

## CHAPTER-2

### 2.1 Right of Children to Free and Compulsory Education (RTE) Act, 2009

There has been a paradigm shift in the field of education in India. Right from the compliance of international obligations to fulfilling the constitutional mandate for providing free and compulsory education, India has witnessed a long journey. The emergence of right to education as a fundamental right may rightly be said an icebreaker but still we have miles to travel in order to make it a ground reality. At the present time SSA is the main vehicle to implementation and regulates the Act. Let's know the history of RTE.

#### International Commitments

The right to education has been recognized as a basic human right in various international instruments and conventions. **Geneva Declaration**<sup>12</sup> containing five principles stated that necessary means must be provided for the physical and spiritual development of the child along with the special provision that a child must be educated and protected against exploitation. Further the landmark **Universal Declaration of Human Rights, 1948** (UDHR) proclaimed that children as a category are entitled to special care and assistance. Article 26 of UDHR provides for the right to compulsory and free education, at least in the elementary and fundamental stages. The US Supreme Court also set an example before world by rightly promulgated the importance of education wherein it unanimously overturns the *Plessy v. Ferguson's* (1896) decision in the case of *Brown v. School Board of Topeka*<sup>13</sup> which was delivered by Chief Justice Earl Warren. Warren J stressed the importance of education in the consciousness of American life when he said:

Education is perhaps the most important function of state and local governments... It is the very foundation of good citizenship. Today it (education) 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

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<sup>12</sup>Adopted on 26th September, 1924.

<sup>13</sup>347 U.S. 483 (1954).

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.<sup>14</sup>

**The International Covenant on Economic, Social and Cultural Rights, 1966**<sup>15</sup> also recognizes the right of everyone to education and maintains that primary education shall be compulsory and available free to all. The State 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 sense of its dignity, and shall strengthen the respect for human rights and fundamental freedom. **The United Nation Convention on the Rights of the Children, 1989**<sup>16</sup> (CRC) has also been recognized as the most complete statement of the children’s rights with the force of international law as compared to the earlier instruments of international law which proved to be a toothless exercise. India made an international commitment on 11<sup>th</sup> December, 1992 by ratifying the CRC, 1989. The Government of India has, subject to resources, undertaken to take measures to progressively implement the provisions of the CRC, 1989 which mainly focusing attention on certain priority issues affecting children, like child labour and compulsory education. Further in the year of 2000, the Millennium Summit devised some goals in the form of **Millennium Development Goals (MDGs)** for the signatory countries.<sup>17</sup> One of the goals amongst these is providing universal primary education by 2015. Though achieving universal primary education is one of the MDGs, but, it is equally true that without a feasible and authentic education system the achievement of other MDGs seem to be a distant dream. So there was an adequate force at international level and it was obligatory for Government of India to endeavour to foster respect for international law and treaty obligations.<sup>18</sup>

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<sup>14</sup> *Ibid.*

<sup>15</sup> Article 13, The International Covenant on Economic, Social and Cultural Rights, 1966.

<sup>16</sup> Articles 28, 29, The Convention on the Rights of the Child, 1989 casts duty upon the State Parties to recognize the right of the child to education. Article 28 provides that state parties with a view to achieving right to education progressively and on the basis of equal opportunity, they shall, in particular: make primary education compulsory and available free to all..., take measures to encourage regular attendance at school and the reduction of drop-out rates. Likewise Article 29 provides for the development of the child’s personality, talents, mental and physical abilities to their fullest potential...

<sup>17</sup> The Millennium Declaration was signed by 147 countries.

<sup>18</sup> See, Article 51, Constitution of India, 1950.

