

Assessment of the right of children to free and compulsory education act, 2009

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Abstract: *Children are the nation's asset and future resource of manpower for the country. They constitute the core of human society. It is their development, which sustains the society. Their development with dignity is a matter of great concern throughout the world. It has been recognized that Elementary education is a fundamental component of education, and the most significant part of the development process. Education plays perhaps the most important role in the development of a human being, and national development. The realization of the right to development of every human being and nation is impossible without the recognition of the right to education.*

Key words : *Child, Law, Right of Education, Development, Supreme Court.*

1. INTRODUCTION:

The purpose of free and compulsory education is to provide a child enhanced awareness, greater openness, the courage to question, perseverance in searching for solutions and living in society with dignity. The goal of elementary education is to equip one with basic minimum levels of knowledge, attitudes, values and skills so to start the journey of one's life.

The Central Government put up in the Parliament "The Right of Education Bill, 2009." the said bill was approved by the Cabinet on 2 July 2009, and the Lok Sabha on 4 August 2009. It received Presidential assent on the 26th August and was published for general information in the Gazette of India on the 27th August, 2009. The Act describes the modalities of the provision of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution.

In recent years, States and Union territories have raised the issue of adverse effect on the learning levels of children under this Act. Authorities are not allowed to hold back student unless and until he /she completed elementary education. Therefore, the amendment to the section was proposed in order to improve the learning outcomes in the elementary classes and to empower the appropriate Government to take a decision as per mandate of section 16 of the Act. Finally in 2019, the Original Act was amended by The Right Of Children To Free And Compulsory Education (Amendment) Act, 2019 No. 1 Of 2019 and was published in official gazette of union of India on 10th January, 2019.

2. PROBLEM OF RESEARCH STUDY:

After coming into force the Right of Children to Free and Compulsory Education Act, 2009, difficulties faced by the authorities in implementing and enforcing the provisions of the Act. considering some major anomalies in the act, and analyzing the usefulness of this Act on the basis of statistical data from senses 2011 and various websites it is found that the state governments have failed to implement even the major provisions of the Right of Children to Free and Compulsory Education Act, 2009 [many major provisions of the Right of Children to Free and Compulsory Education (Amendment) Act, 2019 are same] till new amended Act 2019. There has been a continuous exercise of suggestions, recommendations and reformations for the past more than Ten years in education system to achieve the task of its enforcement and implementation to an acceptable limit. This led the investigator to form an opinion that there may be some stumbling blocks other than those researched out so far as to the cause of malfunctioning Free and Compulsory Education system in India.

3. HYPOTHESIS:

Even after the passing of new Act, ongoing failure of a system presupposes the ongoing existence of some stumbling blocks in the legislation itself. Therefore, the researcher adopts the hypothesis that there are some other major stumbling blocks in the effective implementation of the Right of Children to Free and Compulsory Education (Amendment) Act, 2019 in India.

4. SIGNIFICANCE OF STUDY:

A huge amount is being incurred in maintaining the structural requirement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2019 itself. What the children are getting is not known. Beneficiaries appear to be the custodians of the free and compulsory education system and not the children in the “system”. The proposed research study is directed to find out those major stumbling blocks to suggest reformations in free and compulsory education system. This is the significance of the study.

Keeping in view the nature and scope of the hypothesis, the conceptual and historical development of free and compulsory education system in India, relevant national and international instruments on free and compulsory education system, data available on child population in states of India, writings and reports of the eminent jurists and scholars in the field and judicial decisions will be examined in detail.

5. METHODOLOGY:

In this study, researcher has adopted the doctrinal research method.

6. LIMITATION OF RESEARCH STUDY:

The research study is not intended to examine in detail the provisions of the Right of Children to Free and Compulsory Education Act, 2009 in India which developed through successive stages of history. The study is also intended to examine in detail the provisions of Amended Act 2019.

