic authority, develop and enforce standards for training of teachers, provide technical support and resources to the State Government for promoting innovations, researchers, planning and capacity building.

**Duties of appropriate Government and local authority<sup>17</sup>:**

There are Certain duties of appropriate Government and local authority to be achieved viz., provide free and compulsory elementary education to every child, ensure that the child belonging to weaker section and the child belong to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education

on any grounds, ensure timely prescribing curriculum and courses of study for elementary education.

**Duty of parents and guardian<sup>18</sup>:**

It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighborhood school.

**Appropriate Government to provide for pre-school education<sup>19</sup>:**

With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children. The Act mentions the responsibilities of teachers and schools.

**No capitation fee and screening procedure for admission<sup>20</sup>:**

The Act provides that no school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure. The Act prohibits physical and mental harassment to child. The School to be established after obtaining the necessary certificate of recognition. The Act provides the prohibition of private tuition by teacher in the concerned established school.

**Monitoring of child's right to education<sup>21</sup>:**

The National Commission or the State Commission for Protection of Child Rights, the Commissions for Protection of Child Rights Act, 2005, shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely - examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation; inquire into complaints relating to child's right to free and compulsory education and take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

**Constitution of National and State Advisory Council<sup>22</sup>:**

The Central Government and State Government by notification constitute a National and State Advisory Council consisting of such number of Members, not exceeding fifteen. The persons appointed to possess knowledge and practical experience in the field of elementary education and child development.

**Power to issue directions<sup>23</sup>:**

The Central Government and appropriate Government may issue such guide lines and directions for the proper implementation of the Act. The appropriate Government by

<sup>12</sup> 'History of the Act' available at <http://www.indg.in/primary-education/policiesandschemes/right-to-education-bill> (Last visited on July 21, 2010.)

<sup>13</sup> Section 3 of The Right of Children to free and compulsory Education Act, 2009 (hereafter referred as Act)

<sup>14</sup> Section 5

<sup>15</sup> Section 6

<sup>16</sup> Section 7

<sup>17</sup> Sections 8 and 9 of the Act

<sup>18</sup> Section 10

<sup>19</sup> Section 11

<sup>20</sup> Section 13

<sup>21</sup> Section 31

<sup>22</sup> Sections 33 and 34 of the Act.

<sup>23</sup> Sections 35 and 38

notification make rules for carrying out the provisions of this Act. (s.35 and 38). Legal scrutiny of education law will not affect implementation<sup>24</sup>

### **Applicability to Minority Institutions under Section 35(1) of the Right of Children to Free and Compulsory Education Act: HRD Ministry Issues Guidelines<sup>25</sup>**

The HRD Ministry has received representations from several minority organizations seeking clarification on the applicability of the provisions of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 on minority institutions in light of the provisions of Article 29 and 30 of the Constitution. The matter has been examined in the HRD Ministry. Wide ranging consultations have also been held to obtain views and opinion of various stakeholders on the subject, and the following guidelines are accordingly issued under section 35(1) of the RTE Act, 2009. Institutions including Madrasa and Vedic Pathshalas especially serving religious and linguistic minorities are protected under Article 29 and 30 of the Constitution. The RTE Act does not come in the way of continuance of such institutions or the rights of children in such institutions. Schools are defined in section 2(n) of the RTE Act. Sections or minority organizations covered within the meaning of section 2(n) of the Act, will be governed by the provisions of the RTE Act, 2009. Appropriate Governments and local authorities shall ensure that the rights of Minority Institutions, guaranteed under Article 29 and 30 of the Constitution, are protected while implementing the provisions of the RTE Act.

### **Procedure for Admission in Schools Under Section 13(1) and Section 12(1)(C) of the Right of Children to Free and Compulsory Education Act : Hrd Ministry Issues Guidelines<sup>26</sup>**

The HRD Ministry has received representations from several unaided and aided schools seeking clarification on the procedure to be followed for admission. Section 13(1) of the Right of Children to Free and Compulsory Education (RTE) Act 2009 provides, that while admitting a child, no school or person shall subject the child or his/her parents to any 'screening procedure'. Section 2(o) of the RTE Act defines the term 'screening procedure' to mean the 'method of selection for admission of a child, in preference over another, other than a random method'. Further, section 12(1)(c) of the Act provides that unaided schools and specified category schools shall admit at least 25 per cent of the strength of class1, children belonging to weaker section and children belonging to disadvantaged group from the neighbourhood and provide them free and compulsory education till completion of elementary education. Further, where the school admits children at pre-primary level, such admissions shall be made at that level.

