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**RIGHT TO EDUCATION: A CRITICAL ANALYSIS OF THE  
INDIAN APPROACH**

Under the Guidance and Supervision of

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## CERTIFICATE

This is to certify that **ATHIRA PRASAD**, Reg. No: LM0120004 has submitted her dissertation titled, “*Right to Education: A Critical Analysis of the Indian Approach*”, in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that, the dissertation submitted by her is original, bona-fide and genuine.

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## DECLARATION

I declare that this dissertation titled, “*Right to Education: A Critical Analysis of the Indian Approach*”, researched and submitted by me to the National University of Advanced Legal Studies in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of **Dr. Ambily Perayil** is an original, bona-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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**ATHIRA PRASAD**

## ABBREVIATIONS

1. AIR - All India Reporter
2. ASER: Annual Status of Education Report
3. Anr.: Another
4. C.A.C.L: Campaign against Child Labour
5. CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women
6. CRC: Convention on the Rights of the Child
7. CrLJ: Criminal Law Journal
8. EWS: Economically Weaker Section
9. ICCPR: International Covenant on Civil and Political Rights
10. ICESCR: International Covenant on Economic, Cultural and Social Rights
11. Ibid: Ibidem (Same)
12. ILO: International Labour Organisation
13. Ors.: Others
14. N.A.F.R.E: National Alliance for the Fundamental Right to Education
15. N.C.P.C.R: National Commission for Protection of Child Rights
16. NER: Net Enrolment Rate
17. PIL: Public Interest Litigation
18. PTR: Pupil-Teacher Ration
19. RTE Act: Right of Children to Free and Compulsory Education Act, 2009
20. SCC: Supreme Court Cases
21. S. or Sec.: Section
22. S.A.C.C.S.: South Asian Coalition on Child Servitude
23. S.S.A: Sarva Siksha Abhiyan
24. UDHR: Universal Declaration of Human Rights
25. U.N.: United Nation
26. UNESCO: United Nations Educational, Scientific and Cultural Organisation
27. v.: Versus

## LIST OF CASES

1. Ajay Goswami vs. Union of India & Others AIR 2007 SC 493
2. Anand Vardhan Chandel v. University of Delhi AIR 1978, Delhi 308
3. Ashoka Kumar Thakur v. Union of India and Ors. [2008] INSC 613 (10 April 2008).
4. Avinash Mehrotra v. Union of India (2009) 6 SCC 398
5. Bandhua Mukti Morcha vs. Union of India (1997) 10 SCC 549
6. Brown v. Board of Education of Topeka 347 U.S. 483 (1954).
7. Campbell and Cosans v. United Kingdom [1982] ECHR 1
8. Election Commission of India vs. Sant Merry's School & Others. AIR 2008 SC 655.
9. Islamic Academy of Education vs. State of Karnataka 2002 8 SCC 481
10. M.C. Mehta v. State of Tamil Nadu & Ors. (1996) 6 SCC 756
11. Modern School vs. Union of India, AIR 2004 SC 2236.
12. Modern Dental College & Research Centre v. State of M. P (2009) 7 SCC 751
13. Mohan Jain vs. State of Karnataka (1992) 3 SCC 666
14. Unnikrishnan JP vs State of Andhra Pradesh & Others 1993 AIR 2178
15. P.A. Inamdar and Ors. v. State of Maharashtra and Ors. (2005) 6 SCC 537
16. Pathumma v. State of Kerala 1978 AIR 771
17. State of Bihar and others vs. Project Uchcha Vidhya, Sikshak Sangh and others vs. Union of India 2006 (2) SCC 545.
18. State Of Tamil Nadu & Ors vs K Shyam Sunder & Ors (2011) 8 SCC 737
19. Society for Un-Aided Private School of Rajasthan v. Union of India & Anr. 2012 6 SCC
20. TMA Pai Foundation vs. State of Karnataka 1994 SCC (2) 734
21. Unaided Private Schools of Delhi v. Director of Education (2009) 10 SCC 1

## Table of Contents

SL. NO	CONTENTS	PG NO.
1	<b>Chapter 1: Introduction</b>	10
1.1	Evolution of right to education	13
1.2	Recognition of the Right to Education by International Instruments	14
1.3	Right to Education: Constitutional Mandate	17
1.4	The Objectives of the Study	22
1.5	Hypothesis	22
1.6	Research Questions	23
1.7	Methodology of the Study	23
1.8	Chapterisation	23
2	<b>Chapter 2: Right to Education in India: Constitutional Perspective</b>	25
2.1	Introduction	25
2.2	The Right to Education as an Empowerment Right	25
2.3	Evolution of Education System in India	28
2.4	The initiatives of the Supreme Court of India	31
2.5	The aftermath of the Unni Krishnan decision	33
2.6	Provisions of the Constitution promoting and strengthening the educational framework in India.	34
2.7	86th Constitutional Amendment Act	35
2.8	The Right of Children to Free and Compulsory Education Act, 2009	36
2.9	Main Features of Right to Education Act	37
2.10	Criticism raised against the RTE Act	39
2.11	R.T.E. Amendment Bills	40

2.12	Right to Education Act: Analysis	41
2.13	State-wise analysis of the impact of the RTE Act	42
2.14	Conclusion	45
3	<b>Chapter 3: Landmark decisions dealing with the Right to Education in India</b>	46
3.1	Introduction	46
3.2	Mohini Jain v. State of Karnataka- Significance of the decision	47
3.3	Unni Krishnan, J.P. v. State of Andhra Pradesh	48
3.4	Bandhua Mukti Morcha v. Union of India & Ors.	53
3.5	TMA Pai Foundation v. State of Karnataka - Right of Minorities to Establish Educational Institutions	54
3.6	Islamic Academy of Education vs. State of Karnataka	55
3.7	Avinash Mehrotra v Union of India	58
3.8	Conclusion	59
4	<b>Chapter 4: Right to education – International Prospective</b>	61
4.1	Introduction	61
4.2	Definition	62
4.3	Historical Development of the Right to Education	63
4.4	Philosophical Basis of the Right to Education	65
4.5	The Universality of the Right to Education	67
4.6	International Instruments	71
4.6.1	The International Bill of Human Rights	75
4.6.2	The International Covenant on Economic, Social and Cultural Rights	75
4.6.3	Convention against discrimination in Education	77
4.6.4	The Convention on the Rights of the Child, 1989	78