This proposed study is intended to present the fact that some of the provisions of Right of Children to Free and Compulsory Education (Amendment) Act, 2019 were substantially present in various Children Acts, the Children Act 1960, the Juvenile Justice Act 1986 and the Juvenile Justice (Care and Protection of Children) Act 2000.

7. OBJECTIVE OF THE STUDY:

- To find out whether right to education is a right in the real sense?
- To examine different facets of the rights of a child to education,
- To examine the legal position of the rights of child to education in India.
- To study The Supreme Court's role in developing fundamental right to education through constitutional jurisprudence

8. Evolution of Right to Education in India:

Education has now been recognized as a human right and an instrument of social change. It is education play important role in combating poverty, empowering women, safeguarding children from exploitative and hazardous labour. The right to education, at least at the elementary level, has also been recognized and upheld as a fundamental right by the supreme court of India in Mohini Jain's case...Article 21-A was inserted in the constitution by The Constitution (Eighty-sixth Amendment) Act, 2002 India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right

On the International level, several Conventions and Declarations have recognized the right of a child to education. The world over it has been realized that everyone has the right to education. Moreover, it has been recognized that elementary education should be compulsory and free and available to all for the development of the personality to fullest extent, for enjoying human rights and fundamental freedoms. The emphasis laid on the education of children is more manifest in the UN Declaration on the Rights of the Child, 1959 wherein, inter alia, it has been provided that children who are physically, mentally or socially handicapped shall be given special treatment, education and care required by their particular condition.

The World Declaration followed this UN Convention on 'Education for All' in March 1990. The Declaration represented a worldwide consensus or an expanded vision of basic education and renewed commitment to ensure that the basic learning needs of all are met effectively the world-over. It asserts the fundamental right of all persons to education as an indispensable key to personal and social development. Thus, under International Law, the right of a child to compulsory and free primary education has been guaranteed. At the international level, UN agencies and organs, international development agencies and regional institutions were urged to help implement child development strategies. Many countries including England, U.S., European Countries, Australia, New Zealand, China, Singapore etc., have accepted elementary education as a fundamental right for all children between the ages of 6 to 18 years.

India has accepted elementary education as the basic need of every individual. Over a century ago, the Indian leadership and the intelligentsia of the time were conscious of the poor state of education. This is reflected from the indigenous Commonwealth of India Bill, 1895 drafted under the inspiration of Tilak wherein free elementary education was declared a fundamental right.

The Conference resolved, inter alia that free and compulsory education be provided for seven years on a nationwide scale. The Constituent Assembly endorsed the vision of free and compulsory universal education gave it a

place in the Directive Principles in Part IV of the Constitution. Some of the child specific provisions of the Constitution which have a bearing here are contained in Part III dealing with Fundamental Rights and in Part IV (supra). In the former, the State has been empowered to make special provisions for children.

The employment of children under the age of 14 years has been prohibited.¹⁰ In the latter, the State is directed to prevent the abuse of children¹¹ and to ensure that children are given opportunities and facilities to grow in a healthy environment, and with freedom and dignity. Childhood has been protected against exploitation and moral and material abandonment.¹² The State is also urged to secure the right to education within the limits of its economic capacity and development.¹³ The State is further obliged to provide for free and compulsory education for all children until the age of 14 years within a period of 10 years from the commencement of the Constitution.¹⁴ The State is also obligated to promote educational interests of weaker sections of society, particularly SC and ST.¹⁵ The provision for free and compulsory education is so vigorous in its impact that, if sincerely implemented the other provisions would largely be complied with.

In *Mobini Jain Case*, the Supreme Court has rightly held that the right to education is a fundamental right. Later, in *Unni Krishnan V. State of Andhra Pradesh* the Apex Court held that the right to free education for all children until they complete the age of fourteen years was a fundamental right, the Central Government amended Article 21 of the Constitution of India, and incorporated a new Article 21-A right to education. The Act makes Education a fundamental right for those between the ages of 6-14 years. The said amendment inserted following /changes in the Constitution of India:

(a) Article 21-A which provides that "the state shall provide free and compulsory education to all children between the age of six to fourteen years in such manner as the state may, by law, determine."

