

**A CRITICAL REVIEW: RIGHT TO EDUCATION****ASSISTANT PROFESSOR GAZALA BHOJE, DEPARTMENT OF SOCIOLOGY****G.M.MOMIN WOMENS COLLEGE****Introduction**

Education in its general sense is a form of learning in which the knowledge, skills, values, beliefs and habits of a group of people are transferred from one generation to the next through storytelling, discussion, teaching, training or research. Education may also include informal transmission of such information from one human being to another. Education is commonly and formally divided into stages such as preschool, primary school, secondary school and then college, university or apprenticeship.<sup>1</sup>

**Importance of Education:-**

Education is not all about studying and getting good marks. It is really a means to discover new things which we don't know about and increase our knowledge. An educated person has the ability to differentiate between right and wrong or good and evil. It is the foremost responsibility of a society to educate its citizens. Focus should be on women's education because the knowledge and empowerment of one woman can bring about a change in a family and even the society as a whole. It is the uneducated and illiterate people who think women are not entitled to education.

A person becomes perfect with education as he is not only gaining something from it, but also contributing to the growth of a nation. We must realize the importance of education. We must aim to ensure that each citizen of our nation is educated and independent.<sup>2</sup>

**India's Progress Toward Achieving the Millennium Development Goals**

**The Millennium Development Goals (MDGs)** which include eight goals were framed to address the world's major development challenges with health and its related areas as the prime focus. In **India**, considerable progress has been made in the field of basic universal education, gender equality in education, and global economic growth. However there is slow progress in the improvement of health indicators related to mortality, morbidity, and various environmental factors contributing to poor health conditions. Even though the government has implemented a wide array of programs, policies, and various schemes to combat these health challenges, further intensification of efforts and redesigning of outreach strategies is needed to give momentum to the progress toward achievement of the **MDGs**.

The **MDGs** adopted by the United Nations in the year **2000** project the efforts of the international community to "spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty." The **MDGs** are eight goals to be achieved by **2015** that respond to the world's main development challenges. These goals are further subdivided into **18** numerical targets which are further measured by means of **40** quantifiable indicators. Health constitutes the prime focus of the **MDGs**. While three out of eight goals are directly related to

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<sup>1</sup> Retrieved from: <http://en.wikipedia.org/wiki/education> Date: 3 December ,2014.

<sup>2</sup> Retrieved from: <http://www.thehindu.com/features/kinds/importance-of-education/aritcle461965.ece> Date: 3 December,2014.

health, the other goals are related to factors which have a significant influence on health. Hence the goals and targets are inter-related in many ways. The eight **MDG** goals are to:

- (1) eradicate extreme poverty and hunger;
- (2) achieve universal basic education;
- (3) promote gender equality and empower women;
- (4) reduce child mortality;
- (5) improve maternal health;
- (6) combat HIV/AIDS, malaria, and other diseases;
- (7) ensure environmental sustainability;
- (8) develop a global partnership for development.

Ever since India's independence in **1947**, various national health schemes, programs, and policies have been launched with the view to improve the health status of people. The most recently launched **National Rural Health Mission (NRHM)** in **2005** aims to improve and strengthen the existing rural health care with the phased increase of funding amounting to **2-3 %** of gross somatic product (**GDP**), as well as to bring out some innovative interventions.<sup>3</sup>

#### **Right to Education and Equal Opportunity**

By far the most important term of reference for the **Saman School PranaliAyog**, calls for it to specifically recommended "ways and means to give effect to **Right To Education** under Article 21 A of the Constitution within the framework of a Common School System". Furthermore, the Commission regards education a matter of child's right in contrast to her need, and believes that the state must respond to the right as its sovereign duty, and not just as a part of its welfare or humanitarian agenda.<sup>4</sup>

#### **Historical Evolution of the Concept of Right to Education In India**

The Indian concept of right developed during the freedom movement with the demand for self-governance and total independence from the colonial rule, culminated into part III of the Indian Constitution on `Fundamental Rights` The most important fundamental right impacting on the life of common people in India happens to be Article 21, which guarantees "**right to life and personal liberty**".<sup>5</sup>

##### **❖ Education During The Pre-Independence Era**

The **Right To Education** issue has been debated in India for more than a century. A substantial part of the memorandum presented by **Mahatma Jotirao Phule** to the Indian Education Commission (i-e. the hunter Commission) in **1882**, dwelt upon how the British Government's

<sup>3</sup>Retrieved from: [www.ncbi.nlm.gov/pmc/articles/PMC3180952/](http://www.ncbi.nlm.gov/pmc/articles/PMC3180952/) Date: 12 January ,2015.

