

# A Critique of Right to Education in India

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**ABSTRACT**— *The judicial efforts at national level along with the pressure built by International community at Jometien Conference and afterwards finally led to the Constitutional Amendment in 2002 to ensure 8 years of basic schooling as a fundamental right in India. The amendment needed enabling legislation to be effective, the enactment of which was not smooth but had a long chequered history, depicting official apathy. The historic legislation was ultimately enacted in 2009 but its criticism outnumbered its main features. The paper submits the critical appraisal of the legislation which most of the critiques have neglected.*

**Keywords**— Criticism of Right to Education, Constitutional 86<sup>th</sup> Amendment, Fundamental Right to Education, Free and Compulsory Education.

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## 1. INTRODUCTION

Education is one of the critical factors for reshaping the societies and in the evolution of civilizations. The love of learning had the earliest origin in India. It exercised lasting and powerful influences which lead to glorious traditions of education. ‘In fact education was no exotic to India’<sup>1</sup>. However, its access was not common<sup>2</sup>.

The ancient Indian social and philosophical thinkers believed that education makes a man complete human being in its conceptual essence and continuum<sup>3</sup>. The educational system, however, suffered a setback at the hands of Britishers when they established it to prepare a class of people to speak their language, adopt their culture, values, mores, folks so that these educated Indians can be used as intermediaries between themselves and the masses. This system failed to respond to the needs of the India [12]. Britishers were not interested in mass education and therefore did not establish any public education system. Whenever people agitated for it, they were using official power to spoil it. However, the Indian leadership was conscious of the benefits of education and thus declared it a national need and took several major national movements<sup>4</sup> to compel the colonial government to make provision for basic education available to common masses.

The main purpose of the British Parliament and Colonial government was to drain the wealth from India and they practiced many discriminatory policies to achieve it. Indians were not only discriminated but were given very few basic rights which even could be terminated at will. To put an end to this inhuman treatment was an implicit object of forming the Indian National Congress in 1885. The platform proved fruitful and the first explicit demand for fundamental rights appeared in the Constitution of India Bill, 1895. Article 16 of this Bill laid down a variety of rights including ... free state education [1]. When the British Executive resorted to more arbitrariness in the early decades of 19<sup>th</sup> century<sup>5</sup>,

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1 <http://indiankanoon.org/doc/1485163/> Visited on 12-10-13.

2 The legend of Eklavya, which figures in the Indian epic, the Mahabharata, illustrates the association between education and elites with cruel precision.

3 Justice Dipak Misra, “Right to Education”; Nyaya Deep, National Legal Services Authority, New Delhi, Vol. VIII, Issue 1, p. 24, 2007.

4 The first formal demand for primary compulsory education was made in September 1882 by Dadabhai Naoroji. In 1906 a Committee was appointed to examine the possibility of introducing compulsory education. Compulsory education was introduced in Baroda. In 1910, Mr. G.K. Gokhale introduced a Bill of free and compulsory education for boys between the age group of 6 to 14 through out the country in the Legislative Council. Some provincial governments passed Compulsory Education Laws during 1918 to 1947 to make primary education compulsory. In October 1931, Mahatama Gandhi made a powerful appeal for the establishment of inexpensive, traditional schools for both boys and girls in every village and moved the resolution of Basic Education at Warda in 1937. The Sargent Plan was disapproved. The B.G. Kher Committee’s proposal that the Education For All (EFA) could and should be achieved in 16 years period was rejected on the ground that it is too long a period.

5 In February 1919, Rowlatt Acts (based on the report of Justice S.A.T. Rowlatt’s committee of 1918) were passed by the Imperial Legislative Council (legislature of British India) to replace the suppressive provisions of the Wartime Defence of India Act (1915) by a permanent law. The Rowlatt Acts gave extensive powers to the British Executive for indefinite arrests and detention of individuals, warrant-less searches and seizures, restrictions on public gatherings, and intensive censorship of media and

such demands became an article of faith among the Indian masses. In due course of time, some essential rights<sup>6</sup>, derived from the Common Law and the principles of British Jurisprudence, got some recognition in India [8]. Even basic rights were not justiciable before Indian Independence as they were embodied in the ordinary legislations which could be taken away easily by the authority making them. However, towards the end of World War II, due to some international events<sup>7</sup>, the Government became more and more responsive to public opinion. The demand for the provision of free elementary education was gaining momentum with each passing year<sup>8</sup>.