(b) an amendment of Article 45, that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.

(c) An amendment of Article 51-A inserted therein a new clause (k) after clause (j) that "a parent or guardian shall provide opportunities for education to his children or ward between the ages of 6-14 years."

The Central Government put up in the Parliament "The Right of Education Bill, 2005." In a panel discussion recently organized by the Centre for Civil Society on the 'Right of Education Bill, 2005', The Right to Education Bill, 2009 was approved by the Cabinet on 2 July 2009, and the Lok Sabha on 4 August 2009. It received Presidential assent on the 26th August and was published for general information in the Gazette of India on the 27th August, 2009. The Act describes the modalities of the provision of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution.

9. The Main Object Of The Right Of Children To Free And Compulsory Education Act, 2009 Are:-

- To provide free and compulsory education to all children of India in the 6 to 14 age group.
- To provide for pre-school education to prepare children above the age of three for elementary education and to provide early childhood care and education for all children until they complete the age of six years.
- That no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.
- That a child who completes elementary education shall be awarded a certificate.
- To provide for a fixed student-teacher ratio.
- To provides for 25% reservation for economically disadvantaged communities in admission to class one in all private schools.
- To provide that no capitation fee and screening procedure for admission.
- To provide elementary education conforming to the standards and norms specified in the Schedule.
- To ensure adequate professional degree for school teachers within five years.
- To provide that school infrastructure (where there is problem) to be improved in three years, else recognition cancelled.
- To provide that financial burden will be shared by state and central government.
- To provide that no child shall be subject to physical punishment or mental harassment.
- To provide for the duty of every parent or guardian to admit the child to a neighbourhood school for elementary education and that no child should be denied admission for lack of age proof.
- To provide that the National Commission for Elementary Education shall be constituted to monitor all aspects of elementary education including quality.
- To provide that no teacher shall engage himself or herself in private tuition or private teaching activity.
- To provide that the medium of instruction shall, as far as practicable, be in child's mother tongue.

10. Child population in states of India:

The table shows State wise Boys and Girls population, state wise growth rate in India.