## National Commitment

**The University Education Commission** (1948-1949) under the chairmanship of Dr. Radhakrishnan recognized that: “in a democratic society, the opportunity of learning must be open not only to elite but to all those who have to carry the privilege and responsibility of citizenship. Education is a universal right, not a class privilege.” The post-independence agendas of education, whether envisaged by **Jawaharlal Nehru**, **the Kothari Commission (1966)** or **the National Policy on Education (NPE, 1986)** and **SarvaShikshaAbhiyan (SSA)** have initiated the discourse towards better education. The education came to be perceived as a right and not a privilege.<sup>19</sup> Realization regarding the importance of primary education amongst stakeholders, particularly the policy makers, has opened the doors for the bright future of our next generation. State of Tamil Nadu was the first to break the ice by legislating compulsory primary education in 1994. There are number of initiative at national and regional levels aimed at realization of the child’s rights to education.<sup>20</sup>

To meet with the finance, currently, all taxes in India are subject to the education cess, which is 3% of the total tax payable. With effect from assessment year 2009-10, Secondary and Higher Secondary Education Cess of 1% is applicable on the sub total of taxable income. The proceeds of the 2 per cent cess are directed to a separate non lapsable fund called *PrarambhikShikshaKosh* (PSK), setup by Government of India, to exclusively cater to the elementary education in India. This fund is under the control of the Ministry of Human Resource and Development (MHRD) and is typically utilized for its flagship programmes *SarvaSikshaAbhiyaan* (SSA) and the Mid-day Meal Scheme (MDMS). Furthermore, the exciting proposal of spending six per cent outlay of total GDP on the education may be proved as magic potion if it gets a green signal from the government.

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<sup>19</sup>Ravi Kumar (2006), “Introduction: Equality, Quality and Quantity—Mapping the Challenges before Elementary Education in India” ed. Ravi Kumar, *The Crises of Elementary Education in India*, Sage, New Delhi, p. 22.

<sup>20</sup> See, Government of India (1997), *Convention on the Rights of the Child –Country Report India*, <http://wcd.nic.in/crcfebmr.htm>.

## **2.2 Right to Education and the Constitution of India**

Right from the Preamble of the Constitution of India, which assures the dignity of the individual, our Constitution had incorporated Articles- 41, 45, 46 in part IV, which is of Directive Principles of State Policy. Further to protect the educational interest of religious and linguistic minorities special provisions had been made by inserting Fundamental Rights under Article 30, entitling them to establish and administer educational institutions of their choice. Further Article 26 provides that every religious denomination or any section thereof has been authorized to establish and maintain institutions for religious and charitable purposes.

Article 41 of the Indian Constitution provides that: The State shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education....<sup>21</sup>

Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Further Article 45 provided that the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.<sup>22</sup>

The question was whether it was sufficient in order to attain the Constitutional goals of Justice, Liberty, Equality and Fraternity as laid down in Preamble of our Constitution. On one front as set down in the part III of our Constitution by way of Article 30 and Article 26, they were of limited nature and did not make provisions of the holistic perspective. On the other front, part IV of the Constitution by incorporating the provisions in Articles 41, 45, 46 were of non-justifiable rights and which set the aims for the government to be achieved. Furthermore the failure of the

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<sup>21</sup>The financial condition of India at the time of our independence was also discussed in the Constituent Assembly Debates, Vol.VII at pages 909 and 910 of the (1948-49) wherein it was stated that: In the directives we have provided that in fifteen years' time there should be universal primary education. But no one knows whether the financial and other conditions in the country would permit of universal primary education to be established even then. Today no one in India can ask for primary education as a right as only ten per cent of the population get primary education.

<sup>22</sup> As it was before 86th Amendment

policy makers in order to implement the provisions of Article 45 even after five decades against the Constitutional mandate of 10 years, made the thing more aggravated. Here the **words of the C Rajagopalchari** seem to be right which he wrote in his prison diary in 1922, that:

Election and there corruption, injustice and the power and tyranny of wealth, and inefficiency of the administration, will make a hell of life as soon as freedom is given to us. Men will look regretfully back to the old regime of comparative justice, and efficient, peaceful, more or less honest administration. He added: **“hopes lies only in universal education** by which right conduct, fear of God and love will be developed among the citizens from childhood.<sup>23</sup>