In January 1947 an Advisory Committee was constituted to finalise the Fundamental Rights to be placed before the Constituent Assembly. A Sub-Committee which was setup by this Advisory Committee for which K. M. Munshi submitted a Note and Draft Articles on 17<sup>th</sup> March, 1947<sup>9</sup>.

In the present constitution, the Fundamental Rights and Directive Principles of the State Policy are placed in two different chapters with sharp contrast. However, the leaders of the Independence Movement had drawn no distinction between them. In fact it is the Sapru Committee Report (1944-45) which classified them for the first time into justiciable and non-justiciable rights [1]. On 27<sup>th</sup> March, 1947, among other proposals, the Sub-Committee discussed whether right to primary education could be a justiciable fundamental right or not? The majority opinion was to declare it as a justiciable right and submitted its final report on 16<sup>th</sup> April, 1947. The right to education was placed under Clause 23 which provided:

*"Every citizen is entitled as of right to free primary education and it shall be the duty of the State to provide within a period of ten years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 years."*

However, on 21<sup>st</sup> April, 1947, in an expert meeting of Govind Ballabh Pant, Alladi Krishnaswami Ayyar, M. Ruthnaswami chaired by Sardar Vallabhbhai Patel, it was decided in a dramatic manner to transfer the Right to Education to the chapter on Directive Principles of the State Policy<sup>10</sup>.

Thus, universal, free and compulsory elementary education was supposed to become a reality in India by 1960. But the constitutional obligation was time and again deferred - first to 1970 and then to 1980, 1990, 2000; 2010 and now the target has been shifted to 2015. Free India could not take Article 45 seriously as it was beset with a variety of overriding problems. Expansion of schooling facilities began in all earnestness only in the decade following 1960. By 1988, the Indian State could establish one school in every one of the six-lakh villages of India. In a large number of cases the schools so established were a euphemism for a school. Even this euphemism was absent till 1988. It was only after 1986, the year of adoption of the first-ever National Policy on Education that a macro effort for strengthening of schools began [10]. If the period between 1960 to 1988 may be taken as a period of expansion of schooling facilities, the period following 1988 may be considered as the phase of consolidation of gains through Operation Blackboard, Integrated Education for Disabled Children (IEDC) programme (1974), District Primary Education Programme (DPEP), Sarva Shiksha Abhiyan (SSA) and other interventions.

## 2. THE CONSTITUTIONAL AMENDMENT BILL: HISTORICAL PERSPECTIVE

There were innumerable formal demands for free and compulsory primary education since 1882 onwards. These demands were expressed in different national or regional movements which made some betterment in the basic provision of education. The 90s decade of twentieth century witnessed sudden revival of the interest once again despite the fact that the preceding Policies on Education<sup>11</sup> were silent on the issue [7]. The present wave was stimulated by a number of factors some of which were: (i) the Ramamurti Committee, constituted to review the 1986 National Policy of Education (NPE), criticised the government for its failure to provide free and compulsory education [2]. (ii) the commitments made by India at international conference held at Jomtien in 1990<sup>12</sup> and the events which led to it (iii) Professor Myron

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publications. However, the Acts were never implemented in actual because of the much opposition by an aroused Indian public. There were mass campaigns of non-violent civil disobedience throughout the country demanding guaranteed civil freedoms, and limitations on government power. The Massacre of Amritsar (April 1919) and non-cooperation movement (1920-22) were the offshoots of this movement.

6 These rights include personal freedom, protection of one's life and limb and of one's good name.

7 India took membership of the League of Nations and International Labour Organisation which resulted into an immense educative effect on Indian masses. Similarly Mahatma Gandhi's powerful and persistent efforts resulted into the betterment in the positions of Harijans. The Government of India Acts of 1919 and 1935 introduced comparatively responsible governments. The United Nations (UN) was established towards the end of World War II.

8 All Party Conference of 1928 and Karachi session of the Congress in 1931 stated explicitly that free and compulsory education should be provided by the state.

