



An analysis of the right to education as a basic human right in India

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Abstract

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full-time elementary education of satisfactory and equitable quality in a formal school that satisfies certain essential norms and standards^[1].

This present article aims to analyze the requirement, various implementing issues and importance of the Right to Free and Compulsory Education Act, 2009 and also to evaluate the impact of its provisions on the promotion and defense of children's rights in India in the present time. The research paper will start with a historical perspective, then highlight the Act's key functions, downplays the challenging scenarios in advance and offers solutions. The value of education for children is also discussed in this presentation. Children's rights to education, are the main topics in the present discussion. What are the key responsibilities provided under the Right to Education Act of 2009, same are discussed in the present paper. The participation and functions performed by the international community in advancing the right to education, are also a part of the discussion of the present study. What challenging circumstances are faced for the proper implementation of the Act, 2009, are also made part of the present study.

Keywords: constitution, child education, human rights, fundamental rights, directive principle

Introduction

The Constitution (Eighty-Sixth Amendment) Act of 2002 inserted Article 21-A into the Indian Constitution, which stated 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 Government may also, with the approval of the people, determine." This provision became known as the Right of Children to Free and Compulsory Education (RTE) Act, 2009. The RTE Act marked a turning point for the Government by giving every kid the right to excellent and equitable basic education in a suitable school that could be of a positive acceptable preference as specified by the Act. The Act gave the federal, state, and local governments a legal obligation to abide by the rules it established. For institutions that don't uphold the minimal standards of comfort, rules, and regulations, the country has the right to refuse to give reputation or revoke an already granted reputation.

Concerningly, nevertheless, there is a lack of awareness of providing top-notch education as modern recognition and emphasis are mostly focused on increasing student enrolment and meeting school infrastructure needs. It still needs to be done to reach the inaccessible groups in society with a top-notch education to create an India where everyone has access to equal educational opportunities rather than one that is split between the affluent and the underprivileged. To maximize the demographic dividend and support the country's economic growth, it is currently crucial for the country to develop and implement appropriate regulations. To benefit from and maximize the potential of this demographic dividend, investments in social sectors like education may be crucial. It will probably be beneficial to reflect on one of the most significant Acts of education at this crucial time. a. The RTE Act. When the

RTE Act was passed by the Indian Parliament on August 4, 2009, India joined a list of 135 nations that consider education a fundamental right for all children.

Now that the Act has been in effect for more than five years since it came into effect on 1 April 2010 we can sit back, look at the progress it has made since then, and remember the victories it has brought about. To strengthen the dream of a literate and educated India, in which every kid in the nation has the fundamental right to education, it is even more crucial that we examine the areas where the Act has failed to have a discernible influence and the reasons behind them.

Right to education - A fundamental right

"A man without education is no better than an animal," Education is the pursuit of knowledge, and knowledge is power.

The Constitution (86th Amendment) Act, 2002 included an additional Article 21-A following Article 21 and declared all children between the ages of 6 and 14 to receive an education as a Fundamental Right. It states that "The State will provide free and mandatory schooling to every child between the ages of six and fourteen in such a manner as the State may, by law, determine." A fundamental common freedom is an education. Education is one of the essential elements for the achievement of a popularity-based system of governance. The representatives who comprise the public authority must be chosen by informed residents. Education makes a person the personification of Human pride, which both helps him develop personally and advances the nation. The requirement to provide free and compulsory education to all children until they reach the age of 14 within 10 years of the constitution's beginning has been imposed by Article 45 as one of the Directive Principles of the State Policy by

the constitution's framers, who recognized the value of education. The goal was to eradicate illiteracy from the nation. It evolved into a prediction that the country's elected administrations will essentially carry out the orders. However, it is regrettable that after 71 years after independence, they have not yet taken any decisive action to put these recommendations into effect, and 35% of the country's population is still illiterate. The framers may have believed that it was no longer possible to include it as a fundamental right under Part III of the Constitution in light of the financial circumstances of the new state.

Article 21- A may be read in conjunction with a newly added clause (k) to Article 51A and a newly substituted Article 45. (86th Amendment Act 2002). While the substituted Article 45 requires the State to "seek to provide early childhood care and education for all Children until they complete the age of fourteen years," the addition of clause (k) to Article 51 A places a fundamental responsibility on parents/guardians to "offer opportunities for education to his child or, as the case may be, ward, between the age of six and fourteen years."

In the case of *Brown v. Board of Education* [2], Chief Justice Earl Warren of the United States Supreme Court stressed the importance of the right to education by stating that it is the most important duty of state and local governments. Even services rendered by members of the armed forces are governed by this requirement. It is the cornerstone of responsible citizenship. It is now the main tool for exposing a child to cultural values, preparing him for professional schooling in the future, and assisting him in adjusting properly to his environment. Nowadays, it's doubtful that any child can still properly be expected to lead a lifestyle if he is denied the chance to receive an education.