‘Education’ was a State subject with Entry 11 placed in List II –State List. By the Constitution (42nd Amendment) Act 1976, the above said Entry was deleted and a new Entry 25 was inserted in List III –Concurrent List.<sup>24</sup> Entry 25 incorporate education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour. Swaran Singh Committee (1976) also suggested to put education in the concurrent list and highlighted that: “Agriculture and education is subject of prime importance to country's rapid progress towards achieving desired socio-economic changes....”<sup>25</sup>

### **Supreme Court of India on Right to Education**

In the case of *Mohini Jain v. State of Karnataka*<sup>26</sup> the Supreme Court of India held that though the right to education is not explicitly inserted in part III of the Constitution as a Fundamental Right but Article 21 read with Articles 39, 41 and 45, makes it clear that framers of Constitution of India made it obligatory for the policy makers to provide education for its citizens. The Supreme Court of India held that:

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<sup>23</sup> N.A. Palkhivala (1999), *selected writings* quoted by P. P. Rao (2008), “Fundamental Right to Education”, 50 *JILI* (2008) 591.

<sup>24</sup> Where Parliament and State Legislatures both can make law.

<sup>25</sup> Swaran Singh Committee Report, (1976) 2 *SCC (Jour)* 45.

<sup>26</sup> (1992) 3 *SCC* 666.

The objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three pronged justice promised by the preamble is only an illusion to the teaming-million who are illiterate. It is only education which equips a citizen to participate in achieving the objectives enshrined in the Preamble. **(Per Kuldip Singh J)**<sup>27</sup>

Thus Article 21 cannot be read in isolation and right to live under Article 21 is not restricted to mere animal existence<sup>28</sup> rather something which includes within its ambit the right to live with human dignity.<sup>29</sup> An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him.<sup>30</sup> The state was held duty bound to make endeavour to provide educational facilities at all level. This was the landmark judgment on the front of interpreting the right to life with the Directive Principles of State Policy and advocating for right to education. The Supreme Court of India quoted the **words of Dr. Ambedkar:**

In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip-service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country.<sup>31</sup>

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<sup>27</sup>*Ibid.* Mr. Justice Kuldip Singh may be called as a champion in the field of right to education because earlier no judge could take such a bold step in the recognition of right to education as a fundamental right although many judges indirectly recognized the importance of education. See **Jai S. Singh (2010), “Expanding Horizons of Human Right to Education: Perspective on Indian and International Vision” 52JILI(2010).**

<sup>28</sup>*Francis Coralie v. Union Territory of Delhi*, AIR 1978 SC 597.

<sup>29</sup>*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

<sup>30</sup>*Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666.

<sup>31</sup>*Ibid.* para 8, quoted C.A.D. Vol.VII p. 476.

Further the larger bench of the Supreme Court of India, in the case of **J.P. Unnikrishnan v. State of A.P.**<sup>32</sup> though upheld that right to education flows from Article 21 but at the same time Apex Court limited its scope to the targeted group of children until they complete the age of fourteen years. The Supreme Court has duly recognized the importance of education and opined that:

If really Article 21, which is the heart of fundamental rights has received expanded from time to time there is no justification as to why it cannot be interpreted in the light 45 wherein the State is obligated to provide education upto 14 years of age, within the time limit... The Directive Principles contained in Part IV constitute the stairs to climb the High edifice of a socialistic State and the Fundamental Rights are the means through which one can reach the top of the edifice.

Further, the Apex Court in India commented on the quality of the teaching many a time in its judgments. Allowing ill-trained teachers coming out of derecognized or unrecognized institutes or licensing them to teach the children of impressionable age, contrary to the norms prescribed, will be detrimental to the interest of the nation itself in the sense that in the process of building a great nation, teachers and educational institutions also play vital role. In cases like these, interest of individuals cannot be placed above or preferred to larger public interest." [See **L. Muthukumar v. State of Tamil Nadu**]<sup>33</sup>

### **2.3 Recommendation given by Law Commission of India**

Law Commission of India taken up the matter *suomoto* concerning provision of free and compulsory education to all children up to the age of 14 years, a cherished goal set in the Constitution of India. Education has an acculturating role. It refines sensitivities and perceptions that contribute to National cohesion, scientific temper and independence of mind and spirit – thus furthering various goals set out in our Constitution.<sup>34</sup> Law Commission of India emphasized the need for immediate Central

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<sup>32</sup>(1993) 1 SCC 645.