4.7	Recommendations and Declarations	80
4.8	Regional Instruments	81
4.9	Assessment of fulfilment	84
5	<b>Chapter 5: Conclusion and Suggestions</b>	87
5.1	Introduction	87
5.2	Progress in the educational sphere in India since 1950	87
5.3	Right of Children to Free and Compulsory Education Act, 2009	89
5.4	Impact of Right of Children to Free and Compulsory Education Act, 2009	91
5.5	Measures for ensuring the protection of the right to education of the disadvantaged groups of the society	98
5.6	Challenges in implementing the Right to Education Act	101
5.7	Effect of Pandemic on the education of the children	104
5.8	Conclusion	105
5.9	Suggestions	106
6	<b>Bibliography</b>	108

# **Chapter 1**

## **Introduction**

*“Education is the most powerful weapon which you can use to change the world.”*

– Nelson Mandela

The dynamic process of education continues to be one of the most crucial challenges for developing and developed countries to address in order to lift humanity. Education is a fundamental value by which humans engage and interact with society and through which the human intellect grows. In its broadest sense, it is a type of learning in which the knowledge, skills, and habits of a group of people are passed down from one generation to the next through teaching, training, or research, and it enables them to understand their rights and responsibilities toward their family, society, and nation. Any experience that has a formative effect on how one thinks may be classified as educational.

Education can be described broadly as "all actions by which a human group passes to its descendants a body of knowledge and abilities, as well as a moral code that enables that community to exist."<sup>1</sup> Emile Durkheim, widely regarded as the father of contemporary social science, defined education as "the action of the older generations on those who are not ready for social life." Its goal is to "awaken and develop in the infant those physical, intellectual, and moral states that are required of him/her by his/her society as a whole as well as by the milieu for which he is specifically destined."<sup>2</sup>

The value of education cannot be overstated for any individual. It goes without saying that education improves the lives of people. It is a constant factor in the advancement of human civilization. Although education has a tremendous impact on life, average education is not the same across the board. As a result, strategies for resolving the issues are being developed. Life would be painful and disadvantageous without education.

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<sup>1</sup> Amadou-Mahtar M'Bow "Introduction," in G. Mialaret (ed.) *The Child's Right to Education*, 9, 14-15.

<sup>2</sup> Emile Durkheim, *Education et. Sociologie* (1992) T.B. Bottomore, *Society* (1986) p. 262.

The General Conference of the United Nations Educational, Scientific and Cultural Organization has defined the term "education" to imply "the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their capacities, attitudes, aptitudes, and knowledge"<sup>3</sup>. Education, on the other hand, can be narrowly defined as "formal or professional training delivered within a national, provincial, or local education system, whether public or private."<sup>4</sup>

Dr. A.K. Lakshmanan, then Chief Justice of India, rightly remarked in *Ajay Goswami vs. Union of India & Others* that:

*"Education is perhaps the most important function of state and a local government. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, preparing him for later professional training, and normally adjusting to his environment. In these days, it is doubtful, and a child may reasonably be expected to succeed in life if he is denied the opportunity of an education."*<sup>5</sup>

In the case of *Election Commission of India vs. Sant Merry's School & Others*, Justice S.B. Sinha made similar observations about the inherent importance of education<sup>6</sup>. In the case of *Ashoka Kumar Thakur vs. Union of India and others*<sup>7</sup>, the court correctly observed that India has suffered in the past due to significant underinvestment in higher education. This is due, in part, to thinking that views primary and secondary education as either/or. As a result, particular care is required to strengthen the nation to effectively repair the education system.

According to Ramaswamy and Justice Sagar Ahmad, illiteracy has numerous negative effects in a democracy regulated by the rule of law. An educated citizen can meaningfully exercise his political rights, fulfil his social responsibilities, and cultivate a spirit of tolerance and reform.

As a result, compulsory education is one of the states' responsibilities for the maintenance of democracy, social integration, and the abolition of social problems.<sup>8</sup> The Supreme Court has

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<sup>3</sup> Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental Freedoms, art. 1(a), (1974)

<sup>4</sup> M'Bow, op. cit., p. 11.

<sup>5</sup> AIR 2007 SC 493

<sup>6</sup> AIR 2008 SC 655

<sup>7</sup> 2010 (4) SCR 1

<sup>8</sup> *Bandhua Mukti Morcha vs. Union of India* (1997) 10 SCC 549

recognised the right to education a basic fundamental right by correctly and coherently interpreting Parts III and IV of the Constitution.

The landmark decision of *Brown v. Board of Education of Topeka*<sup>9</sup>, decided by the United States Supreme Court in 1954, emphasised the importance of education by asserting:

*“It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, preparing him for later professional training, and normally adjusting to his environment. These days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”*<sup>10</sup>

These words not only highlight the significance of education but also comment on the court's understanding of the term "education". The court considers education to be a requirement for adequately exercising the rights and duties of citizenship.

The term education has been defined in the Convention Against Discrimination in Education<sup>11</sup> to cover "all types and degrees of formal education, including access to education, the standard and quality of education, and the conditions under which it is provided."

The human right to education is mainly a welfare or "second generation" right that should be supplied to individuals primarily through government agencies. As a result, delivering formal education has been considered a primary function of the state. Article 1 of the Central American Convention on the Unification of the Fundamental Norms of Education of 1962, for instance, recognises education as a major duty of the state, which "must provide maximum educational possibilities." The duty to provide the means of education falls first on the state, according to Principle 4 of the Official Statement of Principles issued by the Conference on the Legal Protection of the Rights of the Child in Warsaw in 1979.

Although children are the major beneficiaries, everyone has the right to an education. Article 26(1) of the Universal Declaration of Human Rights<sup>12</sup>, in proclaiming that "everyone has the

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<sup>9</sup> 347 U.S. 483 (1954).

<sup>10</sup> Ibid

<sup>11</sup> Convention against Discrimination in Education, 429 U.N.T.S. 93, entered into force May 22, 1962.