9 Article VIII was providing for Right to Education in the following terms: "Every citizen is entitled to have free primary education and it shall be legally incumbent upon every unit of the Union to introduce free and compulsory primary education up to age of 14 and in case of adults up to the standard of literacy. The duration, limits; and method of primary education shall be fixed by law."

10 It was placed under Article 45 which provides 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.

11 1986 education policy and its Plan of Action 1992.

12 To know what commitments have been made please visit [http://www.unesco.org/education/pdf/JOMTIE\\_E.PDF](http://www.unesco.org/education/pdf/JOMTIE_E.PDF), accessed on 3rd of January 2014.

Wiener's sensational observations in his book [12] created wrinkles in the Indian society by observing that India's poverty was less relevant, as an explanation for the failure to eradicate child labour from and enforce compulsory education, than the belief system of the middle classes (to which class, the state bureaucracy also belong). (iv) India signed and ratified the UN Convention on the Rights of the Child<sup>13</sup>. (v) the Supreme Court of India in a historic judgment in 1993 declared education as a fundamental right of every child within the age group of 6 to 14 years<sup>14</sup>.

The United Front Government in 1994 resolved to make elementary education as a fundamental right and to enforce it through suitable statutory measures. Accordingly, it was given due place in their 'Common Minimum Programme'<sup>15</sup> and Saikia Committee (1997) was appointed to examine the economic viability of this proposal. The Committee submitted its report with the following recommendation:

*"The Constitution of India should be amended to make the right to free elementary education up to the 14 years of age, a fundamental right. Simultaneously an explicit provision should be made in the Constitution to make it fundamental duty of every citizen who is a parent to provide opportunities for elementary education to all children up to 14 years of age".*

The government accepted the recommendations of the committee and tabled the Constitution (83<sup>rd</sup> Amendment Bill, 1997) in the Lok Sabha in the Mansoon Session of the Parliament. The Bill was referred to the 'Department-Related Parliamentary Standing Committee on Human Resource Development'. The proposed amendment to the Constitution was to the following effect:

- “2. After Article 21 of the Constitution, the following article shall be inserted, namely:  
“21A. (1) The state shall provide free and compulsory education to all citizens of the age of six to fourteen years.  
(2) The right to free and compulsory education referred to in clause (1) shall be enforced in such manner as the State may, by law, determine.  
(3) The state shall not make any law, for free and compulsory education under clause (2), in relation to the educational institutions not maintained by the State or not receiving aid out of the State funds”.
3. Article 35 of the Constitution shall be renumbered as clause (1) of that Article and after clause (1) as so renumbered and before the Explanation, the following clause shall be inserted, namely:  
“(2) The competent legislature shall make the law for the enforcement of right to free and compulsory education referred to in clause (1) of Article 21A within one year from the commencement of the Constitution (Eighty-third Amendment) Act, 1997;  
Provided that a provision of any law relating to free and compulsory education in force in a State immediately before the commencement of the Constitution (Eighty-third Amendment) Act, 1997 which is inconsistent with the provisions of Article 21A, shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier”.
4. Article 45 of the Constitution shall be omitted.
5. In Article 51A of the Constitution, after clause (1), the following clause shall be added, namely:  
“(k) to provide opportunities for education to a child between the age of six and fourteen years of whom such citizen is a parent or guardian”.

In November 1997, the Department Related Parliamentary Standing Committee submitted its report to both houses of the Parliament with the recommendation that the Bill be passed in the light of changes recommended by it<sup>16</sup>.

Accordingly the Constitutional 83<sup>rd</sup> Amendment Bill, 1997 was amended and reintroduced in the Parliament as the Constitution (93<sup>rd</sup> Amendment) Bill, 2001<sup>17</sup>.

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13 The UN General Assembly adopted the Convention on 20 November 1989. It came into force on 2 September 1990 and the government of India ratified it on 12 November 1992. By ratifying the Convention, the Government is obligated "to review National and State legislation and bring it in line with provisions of the Convention".

14 Manohar, V. R.(ed.), All India Reporter, Supreme Court, A.I.R Pvt. Ltd. Nagpur, 2178, 1993.

15 It is a document outlining the minimum objectives of a coalition government. It has acquired prominence since coalition governments have become the norm in India.