<sup>33</sup>(2000) 7 SCC 618.

<sup>34</sup>Law Commission of India (1998), *165<sup>th</sup> Report on 'Free and Compulsory education for children'* Universal Law, New Delhi, 2<sup>nd</sup> edition, p. 165.5, 2010

legislation to give effect to the right to education without waiting for the constitutional amendment to go through in Parliament.<sup>35</sup> Law commission of India had also annexed a draft bill accordingly in its 165<sup>th</sup> report.

### **The National Commission to Review the Working of the Constitution**

The National Commission to review the working of the Constitution<sup>36</sup>, referring to the Constitution 93<sup>rd</sup> (Amendment) Bill which subsequently became the Constitution (86<sup>th</sup> Amendment) Act, 2002, observed that right to free and compulsory education should under no circumstances be diluted and the State should fulfil this solemn obligation to the nation. The responsibility for the universalization of elementary education should be entrusted to *Panchayat* and local self-government institution. Further the Commission was of view of enlarging the scope of the Bill not only to the target group of six to fourteen years but to every child until he complete the age of fourteen years; and in case of girl child and members of the Scheduled Castes and the Scheduled Tribes, until they complete the age of eighteen years. The Commission also suggested that: “it should also be laid down in Article 45 that the State shall make provision for education beyond the age of fourteen years within the limits of its economic capacity and stage of development”. The Commission also recommended “...that an independent National Education Commission should be set up every five years to report to Parliament on the progress of the constitutional directive regarding compulsory education and on other aspects relevant to the knowledge society of the new century.”<sup>37</sup> But the Parliament while amending Constitution in the year 2002<sup>38</sup> did not pay heed to all recommendations.

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<sup>35</sup>*Ibid.*, p. 165.43.

<sup>36</sup> See, *Report of the National Commission to review the working of the Constitution*(2008),p. 214, para 23

<sup>37</sup>*Id.*

<sup>38</sup>By Constitution (86<sup>th</sup> Amendment) Act, 2002.



## 2.4 Emergence of Right to Education as a Fundamental Right

By way of Constitution (86<sup>th</sup> Amendment) Act, 2002, the right to education has been explicitly declared as a fundamental right by inserting a newly Article 21A.<sup>39</sup> The Amendment has inserted following provisions in the Constitution of India:-

- Article 21A Right to Education- 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.
- Article 45. Provision for early childhood care and education to children below the age of six years – The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
- Article 51 A clause (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 to fourteen years.

So the parliament by Constitution (86<sup>th</sup> Amendment) Act, 2002 has tried to justify its obligation as set out in the Directive Principles of State Policy, international obligations or as interpreted by the Apex Court in number of path breaking judgments. Firstly Constitution (86<sup>th</sup> Amendment) Act, 2002 has inserted a new Fundamental Right by way of Article 21A but limited its scope to the target group of children to the age group of six to fourteen years, meaning thereby once the state had complied with Article 21A by making an appropriate law<sup>40</sup> then in case of violation of this right one can go to the Supreme Court under Article 32 or to the respective High Courts under Article 226 for the enforcement of the right to education. This right based approach to education can rightly be said as remarkable step.