<sup>12</sup> UN General Assembly, UDHR, 10 December 1948, art 26, <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 10 May 2021]

right to education," implicitly recognises that education is a life-long and ongoing process that opens new perspectives and improves the individual's quality of life.

Furthermore, the Universal Declaration of Human Rights states unequivocally that "education shall be free, at least in the elementary and fundamental stages." This is the legal basis for the right to education. Almost all countries throughout the world recognise this right in theory. According to the terms of the Convention on the Rights of the Child (1989)<sup>13</sup>, which 194 countries have ratified, states are required to recognise the right of the child to education and, in order to achieve this right gradually and on an equal basis, to make primary education compulsory and accessible to all.

### **1.1 Evolution of right to education**

In modern history, John Locke and Jean-Jacques Rousseau referred to the parental obligation to educate children until they are competent to make full and right use of their freedom and capacities in the *Second Treatise of Government* and *Emile*, and *Treatise on Education*, respectively. Education has long been regarded as so fundamental to human life that it was regarded as a pre-existing or natural right above to positive law.<sup>14</sup>

The French and American Revolutions established, at the very least as a state responsibility, the promotion of education for the benefit of the majority of citizens. Public education was seen as a means of realising the egalitarian ideals on which these revolutions were founded, and education was no longer seen as the exclusive domain of a certain social class.

As a result, some countries made universal and free compulsory public primary education a component of their constitutions. Compulsory education regulations were also enacted in order to give children with elementary general education and vocational training, thereby keeping them out of the labour field. The Declaration of Geneva in 1924<sup>15</sup> was the very first instance

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<sup>13</sup> Unicef.org. 2021. *Convention on the Rights of the Child*. [online] Available at: <<https://www.unicef.org/child-rights-convention>> [Accessed 10 May 2021].

<sup>14</sup> B. Walsh "*Existence and Meaning of Fundamental Rights in the Field of Education in Ireland*", 2 *Human Rights Law Journal*, 319, 320. (1981)

<sup>15</sup> Unicef.org. 2021. *Convention on the Rights of the Child*. [online] Available at: <<https://www.unicef.org/child-rights-convention>> [Accessed 10 May 2021].

of international recognition of the right to education; while this proclamation did not explicitly recognise the right of children to education, three of its five principles implied such a right.

Since 1945, the United Nations and UNESCO have collaborated closely on educational issues such as illiteracy elimination, youth human rights education, and the abolition of educational inequality.

Apart from the Universal declaration of human rights, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention against Discrimination in Education (1960), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and Convention on the Rights of the Child (CRC) also contains provisions for the enforcement of the right to education.

## **1.2 Recognition of the Right to Education by International Instruments**

The Universal Declaration of 1948, the Convention against Discrimination in Education of 1960, the International Covenant on Economic, Social, and Cultural Rights of 1966, and the Convention on the Rights of the Child of 1989 all expressly recognise and reaffirm the right to education.

In addition, UNESCO has adopted a number of non-binding instruments to help realise the right to education. The Recommendation Concerning the Status of Teachers (1966), the Recommendation Concerning Education for International Understanding, Cooperation, and Peace and Education Concerning Human Rights and Fundamental Freedoms (1974), the Recommendation Concerning Technical and Vocational Training, and the Recommendation on the Development of Adult Education are among them (1976). The International Labour Organization has also issued measures on vocational guidance and training 14, and the Commission on the Status of Women has conducted numerous studies on women's access to education.

In 1948, the Universal Declaration of Human Rights explicitly stated that everyone has the right to an education. According to Article 26(1), everyone has the right to an education. Education shall be free, at least in the primary and secondary levels. Technical and professional

education must be made widely available, and higher education must be made equally accessible to all based on merit.<sup>16</sup>

As a result, education is to be made available to all on the basis of merit rather than income or prestige. The commitment to give free education to children implies that each nation should build a free public education system in order to make education accessible to the majority of children.

The concept of compulsory primary education is based on the idea that everyone has an inalienable right to a time of education at the expense of the government. The seeming contradiction between the right to education and the compulsory nature of basic education can be reconciled if the term "compulsory" is used to imply that no person or body can prevent children from receiving primary education. This places the state under an obligation to ensure that children obtain at least an elementary education in cases of parental negligence or ignorance, for example.

Given the aspirational nature of the Universal Declaration at the time of its adoption, it is still remarkable that these aspirations were articulated at a time when relatively few nations had free and compulsory elementary education, and even fewer had adequate secondary and higher education systems.<sup>17</sup> Later United Nations instruments dealing with specific themes or groups have confirmed, expanded, and detailed the Declaration's educational provisions.

The Universal Declaration of Human Rights (UDHR), along with the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC), has contributed to the establishment of viable legal mechanisms through which nation-states can and have implemented, supported, and assessed effective social structures necessary to provide appropriate educational opportunities. Consider Article 13 (1) of the ICESCR, which states that the States Parties to the present Covenant recognize the right of everyone to receive an education. They further agree that education should enable all people to engage successfully in a free society, promote understanding, tolerance, and friendliness among all nations and racial, ethnic, or religious groups, and support the United Nations' efforts to keep the peace.

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<sup>16</sup> *Id* at 4

<sup>17</sup> D. RAY AND N. TARROW, HUMAN RIGHTS AND EDUCATION, 10 (1987)

This emphasises on the importance of recognising, beyond a hazy symbolic suggestion, not only the fundamental nature of having a right to education, but also its instrumental and intrinsic value. Furthermore, Article 28 (1) of the CRC<sup>18</sup>, which builds upon the ICESCR by stipulating that states Parties recognise the right of the child to an education, and in order to achieve this right gradually and on an equal footing, they shall, in particular, Make primary education mandatory and accessible to all. Encourage the development of various forms of secondary education, including general and vocational education, and make them available and accessible to every child, taking appropriate measures such as the introduction of free education and providing financial assistance in cases of need. Make higher education accessible to all on the basis of capacity through any appropriate means; Make educational and vocational information and guidance available and accessible to all children. Lastly, take steps to encourage regular school attendance and reduce dropout rates.