<sup>4</sup>Malhotra Ramesh, 2011, "**RIGHT TO EDUCATION**", Published by D.P.S, *Publishing House*,pg:175

<sup>5</sup>IBID ,pg:179

funding of education tended to benefit, "Brahmins and higher classes" while leaving **"the masses wallowing in ignorance and poverty"**. **G.K. Gokhale** introduced a Bill under the Indian Council Act of 1909, to make primary education compulsory, and deserving of State funding. However, the Bill was defeated by a large majority.<sup>6</sup>

In **1937**, at the National Education Conference held at **Wardha** (Maharashtra), Mahatma Gandhi had to use all the moral powers at his command to persuade the ministers of Education of the newly elected Congress, Governments of seven provinces to give priority to basic education (under *Nai Talim*) of seven years and allocated adequate funds for this purpose in spite of this, the Wardha conference passed a resolution among which the first one stated: "that in the opinion of his conference free and compulsory education be provided for seven years on a nation wide scale". This resolution on free and compulsory education was re-iterated by the 51<sup>st</sup> annual session of Indian national congress held at **Haripura in February 1938**<sup>7</sup>

#### ❖ **Education Development In Post Independence Era**

In **1950**, the country adopted its own constitution, which provided fundamental Rights to equality, to freedom, against exploitation, to freedom of Religion, to constitutional remedies and cultural and educational rights of minorities. The right to free and compulsory education was retained in part IV of the constitution that incorporates the directive principles of state policy. Article 45 of part IV of the constitution declared: "The state shall endeavor 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".<sup>8</sup>

The distinction between fundamental Rights and directive principle of state policy is well settled under the Indian constitution. The most relevant of them from education point of view was the Supreme Court's *Unnikrishna Judgment* (1993). The court ruled that Article 45, of the directive principles of state policy must be read in harmonious conjunction with Article 21. Since, right to life and personal liberty loses its meaning if a child is deprived of elementary education. Thus, this judgment made right to free and compulsory education as good as fundamental right. The Supreme Court also held that economic and financial making provisions of post-basic higher education, but not elementary education<sup>9</sup>.

#### ❖ **Right Of Children To Free And Compulsory Education Bill, 2009:-**

Both the houses of the Indian parliament have passed the Bill for providing free and compulsory education for children in the age-group of 6 to 14. There have been extensive debates on the extent to which this bill will help in implementing the Right to education as provided in Article 21-A of the Indian constitution.

While discussing the problems of school education in India, a few issues are repeatedly raised: absence of teachers from schools lack of interest on the part of the parents or guardians deficiencies

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<sup>6</sup>IBID,pg:179

<sup>7</sup>Malhotra Ramesh, 2011, "*RIGHT TO EDUCATION*", Published by D.P.S, *PUBLISHING HOUSE*,pg:180

<sup>8</sup>IBID,pg:180

<sup>9</sup>IBID ,pg:181

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in curriculum and syllabus, wrong methods of teaching etc. But these problems cannot be viewed in isolation and in a fragmented fashion.<sup>10</sup>

- 1- There is the problem of access School education is simply unavailable to the vast number of children in the country. During the last few decades there has been some progress in improving enrolment. The gross enrolment ratio from classes I to VII was 94.9 percent and from classes I to XII, 77 percent. Educational statistics at a Glance, 2005-06, the Ministry of HRD,2008. The attendance has generally been found to be at least 25 percent, below enrolment. The drop-out rates are very high indeed. For the country as a whole, the drop-out rate from classes I to X was 61.6 percent; and in the state like Bihar it was above 75 percent.<sup>11</sup>
- 2- Systemic problem of school education in India is its abysmally poor quality this has been attributed to a variety of factors, including poor curriculum and syllabus, deficient pedagogy, negligent teachers and parents who are unconcerned. But the real reason is the gross under-funding of school education in India. If the required magnitude of funding is available, many of the factors, allegedly accountable for the poor quality of school education, would disappear.<sup>12</sup>
- 3- Systemic problem of education in India is the rampant discrimination characterizing it. Children of the rich and the elite have access to good quality private and special types of public schools, where as children of vast majority of the poor, including the minorities and marginalized groups, go to government schools which are in a shambles. Thus, the class division in the society is reflected in the division of the school system.<sup>13</sup>

The Right to Education Bill perpetuates the multi-layer discriminating school system in India. It legalizes the currently operating four categories of schools in India:

- (a) Government schools
- (b) Aided private schools,
- (c) Special category schools &
- (d) non- aided private schools.<sup>14</sup>
- (e)

#### **Right To Education Act Will Benefit Disabled**

After facing much opposition from rights groups, India's **Right to Education Act** will cover all categories of differently-abled children. The bill which awaits presidential consent for becoming a law, will benefit children with both mental as well as physical disorders. The **Human Resource Development** (HRD) ministry has admitted that a section of the **Right to Education (RTE) Act** pertaining to "**disadvantage Sections**" will have to be changed as it does not cover all disabled children.