16 The major recommendations of the committee were: (i) Article 45 must be retained to gratify the needs of 0-6 age group (ii) the proposed clause (3) of Article 21-A relating to private institutions must be deleted. (iii) the Central Government should prepare a skeleton legislation whose details can be devised by the individual states according to their befitting needs.

The Bill was passed by unanimous vote on 27<sup>th</sup> November 2001 in the Lok Sabha and by the Rajya Sabha on 14<sup>th</sup> May, 2002. However, the Bill was sent back again to Lok Sabha for the necessary modification in the date clause.

### 3. ENABLING LEGISLATION

The Fundamental Right to education is unique in many respects<sup>18</sup>. It is the only Fundamental Right which is dependent upon the enactment of a subordinate legislation for its implementation<sup>19</sup>. Like 86<sup>th</sup> Amendment to the Constitution, the Right of Children to Free and Compulsory Education Act, 2009 has a chequered history of 7 long years. It was passed only after its several versions were drafted and debated by several committees including the seven committees constituted by the Central Advisory Board of Education (CABE) in August, 2004<sup>20</sup>. The Act was finally passed on 20<sup>th</sup> July, 2009 and came into force on 1<sup>st</sup> April, 2010 throughout India except J&K<sup>21</sup>.

### 4. MAIN FEATURES

The historic legislation bears the following main features:

1. The Act mandates the state to provide free and compulsory elementary education in the neighbourhood to now and on every child in the age group of 6 to 14 years.
2. A child, above the 6 years of age, if not has been admitted in any school, he is not only entitled to be admitted in a class appropriate to his age but also to receive special training in order to be at par with his classmates.
3. A child though admitted if could not complete his 8 years of schooling is entitled to complete it free of cost even after 14 years of age.
4. The admission process under the Act is totally informal. A child is admitted in a school after the completion of six year of age which is determined on the basis of a birth certificate issued under a specific law. However, no child shall be refused admission in case he is not in possession of an age proof certificate.
5. At the entry level, 25% students selected on random basis must represent the weaker sections and disadvantaged communities.
6. The government will reimburse to the private schools the money which they will have to spend for teaching the students belonging to the weaker sections and disadvantaged communities at the rate which the government or private schools will incur on their education.
7. The Act mandates the improvement in quality of education by prescribing certain norms and standards in terms of fixed teacher- student ratio, infrastructure, teachers qualifications and training, curriculum, evaluation, access and specific division of duties and responsibilities of different stakeholders. All these standards must be fulfilled by the existing private schools within specified time duration to avoid the ill consequences<sup>22</sup>.
8. Until the completion of elementary education, no child is required to pass any Board examination.

### 5. CRITICISM

The passing of RTE Act has enabled India to secure its place amongst the 135 nations of the world who have declared primary education as a fundamental right. However, there is always provision for improvement and therefore here is a diverse array of loopholes which need the immediate attention of authorities.

1. The Act mandates all schools except private unaided schools that they should be managed by School Management Committees. It further ordains that 75 per cent membership of these committees must be constituted by the parents or guardians of students<sup>23</sup>. It appears that the authors of the Act have ignored the fact that most of the students of such schools are first generation learners and therefore their parents are not apposite to perform very important roles like monitoring the functioning of school or preparing and recommending the school development plan<sup>24</sup>.

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17 The 93rd Bill was introduced to bring three changes in the Constitution – (i) to insert Article 21-A after Article 21 to provide “The state shall provide free and compulsory education to all children of the age of 6–14 years in such manner as the State may, by law, determine”. (ii) to substitute the text of Article 45 with “ [T]he State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years” (iii) to add clause (k) after clause (j) to provide “[W]ho is a parent or guardian to provide opportunities for education to his child or as the case may be, ward, between the age of 6 and 14 years”

18 This is the only Fundamental Right which was added to the chapter on Fundamental Rights since 1950..

19 Because 86th Amendment to the Constitution stipulates that ‘the state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law, determine’.

20 These drafts were strongly criticised and rejected for being anti-child, anti-education and discriminatory in nature.

21 The Right of Children to Free and Compulsory Education Act, 2009 received the assent of the President on 26th August, 2009 and was published on 27th August, 2009.