Article 29 of the Convention on the Rights of the Child<sup>19</sup> states that it is necessary to recognise both the human dignity and the inherent rights of each child and create appropriate educational environments capable of promoting and modelling this. These articles emphasise the importance of promoting and protecting an educational environment that strives to balance the ability of the child with that of child's familial and cultural identity and to be directly relevant to the child's socioeconomic circumstances by focusing on the need to develop the diverse, evolving abilities of each child.

Special Rapporteur Charles Ammoun's 1957 report proposed the drafting of an international convention on eliminating discrimination in education and laying out the fundamental principles on which such a convention would be based. The Convention Against Discrimination in Education embraced and expanded on these concepts.

The Convention Against Discrimination in Education, which was adopted by the UNESCO General Conference on December 14, 1960<sup>20</sup>, was the first international instrument to prescribe comprehensive international standards for public education. Furthermore, under the authorization of the Commission on Human Rights, the Sub-Commission on the Prevention of

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<sup>18</sup> Unicef.org. 2021. Convention on the Rights of the Child. [online] Available at: <<https://www.unicef.org/child-rights-convention>> [Accessed 10 Feb 2021].

<sup>19</sup> Ibid

<sup>20</sup> 1961. *Convention Against Discrimination in Education, adopted by the General Conference at its eleventh session, Paris, 14 December 1960* = . [Paris]: UNESCO.



Discrimination and Protection of Minorities researched prejudice in education as part of a number of investigations of discrimination in other professions.

The Dakar Framework for Action<sup>21</sup> is based on the Education for All (EFA) 2000 Assessment, the most comprehensive evaluation of education ever conducted. The Assessment, which was requested by the World Conference on Education for All, offered a detailed examination of the state of primary education around the world. It committed countries to strengthening national and regional structures to guarantee that EFA was on the agenda of every national legislative, among other things. It also stressed the importance of taking meaningful steps at the national level to improve the legal foundations of the right to education in national systems. The international community was made aware of the need to provide financial assistance to poor-stricken countries in order to eradicate poverty completely. The UN General Assembly set a target to attain this goal, and the UN Millennium Declaration<sup>22</sup> was approved in September 2000, in which governments vowed to do their best to eradicate poverty, promote human dignity and equality, and achieve peace, democracy, and environmental sustainability.

In particular, the international community committed in the Millennium Development Goals to cut extreme poverty in half by 2015 and to eradicate extreme poverty by 2025. The worldwide community has established a goal of having all children, including boys and girls, finish a whole primary school curriculum by 2015.

As a result, these international treaties have long recognised the right to education as covering access to educational provision as well as the need to eliminate discrimination at all levels of the educational system, set minimum standards, and improve quality. In terms of their relevance in India, it is worth noting that India is a signatory to the ICESCR, the CEDAW Convention, and the Convention on the Rights of the Child.

### **1.3 Right to Education: Constitutional Mandate**

The Constitution of India is based on the principles of 'Justice,' 'Liberty,' 'Equality,' and 'Fraternity,' and is intended to further the goal of social revolution. Parts III and IV, namely the Fundamental Rights and Directive, are at the heart of this social revolution's commitment.

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<sup>21</sup> Right-to-education.org. 2021. [online] Available at: <[https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Dakar\\_Framework\\_for\\_Action\\_2000\\_en.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Dakar_Framework_for_Action_2000_en.pdf)> [Accessed 17 Feb 2021].

<sup>22</sup> United Nations, <https://www.un.org/en/development/devagenda/millennium.shtml> (last visited Feb 2, 2021).

As a signatory to the United Nations Universal Declaration of Human Rights (1948), India incorporates various UDHR concerns into several provisions of its Constitution. According to Article 26 of the Universal Declaration of Human Rights, "everyone has the right to an education." Education shall be free at least in the primary and fundamental stages...' is enshrined in the Indian Constitution in Articles 41 and 45, under the Directive Principles of State Policy.

Article 41<sup>23</sup> provides that the 'state shall, within the limitations of its economic ability and growth, provide efficient provisions for safeguarding the rights to labour, education, and public assistance in unemployment, old age, sickness and disablement, and other circumstances of unreserved want.' The Constitution views education as one of the state's religious obligations. Article 45<sup>24</sup> urges the state to make every effort, within ten years of the adoption of the Constitution, to offer free and compulsory education for all children up to the age of fourteen. However, under the Directive Principles, the right to education is not justified in a court of law, and so, if denied or neglected, it cannot be contested in any court of law in the country. Examining Articles 41 and 45 reveals that, while Article 41 simply expects the state to make adequate provisions for securing the right to education, within the limits of its economic capacity and development, Article 45 makes a more stringent demand on the state to provide education to all children up to the age of 14 years 'within a period of ten years,' regardless of the state's economic conditions.

The judiciary expressed a keen interest to provide free and obligatory education to all children under the age of 14. The Supreme Court of India decided two PIL cases in the year, namely the Mohini Jain and Unni Krishnan cases, in which the court upheld the right to education. In truth, both decisions dealt with the influence of specific state legislation on private educational institutions of higher learning, and the court used the occasion to establish a precedent that also affected public elementary education.

The Supreme Court ruled in *Mohan Jain vs. State of Karnataka*<sup>25</sup>, often known as the 'capitation fee case,' that the right to education is a fundamental right under Article 21 of the Constitution that cannot be denied to a person by imposing a higher cost known as the captivation fee. The right to education is inextricably linked to the right to life. In the instant case, the petitioner

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<sup>23</sup> INDIA CONST. art 41

<sup>24</sup> INDIA CONST. art 45

<sup>25</sup> (1992) 3 SCC 666

challenged the legality of a government notification issued under the Karnataka Education Institution (Prohibition of Captivation Fee) Act 1984, which was passed to regulate tuition fees paid by private medical colleges in the state. According to the division bench of two judges, the right to education at all levels is fundamental to the citizen under Article 21 of the Constitution, and charging admission fees to educational institutions is illegal and amounts to denial of the rights of the citizen to get an education, as well as a violation of Article 14 for being arbitrary, unfair, and unjust.

