



Child rights in India, right to education and the role of courts

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Abstract

“Education is the special manifestation of man. Education is the treasure, which can be preserved without the fear of loss; Education secures material pleasure, happiness and fame, Education is the teacher, Education is God incarnate, Education secures honour at the hand of the state, not money, A man without education is equal to animal.” Education creates the voice through which rights can be claimed and protected. RTE for every child is a human right since education plays a very important role in developing full potential as a human being and ability to think and develop self respect. An attempt has been made to highlight various legal and social sanction of right to education which was added to the supreme law of the land by the 86th constitutional amendment, 2002. The paper is divided into four parts namely Introduction, Child Rights: Constitutional & Legal Perspective, The Role of Judiciary In Protection of Right to Education of Children, and Conclusion.

Keywords: RTE, education, fundamental right, child rights, constitutional amendment, quality education

Introduction

Education has been a part of human society since ancient times, and there have been many theories and philosophies about how best to educate children. The Vedas are ancient scriptures of India that contain knowledge of various subjects, including philosophy, science, and mathematics. Vedic education was based on the idea of holistic learning, which aimed at the physical, mental, and spiritual development of children. Confucianism, an ethical and philosophical system that originated in China, emphasized the importance of moral education. Confucian education aimed to cultivate virtues such as filial piety, respect for elders, and loyalty to the state. The ancient Greek philosopher Plato believed that education should aim at the development of the soul rather than just imparting knowledge. He emphasized the importance of moral education and believed that the pursuit of knowledge should be guided by a sense of purpose. The ancient Spartans believed in the importance of physical training and military education for children. They were trained to be strong, disciplined, and courageous from a young age. Jainism, an ancient Indian religion, emphasized the importance of self-discipline and self-control. Jain education aimed to cultivate virtues such as compassion, non-violence, and truthfulness. These ancient theories on education for children were shaped by the cultural, social, and political contexts of their times. While some of these ideas are still relevant today, modern education has evolved to incorporate new technologies, pedagogical approaches, and diverse perspectives.

According to ancient thinkers in India, vidya or knowledge or learning or education is the third eye of the man, which gives him an insight into all affairs and teaches him how to act, attain salvation and all round progress of the human being. Historically, the right to education in India was exclusively available only to the privileged group or sections of the society. The Indian society believes that the education is the backbone of the development of a country and most importantly it is the key towards the job of the nation building. In a civilised society, the importance of

child welfare cannot be underestimated because the welfare of the entire community, its growth and development depends on the health and well-being of its children. There has been great concern for the welfare of children at the international and national levels. Kofi A Annan ^[1] observed that: There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in space.

The beginning of the movement for the rights of the child can be traced back to the mid 19th century with the publication of an article in June 1852 by Slagvolk, titled “The Rights of the Children”, followed by Kate Kliggin, “Children’s Rights” in 1892. The convention on the Rights of the Child, 1989 marked the culmination of the efforts to bring the international community to recognise the needs of children. Principle 7 of the Declaration of the Rights of the Child, 1959 states that The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility and to become a useful member of society.

Educating and creating a literary citizenry has been one of the foremost goals of the government since the very inception of the Indian nation. Pursuing this goal in 1976 ^[2], after the transfer of ‘education’ from state list to the concurrent list, the centre came up with a central legislation in the form of Right of Children to Free and Compulsory Education Act, 2009, to bring uniformity in education practices and to conform with the international conventions. According to Right to Education Project ^[3] 69 million children are still out of school and more than 700 million can’t read. This shows the schism between the reality on paper and on ground level. Even though there are many pious declarations and rights for the welfare of children and for their education, without a robust framework to implement those rights the institutions would be regarded

toothless tiger. Therefore, Right to Education is inextricably linked to the rights of the children as without a good education the very awareness of their rights and their protection cannot be secured. This paper tries to analyse the child rights vis a vis Right to Education.

Child rights: Constitutional & legal perspective

Child rights are an essential aspect of a democratic society. The Indian Constitution recognizes the importance of child rights and has made provisions for their protection and welfare. In this section, we will discuss child rights from a constitutional and legal perspective in India.

Constitutional Provisions: The Indian Constitution has various provisions for the protection of child rights. The Directive Principles of State Policy (DPSP) enshrined in Part IV of the Constitution provide for the welfare of children. Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Article 21A provides for the right to free and compulsory education for all children between the ages of 6 and 14 years.