22 All the new schools shall be established according to the requirements of 2009 Act, however, the existing private schools got three years time period to meet the requirements.

23 GOI 2009, Section 21(1)

24 GOI 2009, Section 21(2)

2. All schools except that of government are required to meet some specified norms and conditions set by the Act within 3 years to avoid closure<sup>25</sup>. It is not clear that if norms and conditions are set to raise the standards of school education then why government schools are exempted? Does it mean government schools are already up to the mark and only private schools need to be raised? However, it should not surprise us that the percentage of government schools is much higher as compared to private schools when we talk about defaulters of set standards. For example, government promises one teacher and one class room per class after 5<sup>th</sup> primary but in reality we find at times even students of higher secondary schools are forced to share the classroom. Contrary to it how much worst a private school may be, still it will assure one teacher and one class room even to nursery classes. At some places people have lost their faith in government system and are adamant to send their wards in private schools amongst which some are comparatively good and some are bad. Even the good one's, at the same time, may not be in a position to fulfill all the requirements of the Act and thus like bad one's are subject to closure. The repercussions would be backflow of the students towards the government schools with dismal performance. Severity of the impact lies particularly on those students who cannot afford to join good quality private schools that follow the stringent norms of the law. Thus the provision of the Act will backlash rather than doing something good for the poor sections of the society. Therefore, section 18 of the Act is not inclusive in its scope. If we are really interested in improving the standard of our schools, we must institute proper school rating mechanisms based on infrastructure, teaching methodology, learning achievements and other quality indicators<sup>26</sup>.
3. The section 12 of the Act is social in nature and makes reservation of 25% in all private schools in favour of children belonging to disadvantaged group<sup>27</sup> and weaker sections<sup>28</sup> of the society. Most of the children admitted by the elite schools under reserved category quota (disadvantaged group and weaker sections) will have to leave these schools because of the inability to pay high charges. These children will slip back to schools of questionable quality for their post middle standard education. They will not get adjusted there; rather they will drop out or will get psychologically traumatic. In either case the public money spent on these children will not yield desired result.
4. There are certain provisions in the Act though very important yet impossible to comply with. For example, law requires that schools should be made available at convenient distances with play ground facility<sup>29</sup>. Practically speaking, the population explosion has made our cities so congested that people are not getting adequate space for their living. Thereby decreasing the land – man ratio which compels the urban population to go for the vertical expansion of housing structures. Likewise, most of the schools are operating from similar structures and therefore lack the playground and other related facilities, which ultimately may result into their closure. This will have serious implications on the access to education wherein schools are supposed to be at convenient distances from the student's residence.
5. The Act contains ample provisions for staff and student accommodation in the school; however, it fails to make any provision for the safety measures of school buildings. In fact, some of our schools are housed in buildings with very poor safety features and thereby endangering both the future (students) and architects (teachers) of our nation. Safety measures regarding disasters, flood, fire etc. need to be taken care of in the Act by tying up these measures with other formal requirements of recognition/ registration of schools.
6. The Act is extremely input-focused rather than outcome-oriented. It has provisions for teacher's qualification but not for his flair and attitude. It also make provisions for how long should the student stay in the school etc but it is silent on what necessarily their curriculum should contain or which methodology and teaching materials they should adopt? Almost all the schools are promoting the competition amongst the students to gain more and more marks by resorting to 'rot learning' instead of 'learning with understanding'. The result is that the students develop physiological disorders, stress, strain etc. and even leading to suicides in many cases. This educational system does not lead to the socialization of children. We are not improving the quality of our societal life to make it more meaningful and worthy to live; rather we indulge in doing such things which make it more dejected.

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25 According to Section 18 no school other than government school is allowed to function without recognition and no recognition shall be provided until the norms and standards specified under Section 19 are fulfilled.

26 For details see <http://ajayshahblog.blogspot.in/2010/04/right-to-education-act-critique.html> visited on 19-08-13 at 4.25 pm

27 GOI 2009, Section 2(d) defines it to mean a child belonging to the scheduled caste, scheduled tribe, socially and educational backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate government, by notification.

28 GOI 2009, Section 2(e) defines it to mean a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate government, by notification.