Another landmark case in the perspective of education as a fundamental right is *Anand Vardhan Chandel v. University of Delhi*<sup>26</sup>. In its decision, the Delhi High Court stated that education is a fundamental right guaranteed by the Constitution. 'The law is now settled that the expression of life and personal liberty in Article 21 of the Constitution includes a variety of rights even though they are not enumerated in Part III of the Constitution, provided that they are necessary for the full development of the individual's personality and can be included in various aspects of the liberty of the individual,' the court observed.

The Supreme Court in its landmark decision in *Unnikrishnan JP v. State of Andhra Pradesh & Others*<sup>27</sup> in 1993 established that education is a fundamental right derived from Article 21. Nonetheless, the court partially overruled Mohini Jain's case in terms of content. It was decided that the right to free education is only available to children until the age of 14, after which the state's commitment to offer education is subject to the limits of its economic capacity and growth. Articles 41, 45, and 46 impose obligations on the state, which can be fulfilled by either establishing its own institutions or assisting, recognising, or providing affiliation to private organisations. The court further found that the right to education, as understood in the context of Articles 45 and 41, means that every child/citizen has a right to free education until the age of 14, after which the right is subject to the limits of the state's economic capabilities. It was decided that since more than four decades had passed, the state should execute the Directive in Article 45. This was in the nature of rousing the state from its slumber so that it may fully awaken to its commitments under the Directive and give an enlargement of the term "life" or "liberty" in Article 21. In this judgement, the court, for the first time, articulated the support for the right to education as enshrined in the UDHR and Article 13 of the ICESCR as a "social right." By upholding the right to free primary education till the age of 14, the court was

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<sup>26</sup> AIR 1978, Delhi 308

<sup>27</sup> 1993 AIR 2178

encouraging the state to try to fulfil the responsibility under Article 45 within a time limit that had long passed. This was one of the first decisions in which the court used ICESCR terminology to advocate for the progressive realisation of the right to higher education while also proclaiming the fundamental right to free elementary education. Thus, by rightly and harmoniously construing the provisions of Parts III and IV of the Constitution, the Supreme Court has elevated the right to education to the status of a basic fundamental right.

Later, in 2002, with the 86th amendment to the Constitution, Article 21A<sup>28</sup> was added into the Indian Constitution, which stipulates that the state shall provide free and compulsory education to all children aged six to fourteen years in such manner as the state may by law designate. Furthermore, the Right of Children to Free and Compulsory Education (RTE) Act 2009 is the follow-up law envisioned under Article 21-A. The RTE Act was enacted to ensure that every child has the right to a full-time basic education of satisfactory and equitable quality in a formal school that meets certain essential norms and requirements, thereby reinforcing UN recommendations.

The Supreme Court further ruled that the right to education includes the right of citizens to petition the state to provide educational facilities within the limits of the economic capabilities and growth of the state<sup>29</sup>. In this regard, the Supreme Court observed in the case of *State of Bihar and others vs. Project Uchcha Vidhya, Sikshak Sangh and others vs. Union of India*<sup>30</sup> that the establishment of High Schools may not be a constitutional function because citizens of India over the age of 14 may not have any fundamental right in relation to it, but education as an aspect of human development is indisputably a human right. Dr. A.K. Lakshmanan, Chief Justice of India, correctly observed that education is, without a doubt, the most essential duty of state and local government. It is required in the accomplishment of our most basic tasks, including military service. It is the bedrock of good citizenship. Today, it is the primary tool for exposing a child to cultural values, preparing him for later professional training, and generally adjusting to his surroundings. It is uncertain these days, and a youngster may legitimately be expected to achieve in life if he is deprived the opportunity to receive an education.

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<sup>28</sup> INDIA CONSTI. Art 21A, amended by The Constitution (Eighty-sixth Amendment) Act, 2000.

<sup>29</sup> *Modern School vs. Union of India*, AIR 2004 SC 2236.

<sup>30</sup> 2006 (2) SCC 545

With a gross enrolment rate (GER) of 101.4<sup>31</sup>, the emphasis on delivering primary education has yielded results across social groups and gender. Female involvement has increased significantly up to the secondary level, and GER for girls has surpassed that of boys. This increase in female enrolment in elementary and secondary education can be traced mostly to government programmes such as the establishment of residential schools in areas with poor female literacy rates, as well as the provision of physical and financial incentives to the girls. Despite these efforts, the gross enrolment rate of students enrolled in secondary and higher secondary school is declining dramatically<sup>32</sup>. Several social and economic reasons contribute to this drop in the percentage. According to a United Nations report, India has by far the biggest population of illiterate adults, accounting for 37% of the global total, illustrating the wide gaps in the country's affluent and poor education levels. As a result, there is a need to examine the existing provisions and make additional changes in order to bridge the gap between discourse and operational framework.

According to various ASER reports, there is no focus on the quality of learning.<sup>33</sup> Despite the increase in the number of children enrolling in schools, the quality of education provided is not given enough importance, and the number of out of school children has also increased. Sadly, the country today has one of the largest illiterate populations in the world. Even though caste, gender, class and regional disparities have reduced through the universalization of elementary education, they are still glaring and persistent. The educational administration in most states and UTs has yet to effectively tackle endemic problems concerning the shortage of teachers, teacher absenteeism, inadequate and improperly designed school buildings, lack of teaching/learning equipment, need-based teacher training, and a curriculum related to real-life requirements. Another issue regarding the education system is the existence of different boards that govern education in schools resulting in divergent syllabus in the same grade. Homogeneity in curriculum is essential because a course material needs to be made by carefully evaluating the mental ability of a child of the said age, and such evaluation must apply to all children of the same age, there must be not disparity, otherwise this may hamper the development of the child and impact the process of learning. Grievance redressal with the focus of getting children into schools appears to be quite complicated, one of the principal reasons

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<sup>31</sup> Data published by Ministry of Human Resource Development, Department of school education and Literacy (2016).