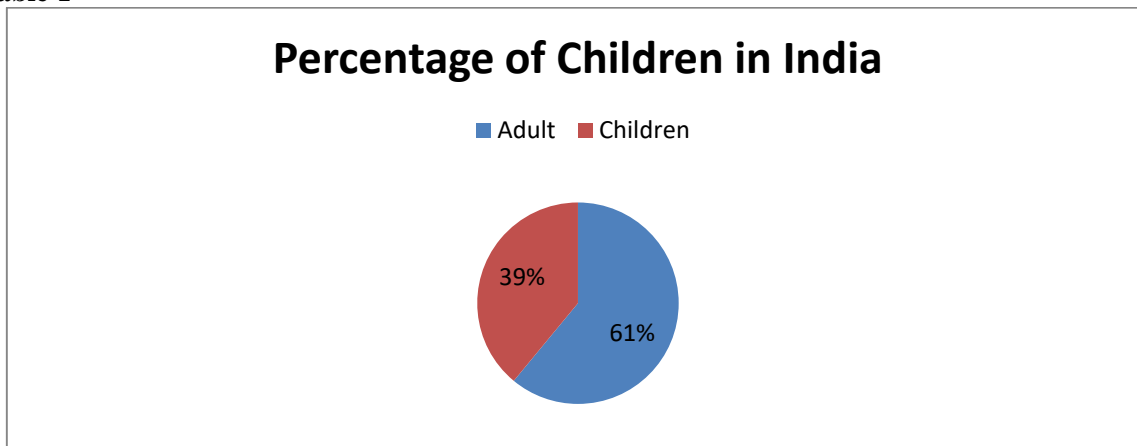
| Sr | India/State/ Union Territory | Total | Boys | Girls | Growth% in State | India |
|----|------------------------------|-----------|----------|----------|------------------|-------|
| | India | 158789287 | 82952135 | 75837152 | -3.80 | 13.12 |
| 1 | Lakshadweep | 7088 | 3715 | 3373 | -22.03 | 11.00 |
| 2 | Daman & Diu# | 25880 | 13556 | 12324 | 25.77 | 10.65 |
| 3 | Andaman & Nicobar Islands# | 39497 | 20097 | 19403 | -11.80 | 10.40 |
| 4 | Dadra & Nagar Haveli # | 49196 | 25575 | 23621 | 22.38 | 14.35 |
| 5 | Sikkim | 61077 | 31418 | 29659 | -21.89 | 10.05 |
| 6 | Chandigarh# | 117953 | 63187 | 54766 | 2.02 | 11.18 |
| 7 | Pondicherry # | 127610 | 64932 | 62678 | 8.92 | 10.25 |
| 8 | Goa | 139495 | 72669 | 66826 | -4.43 | 9.57 |
| 9 | Mizoram | 165536 | 83965 | 81571 | 15.17 | 15.17 |
| 10 | Arunachal Pradesh | 202759 | 103430 | 99329 | -1.51 | 14.66 |
| 11 | Nagaland | 285981 | 147111 | 138870 | -1.28 | 14.44 |
| 12 | Manipur | 353237 | 182684 | 170553 | 8.23 | 12.98 |
| 13 | Tripura | 444055 | 227354 | 216701 | 1.74 | 12.10 |
| 14 | Meghalaya | 555822 | 282189 | 273633 | 18.77 | 18.75 |
| 15 | Himachal Pradesh | 763864 | 400681 | 363183 | -3.69 | 11.14 |
| 16 | Uttarakhand | 1328844 | 704769 | 624075 | -2.29 | 13.14 |
| 17 | NCT of Delhi# | 1970510 | 1055735 | 914775 | -2.30 | 11.76 |
| 18 | Jammu & Kashmir | 2008642 | 1080662 | 927980 | 35.19 | 16.01 |
| 19 | Punjab | 3322247 | 1695935 | 1626312 | -12.41 | 9.95 |
| 20 | Chhattisgarh | 3584028 | 1824987 | 1759041 | 0.82 | 14.03 |
| 21 | Assam | 4511307 | 2305088 | 2206219 | 0.29 | 14.47 |
| 22 | Orissa | 5035650 | 2603208 | 2432442 | -6.03 | 12.00 |
| 23 | Jharkhand | 5237582 | 2695921 | 2541661 | 5.66 | 15.89 |
| 24 | Karnataka | 6855801 | 3527844 | 3327957 | -4.54 | 11.21 |
| 25 | Tamil Nadu | 6894821 | 3542351 | 3352470 | -4.70 | 9.56 |
| 26 | Gujarat | 7494176 | 3974286 | 3519890 | -0.51 | 12.41 |
| 27 | Andhra Pradesh | 8642686 | 4448330 | 4194356 | 15.03 | 10.21 |
| 28 | West Bengal | 10112599 | 5187264 | 4925335 | -11.40 | 11.07 |
| 29 | Rajasthan | 10504916 | 5580212 | 4924704 | -1.37 | 15.31 |
| 30 | Madhya Pradesh | 10548295 | 5516957 | 5031338 | -2.17 | 14.53 |
| 31 | Maharashtra | 12848375 | 6822262 | 6026113 | -6.02 | 11.43 |
| 32 | Bihar | 18582229 | 9615280 | 8966949 | 10.57 | 17.90 |
| 33 | Uttar Pradesh | 29728235 | - | - | - | - |

Source: Censes of India 2011

From the above data it is found that Overall population in India has grown at 17.64% during last 10 years but child population has decreased about 3.08%. 21 out of 35 states and union territories in India had a negative growth rate of child population in last 10 years. Jammu & Kashmir has the highest child population growth rate of 35.19% followed by Daman & Diu with 25.77% growth rate. Lakshadweep and Sikkim both have a negative growth rate of about 22% in child population after 2001 census. Child population in rural India decreased at 7.04% in last 10 years where as child population in urban India has increased 10.32% in the same time. The above table also shows Growth rate of child population in States of India in last 10 years.