The objective of the provisions of section 13(1) read with section 2(a) is to ensure that schools adopt an admission procedure which is non-discriminatory, rational and transparent and that schools do not subject children and their parents to admission tests and interview in order to decide whether they will admit a child or not. Admission tests and interviews are generally a tool for profiling and eliminating children, and therefore, screening to assess a child's intelligence' should be prohibited. The RTE Act is approved in the belief that availability of equal educational opportunities to children belonging to different social and economic background will reinforce the idea of equality ensures to our Constitution and ensure that children are not discriminated on the basis to social or economic background or any such criteria. There is need for moving towards composite classrooms with children from diverse backgrounds rather than homogenous and exclusivist schools. It is an academically established point that heterogeneity in the classroom leads to greater creativity.

### **The right of children to free and compalsary education act 2009 - critical analysis and challenges in its implementation**

#### **1. Who Is a Child?**

Clarity is missing even on the basic understanding of who is a child. The United Nations Convention on Rights of the Child (UNCRC) defines any individual below 18 years of age as a child. While the Juvenile Justice Act in our country considers persons below 14 years of age to be children, the RTE Act 2009 narrows the definition down to persons between six to 14 years.<sup>6</sup> Though the act expresses interest in taking necessary steps in providing free pre-school education for children above three years of age,<sup>27</sup> leaving out this critical segment of the child population from the definition is worrisome. Not only does the act fail to cover all children, it does not provide definite timelines for many provisions.

#### **2. Flexible or Ambiguous?**

As already noted, the five-month old enactment continues to be in a state of suspended animation with the government yet to set a date for the act to come into force as a legally binding obligation.<sup>28</sup> This is not the only worrisome aspect about timelines with regard to the act. Several provisions leave scope for the government to delay effective implementation. For instance, the question of establishing a neighbourhood school where there is none within three years of commencement of the Act is a case in point.<sup>29</sup> The extent of ambiguity becomes obvious as the act does not clarify the area or limits for establishment of a neighborhood school, leaving this to be decided by the government at a later date through rules that it may deem fit to alter.<sup>30</sup> This uncertainty is also evident in determining the eligibility of a teacher. As a critical component affecting outcomes, eligibility of teachers would be based on minimum qualifications as laid down by an academic

<sup>24</sup> The Hindu Times, 2010.

<sup>25</sup> <http://indialawyers.wordpress.com/category/right-to-education/>

<sup>26</sup> Legal Resource Centre/Court Judgment/Legal Archives

<sup>27</sup> Supra.

<sup>28</sup> Section 1.3 RTE Act 2009.

<sup>29</sup> Section 6 RTE Act 2009

<sup>30</sup> Section 38(2)b RTE Act 2009

authority.<sup>31</sup> However, the Act also allows for unqualified teachers to continue for five years after the Act comes into effect, on grounds of lack of availability of trained teachers.<sup>32</sup> It also provides for relaxation of rules and appointment of unqualified teachers for five years till the Act is notified. This only reflects the government's non-serious approach to implementing the Act and its disregard of quality of outcomes.

### 3. Quality: Real or Theoretical ?

The Act lists key norms and standards that would need to be adhered to by all schools, failing which no school may be established.<sup>33</sup> This provision is contradicted when the government gives three more years after the Act takes effect to schools that do not comply with the norms as specified in the schedule.<sup>34</sup> To add to this, the central government may rule to change the schedule by adding or even omitting norms and standards.<sup>35</sup> It is acceptable if items or qualifications are added to the existing parameters; it is another matter that even now the government is unable to set the basic minimum requirements for a school. Another aspect relating to quality is the nature of job conditions for teachers. With a plethora of evidence pointing to the fact that differential remuneration to teachers affects their motivation, the absence of any indicative benchmarks for teachers' salary is a significant oversight in the Act. Further, while the Act suggests that no teacher should be engaged in any non-educational tasks, it excludes their engagement in the population census, duties pertaining to disaster relief and elections at various levels.<sup>36</sup> Not only does the act turn a blind eye to the workload and the absence of motivation among teachers, it forbids them from taking private tuitions.<sup>37</sup> With more than 26% of children in classes IV to VIII attending private tuitions classes,<sup>38</sup> this may be a case of misplaced activism. Setting uniform salary norms for teachers and withdrawing them from all non-educational purposes might have served the cause more effectively.