<sup>32</sup> MHRD Publications and website of UIS [https://www.education.gov.in/sites/upload\\_files/mhrd/files/statistics-new/ESAG-2018.pdf](https://www.education.gov.in/sites/upload_files/mhrd/files/statistics-new/ESAG-2018.pdf) accessed on 27th February

<sup>33</sup> <https://www.asercentre.org/>

being that no one clear mechanism is in place be followed by the general public. The RTE lists a handful of bodies which are entrusted with monitoring enrolment in schools. Further the definition of “local authorities”, one of the groups of bodies which should be handling complaints and ensuring school admission, is also multi-jurisdictional i.e. there is no one body which fulfils the role. The researcher intends to give policy recommendations for assisting the unrecognized schools to meet the prescribed standard within the RTE Act, keeping in mind the capacity of the schools. Though there are many education levels, this study focuses mainly on primary and secondary level education.

#### **1.4 The Objectives of the Study**

The objectives of the research are as follows:

- i. To trace the evolution of a fundamental right to education in India with reference to the various international human rights framework.
- ii. To examine the efficiency of the various policies in safeguarding the right to education.
- iii. To identify the reasons behind the decline in the number of students enrolling for higher education.
- iv. To identify and study the various legal issues relating to illiteracy and lack of education in India from a human rights and human development perspective.
- v. To examine the role of the Supreme Court of India in developing a fundamental right to education through its constitutional jurisprudence.

#### **1.5 Hypothesis**

The existing legislative framework is inadequate in ensuring that the government authorities fulfil the objectives envisaged in the RTE act.

#### **1.6 Research Questions**

- i. To what extent the policies and measures adopted by the international institutions are effective in promoting the right to education.

- ii. Whether there is a need for expanding the age group to which the right to education is guaranteed under the RTE act from 6-14 years of age to 0- 18 years of age.

## **1.7 Methodology of the Study**

The research will be Doctrinal. The existing law concerning the right to education is obtained from Articles 21A Part III, Article 45 and Article 39 (f) of DPSP of the Constitution of India and Right to Education (RTE) Act, 2009. An analysis of these laws, along with the various International Covenants and Instruments that have dealt with this aspect, clubbed with the decision of the various courts, would be used in the process of research.

## **1.8 Chapterisation**

### Chapter 1: Introduction

This chapter is an introduction to the overall theme of this study and further gives an idea about the topic. It also includes research design having a statement of the problem, importance, objective and scope of the study, literature review, research questions, hypothesis, and methodology used to undertake the research.

### Chapter 2: Right to Education- National perspective

This chapter highlights the legislative framework of the Right to free and Compulsory Education Act and also to critically evaluate the provisions of the Act.

### Chapter 3: Judicial Contribution towards Right to Free and Compulsory Education

The judiciary has always exhibited keen interest in the furtherance of right to education. This chapter consists of the analysis of the various landmark cases that changed the landscape of right to education in India and paved the way for the RTE Act.

### Chapter 4: International Perspective Regarding Right to Education

This chapter sets forth the historical development of the right to education, the philosophical basis of the right and the right to education as an empowerment right, the compulsory nature of primary education, and the universality of the right to education. It also deals with the various international instruments, regional instruments, and its protection by instruments of the UN

Specialised Agencies in place for the protection of the right and also, analyses as to how far these instruments have been successful in the fulfilment of the right.

#### Chapter 5: Conclusion and Suggestion

This chapter deals with the conclusions arrived at from the research and the various suggestions put forth which are essential for overcoming the shortcomings of the RTE act. This present chapter also includes a brief analysis as to how the pandemic has affected the educational sphere of the country.



## Chapter 2

### Right to Education in India: Constitutional Perspective

*The foundation of every state is the education of its youth.*

-Diogenes

#### **2.1 Introduction**

The social and economic progress of the nation is dependent on an educated populace. The Indian experience with education has had and continues to have a tumultuous past. During the Constituent Assembly deliberations, the idea of free and obligatory education as a fundamental right was first raised. Although there was universal agreement that there were two types of rights: justiciable and non-justiciable, the precise placement of the right to education became a point of contention.<sup>34</sup>

The right to an education was not formally recognised until *Mohini Jain v. State of Karnataka*<sup>35</sup>. Subsequent judicial rulings such as *Unni Krishnan, J.P. v. State of Andhra Pradesh*<sup>36</sup>, *T.M.A. Pai Foundation v. State of Karnataka*<sup>37</sup>, and *P.A. Inamdar v. State of Maharashtra*<sup>38</sup> expanded on the right and established the legal basis for its enforcement.

The Constitutional 86th Amendment Act of December 2002 makes free and compulsory education a basic right under Article 21 A of the Indian Constitution<sup>39</sup>. The Right of Children to Free and Compulsory Education Act, 2009 was passed on August 4, 2009, in an attempt to truly implement India's Fundamental Right to Free and Compulsory Education. It was implemented as a last-ditch effort to address the massive inequities that existed in the field of elementary education. The act's goal is to give everyone the opportunity to study and benefit from education. This chapter aims at highlighting the legislative framework of the Right to free and Compulsory Education and also to critically evaluate the provisions of the Act.

#### **2.2 The Right to Education as an Empowerment Right**

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<sup>34</sup> SHIVA RAO, THE FRAMING OF INDIA'S CONSTITUTION, 174 (2004)

<sup>35</sup> 1992 AIR 1858

<sup>36</sup> 1993 AIR 217

<sup>37</sup> 1994 AIR 2372

<sup>38</sup> (2005) 6 SCC 567

<sup>39</sup> INDIA CONST. Art 21 A, amended by the Constitution (Eighty-sixth Amendment) Act, 2002.

Before looking at the evolution of the right to education in India, it is crucial to understand why it is such an important for the citizens of the country. The right to education can be thought of as an empowerment right<sup>40</sup>. This term was coined by Jack Donnelly and Rhoda Howard, who differentiated between "survival rights," "membership rights," "protection rights," and "empowerment rights."<sup>41</sup> Individual existence is said to be guaranteed by "survival rights," such as the rights to life, food, and health care. "Membership rights" are held in order to ensure that each individual has an equal place in society. As examples, family rights and the prohibition of discrimination are mentioned. "Protection rights," it is stated, protect the individual from state abuses of power. Examples include the right to habeas corpus and an independent judiciary. Finally, it is stated of "empowerment rights" that they "provide the individual with control over the course of his or her life, and in particular, control over (rather than merely protection against) the state." The right to a free press, freedom of association, and the right to an education are a few examples. People must not only be protected from state attacks, but they must also be empowered to shape and direct their own lives. Empowerment rights allow the individual to take control of his or her life. They make it easier for people to participate in political, economic, social, and cultural life. It is possible to argue that empowerment rights are required for the exercise of other human rights.