In the case of *Mohini Jain v. State of Karnataka* [3], the petitioner argued that under Article 21 of the Indian Constitution, the right to education is a Fundamental Right and cannot be denied to a person by imposing hefty costs known as capitation fees claiming that Article 21 of the Indian Constitution results in the "Right to Education." According to the Supreme Court's ruling in *Bhartiya Seva Samaj Trust Tr, Press v. Yogesh Bhai Ambalal Patel*, "A person may by no means come to understand of his other rights without education. A high general of standard, vocational, and special education are essential to democracy.

The right of children aged 6 to 14 to free and compulsory education up until the completion of elementary education in a neighbourhood school is one of the Act's main provisions.

- The term "compulsory education" refers to the requirement of the relevant government to guarantee free elementary education and ensure that every child in the age range of six to fourteen receives compulsory admission, attendance, and completion of primary school.
- Free means that no child will be required to pay any fees, expenses, or other costs that would prohibit them from pursuing and completing their basic education.
- The statute mandates that all schools adhere to a set of minimum standards. Other schools need a certificate of recognition, whereas government schools must adhere to the student-teacher ratio.
- All children entering must receive free and required education from government schools.

- The act forbids capitation fees, screening practices for admittance to children, and physical or verbal abuse. In addition, it forbids expulsion or holding students back in class until they have finished their elementary education.
- It forbids corporal punishment and verbal abuse of children ages 6 to 14, (ii) admissions screening processes, (iii) capitation fees, (iv) teacher-provided private instruction, (v) operation of schools without authorization,
- A non-accepted or newly enrolled kid may be admitted to an age-appropriate class under the terms of the Act.
- The Act outlines the obligations and responsibilities of the relevant Governments, local authorities are responsible for delivering free and mandatory education, and the division of financial and other responsibilities between the Central and State Governments.
- The Pupil Teacher Ratio (PTR) norms and regulations, structures and infrastructure, school working days, and teacher working hours are all outlined in the Act.
- The Act forbids the use of teachers for non-educational tasks, except for the decennial census, local government, state legislature, and parliamentary elections, and disaster assistance.
- The Act mandates the appointment of educators who have received the necessary training and academic credentials, or educators who are suitably qualified.
- The Act calls for the creation of curricula that uphold the values of the Constitution, the all-round development of children, the development of their knowledge, potential, and talent, and the eradication of their fear, trauma, and anxiety through a system of child-friendly and child-centered learning.
- The Act calls for the protection and oversight of children's rights to free and compulsory education as well as the redressing of grievances by the National and State C (2009 Right to Education Act)

Role of international instruments in promoting the right to education

It is crucial to highlight that the right to education has quickly gained international recognition. Numerous international conventions have been signed that deal with the right to education. It is important to understand the definition of "Convention" before analyzing the numerous Conventions on the right to education. Any international pact between States is what the word "convention" actually means. It is time to talk about certain international conventions that deal with the right to education.

Universal declaration of human rights, 1948

By this pronouncement, the benefit of education was highlighted in particular. The idea of free and mandatory education is the main focus of the aforementioned declaration. All people have the right to education, according to the Universal Declaration of Human Rights. It is crucial to make knowledge accessible to children early on. This implies that basic education is fundamental and ought to be accessible to everyone. In addition to providing for elementary education, efforts must be taken to provide for technical education. In a similar vein, vocational education is also stressed.

It is without a doubt true that education serves to elevate the human race. As a result of the right to education, human beings' inherent rights are acknowledged. Education access is a fundamental human right. Such a privilege cannot be denied to anyone.

The right of a kid to education must be respected by the child's guardians. The type of schooling that the parents choose for their child is completely up to them. It is stated that higher education should be accessible to all people, based on their talents. It is said that the United Nations' efforts will be aided by the right to education.

International covenant on civil and political rights, 1966

The Covenant considers children's religious and moral rights. There are no explicit provisions on required and free education in the aforementioned Covenant. However, the contracting parties have accorded the independence of parents the appropriate significance. The Covenant explains that the children's guardians will provide them with opportunities for moral and religious indoctrination.

International covenant on economic, social and cultural rights, 1966

The right to education is covered by this Covenant as well. Under the terms of this Covenant, everyone has the right to an education, and the member states will uphold this privilege. For the objective of enhancing human personality, it is important to retain the robustness of education.