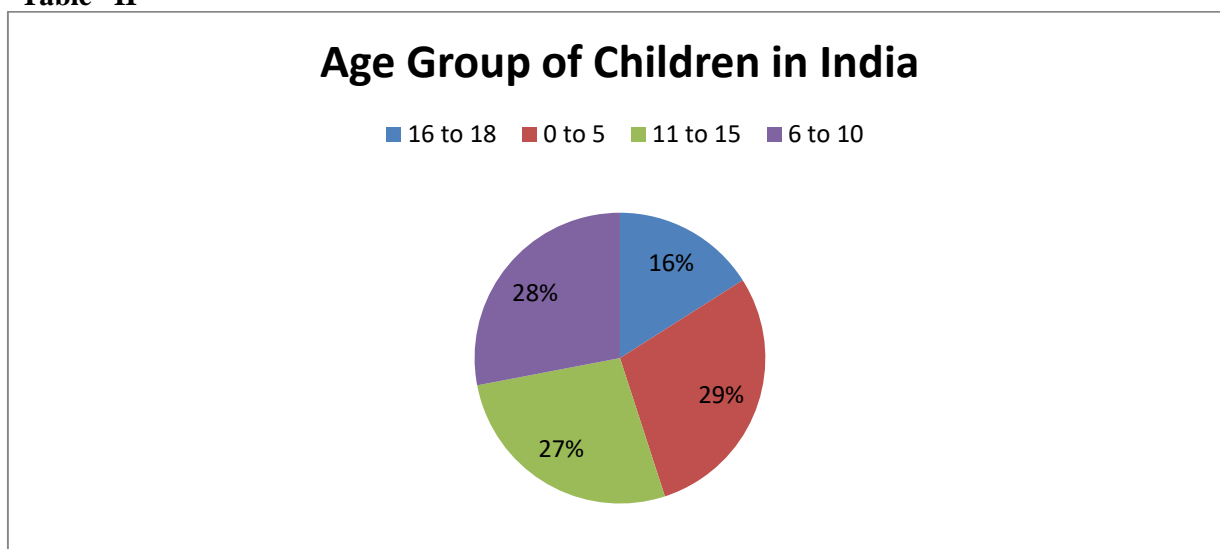
Only five out of 35 states i.e. Uttar Pradesh, Bihar, Maharashtra, Madhya Pradesh and Rajasthan contributes 52% of child population in the country.

1. Table-I



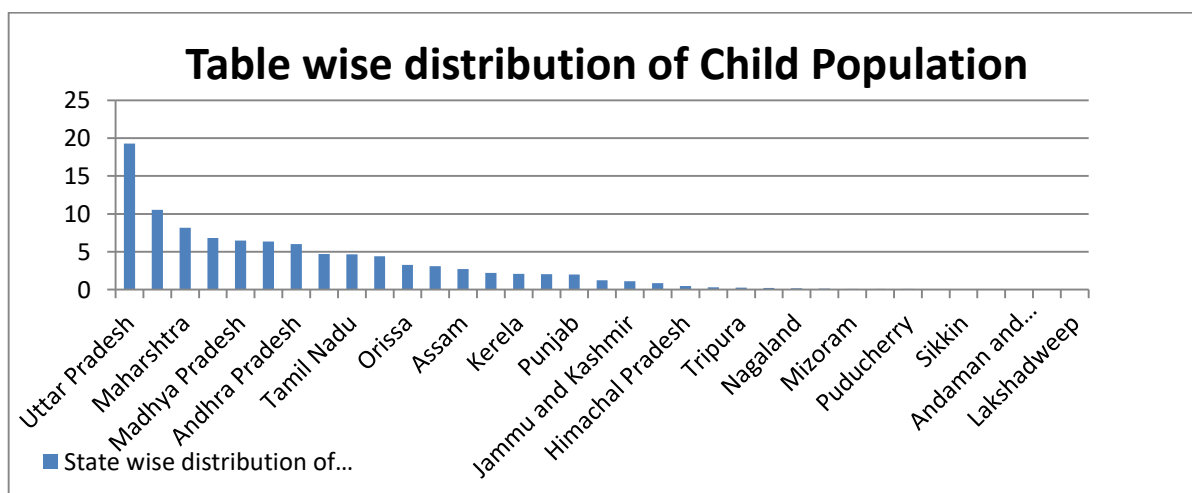
India with 1.25 billion people constitutes as the second most populous country in the world, while children represents 39% of total population of the country. This table shows the population of children is 39% of total population of India.