The second provision as inserted by the Constitution (86<sup>th</sup> Amendment) Act, 2002 is the substitution of Article 45. Earlier it used to put a mandate upon the State for free

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<sup>39</sup>Here it is pertinent to mention that India is going to top with the largest demographic dividend in the world but, the true benefit of it can only be reaped if this dividend is sound and fruitful. Capacity building of our demographic dividend by imparting free and compulsory education is the only solution; otherwise, it could be converted in to a demographic deficit. **(deliberation of Prof. Mool Chand Sharma on the topic)** So it was not only the social aspects which were responsible for the Constitution (86<sup>th</sup> Amendment) Act, 2002 but also the economic aspects which emerged particularly after the emergence of LPG world in the early 1990s.

<sup>40</sup> As the Article 21A itself put a mandate upon State to make a law for determining the manner.

and compulsory education for all children until they complete the age of fourteen years. As now by 86<sup>th</sup> Amendment, the right to education itself has been inserted in part III of the Constitution, that's why Article 45 has been substituted by 86<sup>th</sup> Amendment itself. As Article 21A is limited to the target group of six to fourteen years of children then what about the children below the age of six years? It was perhaps the reason that new Article 45 substituted earlier in order to put a mandate upon State for early childhood care and education to children below the age of six years. Constitution (86<sup>th</sup> Amendment) Act, 2002, bifurcate the children of fourteen years of age in to two categories i.e. below the age of six years and under the age group of six to fourteen years. For the first category, right to education and early childhood care has been inserted in Part IV and for the second group right to education has been inserted in Part III of the Constitution.

Further the last provision which has been inserted by Constitution (86<sup>th</sup> Amendment) Act, 2002 was the Clause (k) to the Article 51A which deals with Fundamental Duties in Part IVA of the Constitution. This provision puts a constitutional mandate upon the citizen to provide opportunities for education to his child or, as the case may be, ward between the ages of six to fourteen years.

In contemporary India it is noteworthy to mention that after 86<sup>th</sup> Amendment of the Constitution of India, Right to education is the only right which falls in Part III, Part IV and Part IV A of the Constitution of India.

## **2.5 Right of Children to Free and Compulsory Education (RTE) Act, 2009**

In compliance of the mandate put by Article 21A, the Parliament has passed the Right of Children to Free and Compulsory Education (RTE) Act, 2009. The RTE Act, 2009 was passed by the Indian Parliament on 4 August 2009<sup>41</sup>. India became one of 135 countries to make education a fundamental right of every child when the Act came into force on 1 April 2010. The law came into effect in the whole of India except the state of Jammu and Kashmir. The first time in the history of India a law was brought

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<sup>41</sup>The bill was approved by the cabinet on 2 July 2009. *RajyaSabh* passed the bill on 20 July, 2009 and the *LokSabh* on 4 August, 2009. It received Presidential assent and was notified as law on 3 Sept, 2009, as the Children's Right to Free and Compulsory Education Act, 2009.

into force by a speech by the Prime Minister. In his speech, Dr. Manmohan Singh, Prime Minister of India stated that: "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India."

### **Major Provisions of the Right of Children for Free and Compulsory Education Act, 2009**

- Free and compulsory education to all children of the age group of six to fourteen years.(section 3)
- A child who is above six years of age and has not been 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 her age; Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed: Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.(section 4)
- Financial burden for complying with the provisions of Act will be shared between States and Central Government.(section7)
- As per the Act 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.(section 10)
- Act provides that appropriate government to provide pre-school education also. (section11)
- This Act also provides for 25 percent reservation for students of disadvantaged groups and of economic weaker section of the society in admission to Class I in all private schools excluding the unaided minorities' schools.<sup>42</sup> It ensures

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<sup>42</sup>The Supreme Court of India exclude the unaided minorities schools from the mandate of complying with 25% reservation for children of disadvantaged group and of weaker section of the society in the judgment of *Society of unaided private schools v. Union of India* on April 12, 2012.

reimbursement by the government to these unaided schools, based on per child expenditure incurred towards admitting these students.(section 12)<sup>43</sup>