For a variety of reasons, the right to education is an empowerment right. Education, as we all know, has enormous liberating potential. Educational institutions are frequently used as a tool of social control, enforcing intellectual conformity, rather than as a mechanism to foster creativity and autonomy and promote personal liberation.<sup>42</sup> Nonetheless, "regardless of how tightly controlled the curriculum is, the skills developed in educational institutions can be applied to the development of ideas other than those sanctioned by the state." This is supported by the high proportion of educated people among political dissidents in many countries around the world. As a result, education enables a person to think critically about life. It enables him to seriously consider possible courses of action and make rational decisions based on such consideration.

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<sup>40</sup> On the nature of the right to education as an empowerment right, see Lonbay, 1988, pp. 34–35 (who speaks of education as a "core" human right), Coomans, 1992, pp. 270–272, Coomans, 1995, pp. 11–12, Nowak, 1995b, p. 189, Mehedi, 1999b, paras. 1–4 (UN Doc. E/CN.4/Sub.2/1999/10) and Toma"evski, 2001a, paras. 11–14 (UN Doc. E/CN.4/2001/52).

<sup>41</sup> Donnelly and Howard, 1988, pp. 214–248.

<sup>42</sup> Donnelly and Howard, 1988, p. 235.

Education is also a symbol of political empowerment<sup>43</sup>. Freedom of information, expression, assembly, and association, as well as the right to vote and be elected, are all contingent on a certain level of education. Only those who can be informed, express their ideas, and gather to articulate their concerns are able to participate in political life. Similarly, only an educated person can make an informed decision and, as a result, exercise his or her right to vote or run for political office. According to one source, "for this reason, well-educated and critical citizens can pose a threat to a regime that oppresses its own people. As a result, some governments do not feel obligated or interested in investing large sums of money and effort in education."<sup>44</sup>

Furthermore, education is critical to socioeconomic development.<sup>45</sup> Education helps people realize their economic and social human rights. As an example, consider the right to food. Individuals may be taught how to secure their own food supply. However, other such rights come to mind, such as the right to work, the right to a decent standard of living, and the right to health. These rights can only be exercised meaningfully if a certain level of education is attained. Ultimately, it is the individual who has been taught to read and write who can acquire the knowledge and skills required to meet the basic needs of himself and his family. Economic and social integration are aided by education. Only those who are literate can fully participate in economic life and take advantage of the opportunities it provides. And, in almost every country, education is "one of the few ways for a poor child to rapidly move up the social ladder."<sup>46</sup>

Finally, education broadens people's opportunities to participate in cultural activities<sup>47</sup>. Article 15 of the 1966 International Covenant on Economic, Social, and Cultural Rights protects the right to participate in cultural life. There is a strong link between educational and cultural rights. To a large extent, the level of realization of the right to education reflects the status of enjoyment of cultural rights. Education is the most important means of preserving religious, linguistic, and ethnic minorities' cultural identities.

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<sup>43</sup> On education and political empowerment, see Donnelly and Howard, 1988, p. 235 and Coomans, 1992, pp. 271–272.

<sup>44</sup> Coomans, 1992, pp. 271–272

<sup>45</sup> On education and socio-economic empowerment, see Donnelly and Howard, 1988, p. 236 and Coomans, 1992, p. 272.

<sup>46</sup> Donnelly and Howard, 1988, p. 236.

<sup>47</sup> Ibid

The Committee on Economic, Social, and Cultural Rights, which is in charge of overseeing the International Covenant on Economic, Social, and Cultural Rights, has confirmed the aforementioned observations on the nature of the right to education, commenting as follows:

Education is both a human right in and of itself, as well as an essential means of realizing other human rights. Education, as an empowerment right, is the primary means by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to fully participate in their communities. Education is critical for empowering women, protecting children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and limiting population growth. Education is increasingly being recognized as one of the best financial investments that states can make. However, the value of education extends beyond practical considerations: a well-educated, enlightened, and active mind, free to wander freely and widely, is one of the joys and rewards of human existence.<sup>48</sup>

It is possible to conclude that realising the right to education promotes other human rights at the same time. The protection of the right to education greatly facilitates the enjoyment of many civil and political rights, as well as economic, social, and cultural rights. The right to education, in this way, emphasizes the interdependence and indivisibility of all human rights.

### **2.3 Evolution of Education System in India**

Throughout the history of India, great thinkers have always underlined the importance of education. According to them, Vidya, or education, is man's 'third eye,' giving him insight into all affairs and teaching him how to act; it takes us to redemption; and it leads us to all-round advancement and success in the mundane domain.<sup>49</sup>

A verse borrowed for “Neethishatakam” by Bhartruhari, written in the 1st Century B.C., highlights the significance of education:

*Education is the special manifestation of man;*

*Education is the treasure which can be preserved without the fear of loss;*

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<sup>48</sup> CESCR, General Comment No. 13 (Twenty-First Session, 1999) [UN Doc. E/2000/22] The right to education (art. 13 ICESCR) [Compilation, 2004, pp. 71–86], para. 1.

<sup>49</sup> S. Gupta, Education in Emerging India, 2nd Ed. (2008), Shipra Publications, Delhi, p.1.

*Education secures material pleasure, happiness and fame;*

*Education is the teacher of the teacher;*

*Education is God incarnate;*

*Education secures honour at the hands of the State, not money.*

*A man without education is equal to an animal.*<sup>50</sup>

By the end of the 18th century, India had developed an indigenous educational system that was delivered through schools, colleges, and universities. Post-independence India inherited an education system marked by large-scale inter- and intra-regional inequities. The system educated only a chosen few, resulting in a large disparity between the educated and the illiterate. Economic inequality, gender discrepancy, and tight social stratifications exacerbated educational inequity. Since independence, there has been a growing recognition that progress cannot be self-sustaining unless it is accompanied by equivalent changes in the attitudes, values, knowledge, and abilities of the people as a whole, and that the only way to achieve this transformation is via education. Under the conventional educational system, formal education was limited to higher learning institutions and a small number of elementary schools.<sup>51</sup>

Nonetheless, Hindu higher learning institutes such as Tols and Pathashala were providing education in Sanskrit to individuals of upper castes. Similarly, Madrasahs were centers of higher learning for Muslims studying Arabic and Persian. Some Hindus were also learning Persian because they worked in Moghul Courts and administrative institutions.