2. Table –II



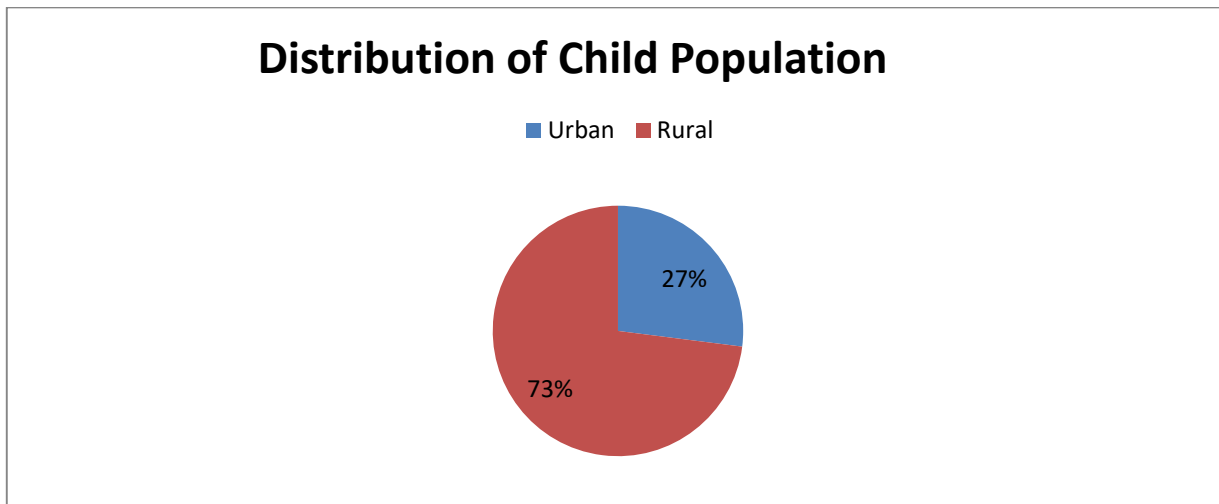
This figure shows that the larger number of about 29% constitutes children in the age between 0-5 years. Children in the age group (0-6 years) in the total population has showed a decline of 2.8 points in 2011, compared to Census 2001. The children’s population (6-10) is 28 %, whereas the population of children (11-15) is 27%. Also, the population of children (16-18) is 16%.