India has enacted several laws for the protection of child rights. The Juvenile Justice (Care and Protection of Children) Act, 2015, is a comprehensive law that provides for the care, protection, and rehabilitation of children in need of care and protection. The Protection of Children from Sexual Offences (POCSO) Act, 2012, is another important law that aims to protect children from sexual abuse and exploitation. The Right to Education Act, 2009, mandates free and compulsory education for all children between the ages of 6 and 14 years. India has also ratified various international conventions and treaties that aim to protect the rights of children. The United Nations Convention on the Rights of the Child (UNCRC) is one such convention that India ratified in 1992. The UNCRC defines the rights of children and sets out the obligations of states to ensure their protection and welfare.

Despite these constitutional and legal provisions, child rights violations continue to be a major challenge in India. Child labor, child marriage, trafficking of children, and sexual abuse are some of the major issues that need urgent attention. Therefore, there is a need for increased awareness, better implementation of laws, and collective efforts to ensure the protection and well-being of children in India. Child rights in India refer to the fundamental rights that are guaranteed to all children in the country, regardless of their gender, caste, religion, or social status. These rights include the right to survival, protection, development, and participation. The Indian Constitution and various international conventions and treaties provide a legal framework for protecting the rights of children in India.

Some of the key child rights in India are:

- Right to life and survival: Every child has the right to life, survival, and a decent standard of living.
- Right to education: Every child has the right to free and compulsory education up to the age of 14 years.
- Right to health: Every child has the right to access quality healthcare services and nutritious food.
- Right to protection: Every child has the right to protection from all forms of abuse, exploitation, and neglect.
- Right to participation: Every child has the right to participate in decision-making processes that affect their lives.
- Right to identity: Every child has the right to a legal identity, including a birth certificate.

In India, various laws and policies have been enacted to protect the rights of children. The Juvenile Justice Act, 2015, the Right to Education Act, 2009, and the Protection of Children from Sexual Offences Act, 2012, are some of the key legal frameworks that aim to safeguard the rights of children. The government also runs various schemes and programs to promote the welfare of children, including the Integrated Child Development Services (ICDS) and the National Child Labour Project (NCLP). Despite these measures, child rights violations continue to be a major challenge in India. Child labor, child marriage, trafficking of children, and sexual abuse are some of the major issues that need urgent attention. Therefore, there is a need for increased awareness, better implementation of laws, and collective efforts to ensure the protection and well-being of children in India.

The National Commission on the Constitution (NCRWC) in its 2002 report suggested incorporation of the right to education as fundamental right. It said that every child should “have the right to free education until he completes the age of 14 years; and in the case of girls and members of Scheduled Castes and Scheduled Tribes, until they complete the age of 18 years”. Right to Education and provision for free and compulsory education were covered by Arts 41 and 45 of the Constitution as it came out of the Constituent Assembly. Article 41 said that the State shall, within the limits of its economic capacity and development, “make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” Also, Art 45 provided for free and compulsory education which reads: The state shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years. The 86th Constitutional amendment of 2002 ^[4] was a paradigm shift in the history of Indian educational scenario. Art 21A gave effect to Art 41 and Art 45 which were directive principles by bringing them under the umbrage of fundamental rights and subsequently in 2009 the Parliament of India enacted the Right of Children to Free & Compulsory Education (RTE) Act, 2009 ^[5]. However, it can be said that Art 21A is yet to come in force because it talks about Free and Compulsory Education to all children.

Art 21A of the Constitution provides for free and compulsory for all children for the age of 6 to 14 years becoming a judicially enforceable fundamental right. The catch, however, in the last part of the article which says “in such manner as the state may, by law, determine”; which means that the manner and the timing of the implementation of the provision would depend upon a law to be made. Since, no law has been made so far to effectuate it, the right under Article 21A has not come into force practically. Also, Right to Education has received a setback by not seeking to cover the children below 6 years and above 14 years. It is not clear why the rights of child below the age of 6 years are not covered under while children in nurseries and anganwadi below the age of 6 play a crucial role in preparing a child for his school and basic education. They also take and effective care of a small child’s nutritional needs which is now reflected in the amended Art 45. Art 51A (k) states: 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 and fourteen years. Thus,

Art 51A(k) imposes a solemn fundamental duty upon the parents and guardians of children to educate them.