### 4. Who Is Accountable?

Quality monitoring is attainable only in a culture of accountability. To ensure this, the Act requires that all schools, except those that are unaided, constitute school management committees.<sup>39</sup> Apart from complex questions relating to fixing of accountability at different levels, which remain unaddressed (maybe for good reason, as the Act could not have spelt out all the relevant details), it is not clear why unaided schools are left out of the purview of accountability with regard to the provisions contained in Section 21.1, when they admit 25% of the underprivileged students. Further, the government seems to be in no hurry to adhere to the spirit of the right to education, going by the number of disclaimers that are provided.<sup>40</sup> These

allow for prosecution to be instituted only with the previous sanction of an authorized government personnel in the event of a school charging any kind of fees. These also relate to the decision to scrap the recognition of any school, and prosecution for running a school without any recognition. An intelligent guess is sufficient to peg the occurrence of such prosecution as unlikely. The Act also maintains that legal proceedings against such actions of the government cannot be initiated in the event that these have been undertaken in good faith and best interests of the children.<sup>41</sup> Rather than pursuing an objective vision, the Act is ridden with loopholes. There are many other issues that need to be examined closely (such as harmonization of rules and provisions in place in different states with the RTE Act 2009, among others); however, we now shift our focus to the question of finances.

### 5. Financial Responsibility

There is no clarity on who will take the lead in financing the Act. Ideally, the central government ought to be shouldering this duty in the light of the poor fiscal situation in most states. Acknowledging this reality, the Act notes that the states may seek a predetermined percentage of expenditure as grants-in-aid from the central government, based on the recommendations of the finance commission on assessment of additional resource requirements for any state. Be that as it may, the Act reveals an obvious contradiction when, on the one hand, it suggests that both the union and state governments have concurrent responsibility to finance the Act,<sup>42</sup> with the centre preparing estimates of capital and recurring expenditure under the Act, while on the other, it unequivocally holds the state governments responsible for providing the funds for implementation of the Act.<sup>43</sup> The union government's attempt to shy away from taking primary financial responsibility of implementing the act is in keeping with its reluctance to allocate adequately for the social sector. The Eleventh Plan outlay for education was promised to be approximately 20% of the total. A rudimentary analysis of the budgetary outlays by the union government in the three years from 2007-08 to 2009-10 on key plan programmes in the elementary education sector, ie, on SSA and the Midday Meal Scheme, reveals that when seen as a proportion to the total outlay in the Eleventh Plan, the trajectory of spending in the first three years of the Eleventh Plan period in this sector does not conform to the promises.

In principle, the RTE Act 2009, with appropriate modifications and financial provisioning, offers a great opportunity to correct the anomaly of poor education outcomes, and can deliver on the long-standing commitment of providing basic and quality education to the so-called "demographic dividend" of the country. Unfortunately, short-term political gains and poor judgment on the part of politicians and policymakers may continue to be major roadblocks in accomplishing this critical goal.

<sup>31</sup> Section 23(1) RTE Act 2009

<sup>32</sup> Section 23(2) RTE Act 2009

<sup>33</sup> Section 19(1) RTE Act 2009

<sup>34</sup> Section 19(2) RTE Act 2009

<sup>35</sup> Section 20 RTE Act 2009

<sup>36</sup> Section 27 RTE Act 2009

<sup>37</sup> Section 28 RTE Act 2009

<sup>38</sup> *ibid*

<sup>39</sup> Section 21(1) RTE Act 2009

<sup>40</sup> Section 35 RTE Act 2009

<sup>41</sup> Section 37 RTE Act 2009

<sup>42</sup> Section 7(1) RTE Act 2009

<sup>43</sup> Section 7(5) RTE Act 2009

## 6. Coercive and non-coercive rules within a rights framework

It is evident that there is a fundamental right to FCE in India. However, apart from a mere mention of the age group for which such a right is guaranteed, Article 21-A does not throw any light on its content. The content of the right is left to be regulated by law. In order to implement the fundamental right to education through a rights-based model of legislation, one needs to determine the features of such a model. However, before examining the elements of a rights-based model of legislation. The duty to protect requires the State to ensure that the State/enterprises/individuals do not deprive children of their right

## 7. Implementation

Today education is considered an important public function and the state is seen as the chief provider of education through the allocation of substantial budgetary resources and regulating the provision of education. The pre-eminent role of the state in fulfilling the right to education is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights. Traditionally, education has been the duty of a child's parents, however with the rise of systems of education, the role of parents has diminished. With regards to realizing the right to education the World Declaration on Education for All, adopted at the 1990 World Conference on Education for All states that "partnerships between government and non-governmental organizations, the private sector, local communities, religious groups, and families" are necessary.

## Conclusion

A good quality education is the birth right of every child. In India lots of efforts had been made before and after independence to provide free and compulsory elementary education to every child without any discrimination. As described by Granvil Austin the fundamental rights and directive state policy are the conscience of our constitution. The directive principles prescribed the goal to be attained and the fundamental rights lay down the means by which that goal is to be achieved.

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