3. Table-III



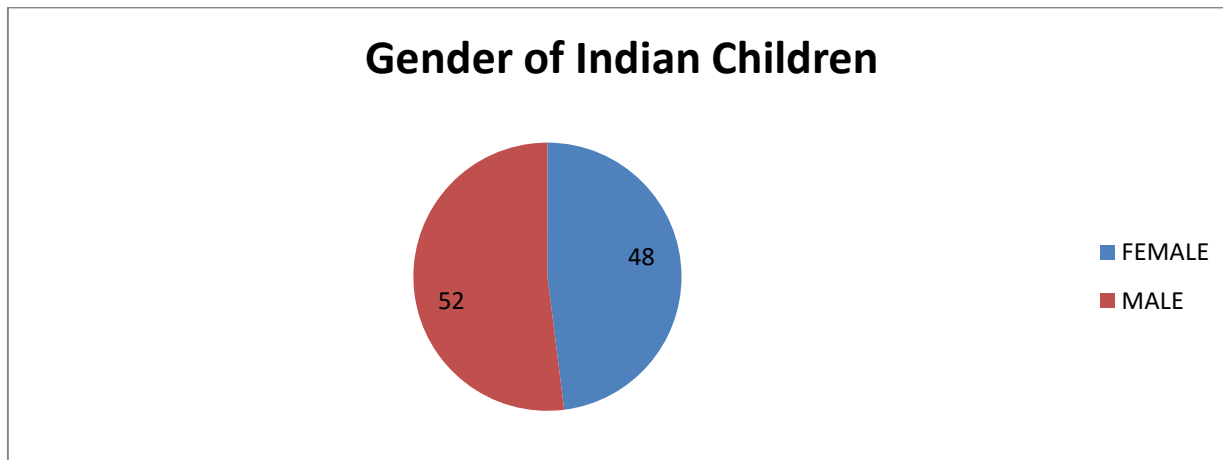
This table shows that Uttar Pradesh (19.27%) has the highest child population in the country followed by Bihar (10.55%), Maharashtra (8.15%), West Bengal (6.81%) and Madhya Pradesh (6.46%) constitutes 52% of Child population in the country. Also, Lakshadweep has no child population.

4. Table-IV



This shows that 27% children in India are residing in urban area whereas 73% are residing in rural area.

5. Table-V



This figure shows that 52% of children in India are Male and 48% of children are female.

Data Source: Census of India 2010-11

The purpose of free and compulsory education is to provide a child enhanced awareness, greater openness, the courage to question, perseverance in searching for solutions and living in society with dignity. The goal of elementary education is to equip one with basic minimum levels of knowledge, attitudes, values and skills so to start the journey of one's life. There are many problems in implementing the policy such as lack of public awareness, growth of child population, red tapes, mismanagement, corruption, lack of cooperation of NGO's etc. So, the Government must also make the provision to secure its implementation as well.

The Act provides that no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education. A Single Judge Bench comprising of Sanjay K. Agrawal J., decided a writ petition filed challenging the order of school authorities (DPS) to hold back the petitioner (student) from being promoted to a further class, due to low attendance being the major cause.

The present case constitutes the facts that the petitioner a Class VIII student who attended 11 school days out of 207 due to which he was barred for the final examinations but on the order of District Education officer he was allowed to appear for the said examinations. Even after being given permission the petitioner appeared only for 4

subjects out of 6. Further, the petitioner was not promoted to Class IX for the reasons of low attendance, which led to him filing of this Writ Petition.

The contention of the petitioner was that in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009, right to education is a Fundamental Right under Article 21-A of the Constitution of India and Section 16 specifies the provision that 'no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education'. Therefore, the Court on noting the submissions of the petitioner decided that the respondent school is not justified in holding back the petitioner as this case came under the premise of Section 16 of the Right of Children to Free and Compulsory Education Act, 2009.

There are many problems in implementing the policy such as lack of public awareness, growth of child population, red tapes, mismanagement, corruption, lack of cooperation of NGO's etc. So, the Government must also make the provision to secure its implementation as well.

11. CONCLUSION:

The Act provides that every authority ensure 'Good quality' of elementary education as one of its objectives, but fails to define the term 'good quality'. The Act specifies norms for physical infrastructure of school (number of rooms, teachers, toilets, library, play material, games and sports equipment etc.) but does not outline expectations on learning outcomes.

There are many problems in implementing the policy such as lack of public awareness, growth of child population, red tapes, mismanagement, corruption, lack of cooperation of NGO's etc. So, the Government must also make the provision to secure its implementation as well.

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