Right to Education has some very essential features which can be briefly summed up. Every child of India in the 6 to 14 years age group; has a right to free and compulsory education in a neighbourhood school till the achievement of elementary education also children who have either dropped out from the school or who are not present at any school will be enrolled in the schools and no school can reject them for taking admission. Private and unaided educational institutes are bound to reserve 25 percent of the seats for the students belonging to economically weaker section and disadvantaged section of the society in admission to class first and they shall be reimbursed by State as part of the public-private partnership plan. The National Commission for Protection of Child Rights (NCPCR) and state commissions will monitor the implementation of the Act.

The role of judiciary in protection of right to education of children

The judiciary has played a proactive role in providing free and compulsory education to all the children below the age of 14 years. In *Mohini Jain vs State of Karnataka* ^[6], popularly known as the 'capitation fee case', the Supreme Court has held that the right to education is a fundamental right under Art 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the capitation fee. In *Unni Krishnan vs State of Andhra Pradesh* ^[7], the Apex Court was asked to examine the correctness of the decision given by the Court *Mohini Jain* case and the five-judge bench held that right to education is a fundamental right under Art 21 of the constitution as it directly flows from right to life. In case of *Bandhua Mukti Morcha vs Union of India & Ors* ^[8] it has been held that it is the solemn duty of the State to provide basic education to children also working in different industries or factories. In the case of *TMA Pai Foundation vs State of Karnataka* ^[9] the scheme formulated by the Court in the case of *Unnikrishnan* was held to be an unreasonable restriction as it resulted in revenue shortfalls making it difficult for the educational institutions. The Court held that right to establish and administer an institution includes the right to admit students, rights to set up a reasonable fee structure, right to constitute a governing body and right to appoint staff and take disciplinary action. In *Islamic Academy of Education vs State of Karnataka* ^[10], another issue arose for the determination of fees structure in private unaided schools. It was held that management has the complete autonomy not only for admission of students but also to decide their fee structure which could create a reasonable revenue surplus for the purpose of development of education and expansion of education.

Conclusion

Right to Education Act though good very much on paper when it comes to the efficacy of the Act and its implementation it has failed on numerous counts. A law that was supposed to be the solution to all of the country's problems in primary education has now itself become the problem. Far from increasing access of children from low-income backgrounds to education, it has imperilled it. Far from improving the quality of education, it has led to downfall in standards. And as if this were not enough, it has opened up more avenues for corruption. The legislation has

focused on infrastructure and inputs, teacher-pupil ratio, teacher qualifications and salaries, uniforms rather than on quality of education. The provisions of the Act have renewed the licence raj and are killing the education market. ASER 2016 ^[11] data shows that the percentage of children in Class V who can read a Class II level text dropped from 53.7% in 2010 to 47.8% in 2016. Percentage of children in Class VIII who can read the same text dropped from 83.5% to 73.1% over the same period. In 2010 only 36.2% children in Class V could do simple division this fell to 26% in 2016. The main reason for these abysmal learning outcomes is the notorious no-detention policy in Section 16. This section mandated that no student could be detained in a class between Class I and VIII. Instead of an annual examination determining promotion to the next class, there was to be continuous and comprehensive evaluation (CCE) which meant students were to be assessed through the year.

A law no matter how well conceived it can only establish institutions on paper implementing those provisions and breathing life into the provisions depends upon the administrative machinery which must be effective. Right to Education may be a misnomer in today's parlance as what Indian children need is not just Right to Education but a Right to Quality Education which prepares them for the competitive world. India is grappling with converting its demographic dividend into employable population however if the education sector is weak and the prospects of children is bleak with relation to education it can become a demographic disaster. Education of children which are citizens of tomorrow is the key to the development of nation safeguarding the key is the responsibility of not just the government but of the civil society as well.

References

1. He is a Ghanaian diplomat who served as the seventh Secretary-General of the United Nations from January 1997 to December 2006.
2. 42nd Amendment Act of 1976
3. United Nations Project on Right to Education
4. Introduction of Article 21A in the Constitution
5. Act No. 35 of 2009
6. AIR 1992 SC 1858
7. AIR 1993 SC 2178
8. AIR 1984 SC 802
9. AIR 2003 SC 355
10. (2003) 6 SCC 697
11. Annual Status of Education Report, 2016