- 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. A provision of heavy penalty in case of charging capitation fee, to the tune of ten times the capitation fee charged and further a penalty which may extend up to twenty –five thousand rupees in case of conducting any screening first time and fifty thousand rupees for each subsequent contravention.(section 13)
- For the purposes of admission to elementary education. The age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed. No child shall be denied admission in a school for lack of age proof.(section 14)
- No child shall be declared fail in examination or expelled from the school until he or she complete elementary education.(section 16)
- No child shall be subjected to physical punishment or mental harassment.(section 17)
- School infrastructure (where there is problem) to be improved within three years after the implementation of this Act, else recognition cancelled.(**section 19**)
- Provision of a School Management Committee consisting of parents or guardian of children admitted in such school, elected representatives of the local authority and teachers. This committee shall have at least three-fourth of its members from parents or guardians of children inclusive of proportionate representation from disadvantaged group or weaker section. Overall there shall be fifty per cent women member in this committee.(section 21)

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<sup>43</sup>By virtue of Section 12(2) RTE Act, 2009 the unaided school which has not received any land, building, equipment or other facilities, either free of cost or at concessional rate, would be entitled for reimbursement of the expenditure incurred by it to the extent of per child expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed. Such reimbursement shall not exceed per child expenditure incurred by a school established, owned or controlled by the appropriate government or a local authority.

- School teachers will need adequate professional degree within five years from the implementation of this Act or else will lose job.(**school 23**)
- This Act calls for a fixed student-teacher ratio and provides that no teacher shall be deployed for any non-educational purpose except as in section 27.(section 25)
- This Act prohibit private tuition by teachers.(section 28)
- This Act makes a provision for improvement in quality of education.(**section 29**)
- A child who completes elementary education shall be awarded with a certificate.(section 30)
- To examine, review the safeguards and recommend measures for implementation of rights provided by or under this RTE Act, the National Commission for Protection of Child Rights<sup>44</sup> and State Commission for Protection of Child Rights<sup>45</sup> have been empowered in addition to the functions already assigned. (section 31)
- RTE Act also provide for the constitution of National Advisory Council and State Advisory Council for advising the respective Governments.(sections 33, 34)
- The Schedule attached to the RTE Act, 2009 prescribes certain norms and standards for a school to be comply with under this Act like:- number of teachers, infrastructure, minimum working days/ instructional hours in an academic year or per week, teaching learning equipment, library, play material, games and sports equipment.

## **2.6 Constitutionality of Right of Children to Free and Compulsory Education (RTE) Act, 2009**

The Right of Children to Free and Compulsory Education (RTE) Act, 2009 was challenged before the Supreme Court of India by the private schools owners on the ground of violation of their fundamental right under Article 19(1) (g), which gives all the citizens a right to practice any profession, or to carry on any occupation, trade or

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<sup>44</sup>Constituted under section 3, The Commission for Protection of Child Rights Act, 2005.

<sup>45</sup>Constituted under section 17, The Commission for Protection of Child Rights Act, 2005.

business. In the case of *Society of unaided Private Schools of Rajasthan v. Union of India*<sup>46</sup> the Supreme Court discussed the constitutional validity of the Act.

The Supreme Court is of the view that the word ‘Free’ in the long title to the 2009 Act stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling. The word ‘Compulsory’ in that title stands for compulsion on the State and the parental duty to send children to school. Supreme Court of India held that the RTE Act, 2009 could only apply to day scholars. It cannot be extended to boarders. To put the matter beyond doubt the Supreme Court recommended that appropriate guidelines be issued under Section 35 of the 2009 Act clarifying the above position.

The Supreme Court of India also held that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following:

- a school established, owned or controlled by the appropriate Government or a local authority;
- an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- A school belonging to specified category; and
- An unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

The Supreme Court also excludes the unaided minorities schools by holding that the RTE Act and in particular Sections 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) of the Constitution of India and, consequently, applying the principle of severability<sup>47</sup> the said 2009 Act shall not apply to such schools.

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<sup>46</sup>(2012) 6 SCC 1.

<sup>47</sup>*R.M.D. Chamarbaugwallav. Union of India*, 1957 SCR 930.