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<sup>10</sup>Malhotra Ramesh, 2011, "**RIGHT TO EDUCATION**",Published by D.P.S, *PUBLISHING HOUSE*,pg:90

<sup>11</sup> IBID, pg:91

<sup>12</sup>Malhotra Ramesh, 2011, "**RIGHT TO EDUCATION**",Published by D.P.S, *PUBLISHING HOUSE*,pg:93

<sup>13</sup>Malhotra Ramesh, 2011, "**RIGHT TO EDUCATION**",Published by D.P.S, *PUBLISHING HOUSE*,pg:97

<sup>14</sup>IBID,pg:98

According to the proposed amendment, the Act will now include children covered under the National Trust Act and other law that deals with those suffering from mental as well as physical disorders. Barely a week after the Act was passed, the Prime Minister's office wrote to the HRD ministry asking it to ensure that the concerns of the disabled were addressed HRD Minister Kapil Sibal assured both Parliament and the Central Advisory Board of Education (CABE) that all categories of disabled children would receive benefits under the RTE Act.

**“Section 3 states that disadvantaged sectioned sections cover children with disabilities as specified under the persons with Disabilities Act”.**

The RTE Act proposes free and compulsory education to all children aged between 6 and 14 years, making it binding on all public and private schools to reserve 25% of their seats for children from “disadvantaged Sections”.

Activists says that, “where the bill does define “Disability”, it takes the meaning as given in the disability Act 1995, which covers people with physical disabilities only”.

Activists point out that India was one of the first countries to ratify the UN convention on rights of persons with disabilities, in October 2007, which says.... “State parties shall ensure that person with disability are not excluded from the general education system on the basis of disability and that children with disabilities are not excluded from free and compulsory primary education or from secondary education on the basis of disability”.<sup>15</sup>

**RTE Act Not Applicable To Minority Institution: Supreme Court:-**

Upholding the validity of the right to education (RTE) Act, the Supreme Court said “it will not apply to aided or unaided minority schools and they are not bound to give 25% seats reserved for the children of economically weaker sections”.

A five – judge Constitution Bench headed by chief justice R.M. Lodha said that “minority institution were outside the ambit of the RTE and also upheld the constitutional validity of the social welfare legislation enacted with constitutional amendments which places on obligation on unaided private schools to reserve 25% seats for such wards”.

It also upheld Article 15 (5) and 21(a), by virtue of which unaided private schools are also obligated to reserve 25% seats for students from weaker sections. The court order come on a bunch of petitions by the Karnataka – based institutions. They have contended that a three – judge bench ruling on the validity of the RTE Act did not deal with the constitutional validity of these provisions in its April 2012 verdict. The bench, by a 2:1 majority verdict, had shut down a challenge to the validity of the RTE, consequently obligating private unaided schools to reserve seats.

The dissenting judgment by Justice K.S. RadhaKrishnan however held that the man date under the RTE act providing for reservations of seats was not constitutionally valid, and does the unaided schools, weather the majority or minority, could not be compelled to unmark 25% seats in their institutions.

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<sup>15</sup>Retrieved from: <http://southasia.oneworld.net/news/right-to-education-act-will-benefit-disabled> 5 December, 2014.

**On August 23, 2013**, a three- judge bench issue to a five – judge bench because it involved a vital constitutional question of law relating to the rights of unaided private educational institutions.

The petitioners had contended that the earlier ruling had stated such interference would violate Articles 14, 15 (1) , 19(1)(g) and 21. The **Right to Education Law** was enacted by parliament in 2009 by inserting article 21A to provide free and compulsory education to children between 6 and 14 years.<sup>16</sup> The recent supreme court judgment ruling that **Right To Education (RTE) Act** is not applicable to minority schools has been facing oppositions from the legal fraternity, who believe that the ruling will deprive hundreds of thousands of children from quality education. The **RTE Act** states that 25% of seats in schools are to be reserved for socially and economically weaker sections of society but was ruled as not applicable to minority-run institutes.<sup>17</sup>

#### **Conclusion:-**

Thus, it can be conclude that, education is a fundamental human right, without which capabilities for a decent life and effective participation in society are lesslikely to be developed. Since, the **RTE Act** has provided us the tools to provide quality education to all our children, it is now imperative that we, the people of India, joint hands to ensure the implementation of these law in its true spirit. This **Act** has put India in the same league as USA and 130 other nations as far as the **Right To Education** is concerned. A hope that if all these hurdles and short comings are overcome and the loopholes removed, then this will become the road leading towards an Educated India, a Proud India.

**“SARVA SHIKSHA WILL BE USED TO PUSH RIGHT TO EDUCATION....”<sup>18</sup>**

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<sup>16</sup>Retrieved from: <http://www.dnaindia.com/india/report-rte-act-not-applicable-to-minority-institutions-supreme-court-1985782>, Dste:23 December, 2014.

<sup>17</sup>Retrieved from: <http://indiatoday.intoday.in/education/story/rte-should-be-applicable-to-minority-schools-legal-fraternity/1/360339.html/> Date:23 December, 2014.

<sup>18</sup>Retrieved from:<http://www.authorstream.com/presentation/tarunguptagi-1175046-right-to-education-act/> Date: 4 December, 2014

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