Human beings' fundamental rights must be given serious consideration. Humanity's magnificence is unavoidable, and it must be upheld. People must actively participate in society's activities. The United Nations can maintain its tranquility with the aid of the right to education. Every person will be able to access and get a free elementary education. The contracting States acknowledge that education is a requirement. Secondary education will be prioritized in addition to basic education. Increased technical and professional education is essential. Secondary education should be accessible to everyone. Higher education will also be accorded important momentousness in addition to primary and secondary education. The contracting States promise to work to make basic education a reality. The contracting States will provide people with encouragement and inspiration to pursue and complete their basic education.

The improvement of pedagogy at all levels is emphasized. The preceptors' circumstances will be taken into consideration. The States will make an effort to account for the expansion of the educational system. The establishment of a fellowship system is under consideration. The Covenant stipulates that the children's moral and religious rights will not be infringed upon. The admission of their children to any reputable educational institution is left up to the parents' discretion for the benefit of the kids. Such a school doesn't need to be a State-owned institution. The prerequisite is that the relevant State must have recognized the educational institution in question.

According to the Covenant's stipulations, the contracting parties or Member States have been given two years to make acceptable arrangements for free and required primary education in their respective jurisdictions. The Member States will have a set amount of time to propose a plan of action regarding the application of the aforementioned clauses.

United Nations convention on rights of child, 1989

The right of children to education is a major focus of this Convention. The second of September 1990 saw the implementation of this convention. An individual who has not turned 18 years old is referred to as a "child" under the terms of the Convention. Therefore, a child is defined as a person who is under the age of 18. The Convention calls for international collaboration between States to advance the right to education. In terms of education, there must be equal opportunity. According to the Convention's stipulations, elementary education will be both free and required.

Additionally, it is suggested that dropout rates be reduced. There will be an effort to make it easier for the pupils to attend. The State will take into account how effectively educating youngsters will support their growth both mentally and physically. People should be able to enroll in higher education based on their qualifications. The value of the children's dignity is emphasized. The contracting States will make efforts to eradicate illiteracy on a global scale. The spread of scientific information shall be encouraged. Additionally, pedagogy will be improved for the benefit of the kids. The States must provide free primary education to the public.

Conclusion

The importance of education in a man's life has never been disputed, and this is true from the very beginning. It teaches us about the technical elements as well as the highest human characteristics, which nurture our minds and souls. Only education can help us develop as people and get ready for even the most challenging positions in life. One's mind, soul, and manner of thinking are all shaped by education. The same point of view has occasionally been made by different geniuses, who have expressed it in elegantly constructed sentences. Dr. Manmohan Singh, unquestionably one of the most competent economists and a former Indian prime minister, addressed the value of education by sharing his struggles as a student and what motivated him to adamantly ensure that everyone has access to education.

With this in mind, India may see the RTE, as one of the most beneficial pieces of law. The Act has shown to be progressive and has benefited a significant number of young children nationwide. The Act does, however, have some flaws that have, in some way, diminished the effectiveness of the Act and its provisions. These include the 25% reserve requirement, several state regulations that have an impact on federal law, money limits, and linguistic usage. Following a thorough examination of the law and the relevant cases, it has been determined that there are a few simple steps that may be taken to develop a code that is more effective and applicable. These steps are outlined below.

1. Better funding allocation and resource accumulation

We are well aware of the limited funding options accessible to the state government. The central government must fulfill all of its commitments thoroughly and without difficulty. The percentage of the available money ought to be taken into account, and it ought to be made subject to a raise based on and taking into account the other revenues and expenses on the budget. Not only that but the ratio must be decided to achieve balance, as well as the division of costs between the state and the federal government, which should be reviewed and regulated as necessary.

2. Raising awareness

Since RTE was created primarily for the benefit of the public, exercising a right is always preceded by knowledge of that right. People need to be made aware of the existence of laws that are unquestionably designed with their interests in mind. Even if the government has run campaigns for this, there still seems to be a long way to go.

3. A set standard of operation and procedure

The goals of the Act can only be accomplished by uniformity in the operating method. The secret to making this Act successful is to operate consistently. Regardless of the type of school, whether it is privately or publicly managed, the government must make sure that every school complies with the requirements so that no child is denied even the smallest advantages of this piece of legislation.

4. Increase the number of schools already in place

It is clear from the population graph that more schools are needed because the current number is insufficient.

There are two ways to do this

1. By expanding and establishing new schools. The government can take this action to make it easier for new schools and study areas to be established.
2. By aiding institutions that have been unable to maintain their standard of excellence or financial viability.

Additionally, there may be some schools that have not received recognition; in these cases, financial assistance or other incentives may be provided to increase their productivity and give them access to essential facilities. For this, a grading system may be developed to encourage schools to operate more efficiently.

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