29 GOI 2009, 2 (VI), Schedule attached to Rights of Children to Free and Compulsory Education Act, 2009.

7. All over India there is some sort of class configuration in school system with great pluralities. On the one hand there is an Education Guarantee Centre (EGC) with a barely educated “*para teacher*” whose educational qualification may be standard five<sup>30</sup>, and on the other, a private school of international standard with acclaimed theatre celebrities and a world renowned guest faculty to hone the child’s talent. ‘In between is a variety of dismal alternative, non-formal, broken down, child – unfriendly structures, that all go by the name of a school’<sup>31</sup>. The rich men send their children in well established private schools, while poorer sections which constitute majority of the population are compelled to enroll their wards in government; government aided or private schools of poor quality<sup>32</sup>. The Act tried to address the problem by reserving 25% seats in private schools for economically weaker and socially disadvantaged sections but unfortunately it was halfhearted effort as government’s own well endowed Navodhaya, Kendriya and *Sainik* schools are exempted under “specified category”<sup>33</sup> from such reservation. Such arrangement of the Act raises a question which anybody may ask that how educational equality will be guaranteed to the students when the Act is permitting so much diversification of schools. It seems to be that the Act disrupts the concept of ‘Common School System’ as recommended by the Kothari Commission long before in 1966.
8. By defining ‘quality education’ in its narrowest terms of infrastructure, academic calendar, teaching input aids etc.; the Act is not in consonance with the modern trends of global governance whereby India has become a global village and thus students have to compete at the international level. In such a scenario there is need to personify and redefine ‘quality’ [11]. Entrepreneurial approach to learning should be adopted wherein students become more active and independent learners [10]. Resnick recommends that ‘instead of dividing up the curriculum into separate disciplines (math, science, social studies, language), we should focus on themes and projects that cut across the disciplines, taking advantage of the rich connections among different domains of knowledge. Instead of dividing students according to age, we should encourage students of all ages to work together on projects, enabling them to learn from one another (and to learn by teaching one another)’. Probably our policy makers took it wrong and authorized the merger of two or more than two classes to be engaged by a single teacher to overcome the deficiency of teachers<sup>34</sup>. This clubbing of students of different ages and of multi disciplinary subjects has not led to the attainment of aforementioned objective. Instead merging of classes (in a primary school with only two teachers) has been used to avoid the scarcity of teachers and other teaching inputs.

Within the framework of globalization, the concept of curriculum changed<sup>35</sup>. It includes all interactions, formal or informal, within and outside the school which touches the life of a student at any point and determines the development of his personality. It defines: why, what, when, where, how; and with whom to learn. Now if we have the critical evaluation of rural Bharat and shining India, we find huge differences. In shining India, almost all students are in good atmosphere and one may agree that there is no problem. However, rural Bharat depicts a gloomy picture as hardly one can find a student in conducive atmosphere wherein he can be groomed to compete at international level. The evident factors responsible for the emergence of these two Indias are existence of poverty, ignorance, wide differences in attitudes and perceptions in general and government policies and their implementations in particular. Despite revision in National Curriculum Framework [5] almost all Indian rural schools are still following the curriculum which was designed for the paper-and-pencil era schools<sup>36</sup>. When something new is introduced in the curriculum with which teachers are not accustomed to, they don’t want to give effect to it, and their supervisors too enforce it liberally. The result is that our educational institutions are not producing human resources fit for present industry. If we want to put an end to all this, the teachers need not only to be energetic and enthusiastic in updating their knowledge but they have to go one mile ahead and devise new techniques by which it will become easier for students to learn it. More importantly, teachers have to teach how to become a better learner. Similarly, administrators must be committed to enforce the laws and policies religiously to prepare the students with the new skills and ideas fit for the present digital society.

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30 The Rajasthan government has fixed the educational qualification for the ‘para teacher’ as standard eight for men and standard five for women.

31 <http://southasianpoliticalsystem.blogspot.in/2013/02/right-to-education-act-critique.html> Accessed on 19-08-13.

32 People have completely lost faith in government system and only those who are totally illiterate and ignorant admit their kids in government schools. Others prefer private or government aided schools. These schools at times are worst than government schools but are still preferred by the people.

33 Section 2(p) defines it to mean a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik school or any other school having a district character which may be specified, by notification, by the appropriate government.

34 The Schedule attached to the Right of Children to the Free and Compulsory Education Act, 2009 authorises the functioning of class 1st to 5th (primary school of five classes) by only two teachers. It is only possible to engage all the students if both the teachers will take combine classes.

35 The concept was originally confined to a course of studies followed by a pupil in a teaching institution.

36 The curriculum framework is always a suggestive rather than prescriptive and therefore is not enforceable by law in the states.

The recognition which is mandatory for the functioning of a school has been made dependent upon the condition that no child shall be held back in any class or expelled from the school till he completes his primary education<sup>37</sup>. This condition will not work generally because our schools are not Democratic Schools<sup>38</sup> wherein students are involved in the decision-making process that determines what and how they learn. Imported concepts can work only if conditions are made suitable for them. John Holt in his book [6] writes: 'For children, the central business of school is not learning ... it is getting daily tasks done; ... Each task is an end in itself. The children do not care how they dispose of it.' In fact children come to hate these tasks and associate school and learning with those tasks that they hate. The result is that they are not willing to learn. School thus becomes a place for punishment. This feeling could be dispelled at the very beginning, if only the tasks were framed with enough foresight and taking into consideration the child's psychology and behavior patterns. However, in India it is not possible because of multi-diversity of beliefs, culture, habits, mores and folks and more importantly because of the unwillingness of the state to increase spending on education<sup>39</sup>.

A school teacher<sup>40</sup> shares a shocking reply of his student when he tried to correct his behaviour for his underperformance: "Sir, whether I study or not, at the end of the year you will see me in the next class"<sup>41</sup>. If this is the situation, there is no place for the policies like 'No retention, No detention'. It seems only to increase the literacy rate figures with no regard to learning. It is safe to associate the unwillingness of dull students to learn with this policy. Students alone are not to be blamed; teachers too would be interested in their promotion to next class in order to escape themselves from providing the remedial teaching. These students after passing their 8<sup>th</sup> class whether by hook or crook find easy admission in secondary schools that too without any entrance test. Whether these students are worth to seek admission in 9<sup>th</sup> class or not is a fact to be ascertained but the hard reality is that they have the unconditional constitutional right over admission.

9. The prohibition of private teaching is not appearing a sound principle<sup>42</sup>. There are some good teachers who are in government service and thus could not get motivated students. Contrary to it there are some students enrolled in private schools who want to study from these quality teachers to compete in competitive exams.

## 6. CONCLUSION

Education, which is considered backbone for the development of any country, had not only its origin but also a glorious past in India. However, it was ruined by the colonial rule to the extent that Indian freedom fighters were made to beg literally even for the basic education of their children. After a long fight when India gained her freedom, it was so much robbed of its wealth that it could not give place to the provision of education in the chapter on fundamental rights; instead it was kept in Directive Principles of State Policy which are non-enforceable. The Constitution framers were well aware of the importance of education so set a 10 years' time limit within which government must provide for free and compulsory primary education of all the children within the age group of 6-14. Indian government failed miserably time and again to achieve this long pending goal. Finally, a process to amend the constitution was started long back in 1994 so that education is made a fundamental right. The process was completed only in 2002 but could not be given effect because it needed an enabling legislation. The government showed its unwillingness again and took seven complete years to enact the Children's Right to Free and Compulsory Education Act in 2009. The legislation though is comprehensive and provides for quality, infrastructure, teachers, parents, government etc. but at the same time it is not something for which Indians are proud. It is not sensitive to the varied and multifarious problems our society is facing. It is not providing for the material and means which will aboard India on the ship of globalization.

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38 The Concept spans from at least 1600s and without any association with any specific individual or nation.

39 Expenditure on education has no uniform trend in India. It rose from 0.64% of GDP in 1951-52 to 2.31% in 1970-71. In recent past its lowest value was 2.83 in 1997 and reached the peak of 4.34 in 1999. The graph of public spending on education continues to fluctuate.

40 Muhammad Latif Rather.

41 Students don't perform. Responsible who?; Greater Kashmir; 11-01-2010. p. 8.

42 Section 28 prohibits the private tuition or teaching by teachers in government service.

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