While the Indian Constitution guarantees a number of human rights to its citizens, it distinguishes between Fundamental Rights and Directive Principles of State Policy. Article 37 of the Constitution states that, while the Directive Principles are "essential in the governing of the country" and the state is obligated to execute them, they "must not be enforced in any court."<sup>52</sup> There has been much discussion about the exact meaning of the wording of article 37. The mainstream understanding, however, has been that the rights specified in the Directive

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<sup>50</sup> Ashoka Kumar Thakur v. Union of India and Ors, Writ Petition (civil) 265 of 2006

<sup>51</sup> Education system in pre-independence India, <https://www.coursehero.com/file/95179395/HPEE-Newdocx/> (last visited on 3<sup>rd</sup> April 2021)

<sup>52</sup> INDIA CONST. part IV, art. 37.

Principles are to be implemented by the Indian state's executive and legislative institutions and are not to be subject to court intervention.<sup>53</sup>

Although other provisions of the Constitution have an impact on the right to education, Article 45 of the Constitution, which falls under the Directive Principles, is particularly important. It originally stated: "The State shall endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years." It should be noted that this is the only clause among the Directive Principles that includes a time limit, indicating the seriousness with which the framers of the Constitution regarded the need for its implementation.

Education had been listed as a subject for which only the provinces may enact legislation in British India since at least 1935. During the formulation of the constitutional provisions dealing to education in the constituent assembly, the framers debated whether education should be moved to the union or concurrent lists so that the central government could implement laws on education. Maulana Azad, who later became independent India's first union minister of education, was adamantly opposed to delegating education totally to the states, and he received backing from Nehru and other key constituent assembly members. Azad argued that delegating this authority to the central government was required in order to establish uniform national educational standards. However, some of the other members of the drafting committee argued that states should also have the authority to create educational policies and pass laws. They were driven, in part, by the realization that the various languages spoken throughout India would necessitate teaching in the local tongue, necessitating a decentralized approach to education.<sup>54</sup>

The situation was resolved by retaining education on the state list and including entries relating to higher education and scientific and technical institutions on the union and concurrent lists, granting the central government the authority to make policies and enact laws governing certain critical aspects of education. It was also agreed that the central government would have the authority to develop national strategies for coordinating educational service delivery.

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<sup>53</sup> Joseph Minattur, *The Unenforceable Directives in the Indian Constitution*, (1975) 1 S.C.C. (Jour.) 17

<sup>54</sup> An appraisal of India's contemporary 'promise', <https://lawandotherthings.com/2005/10/appraisal-of-indias-contemporary/> (last visited on 4<sup>th</sup> April 2021).

In the years following independence, it does not appear that central governments in India prioritised education as a national priority. An examination of government records reveals this; between 1951 and 1955, public expenditure on education accounted for less than 1% of India's total GDP (G.D.P.).<sup>55</sup> For the first time, more than 1% of total G.D.P. was spent on education in 1955-56, however this figure remained between 1% and 2% until 1979.

Dr. L. C. Jain, a renowned social activist, observed in his comprehensive examination of annual national budgets that between 1951 and 1961, article 45 "laid under a lid"; "not to be found a fleeting allusion to education, let alone to Article 45, in the budget speeches."<sup>56</sup> He further commented on the perplexing nature of this event, especially given that the wording of the Constitution prioritised universal education provision, and some members of the constituent assembly went on to hold significant posts in the central government. He stated, as evidence of this disdain of education, that the entire budgeted spending between 1951 and 1961 was Rs.12,000 crores (120 billion rupees or 2.6 billion US dollars), of which education received just Rs. 341 crores (3.41 billion rupees or 139 million U.S. dollars).

According to the brief statistical study provided previously, things did not significantly better during the next three decades. A notable shift happened in 1976, when education was shifted from the state list to the concurrent list as a result of a constitutional amendment. The measure was intended to give the central government a more major role in delivering educational services on a national scale, but it had no immediate impact. In 1991, India's literacy rate was only 52.21 percent, which was low in comparison to other emerging countries.<sup>57</sup>

Thus, even three decades beyond the time limit set in Article 45, it became clear that neither the federal government nor the individual state governments were making any progress toward achieving the aim stated in Article 45 of the Constitution.

## **2.4 The initiatives of the Supreme Court of India**

The shortcomings of the executive and legislative branches of the Indian government were not limited to schooling. Beginning in the late 1970s, the Supreme Court of India appears to have

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<sup>55</sup> Department of Education, Government of India, Selected Educational Statistics 2000-2001, 2, [http://www.education.nic.in/htmlweb/edustats\\_03.pdf](http://www.education.nic.in/htmlweb/edustats_03.pdf)

<sup>56</sup> Jain, L.C., 'Are Our Budget Makers Fruitful to the Constitution? A Tour of the. Budgets 1947-2001', (National Centre for Advocacy Studies 2001).

<sup>57</sup> Selected Educational Statistics 2000-2001

been forced to provide remedy to individuals dissatisfied with successive governments' failures to achieve constitutionally mandated aims.

Though initially meant at offering relief to the most disadvantaged members of society, the Supreme Court has used this jurisdiction to address a wide and diverse range of challenges over the years. The Court used its P.I.L. jurisdiction in the 1990s to address numerous of India's increasing middle-class issues.

In the 1990s, the Supreme Court was called upon to decide the constitutional status of the right to education in two cases: *Mohini Jain v. State of Karnataka*<sup>58</sup> and *Unni Krishnan. P v. State of Andhra Pradesh*<sup>59</sup>, in which the constitutionality of state legislation enacted to curb the excessive "capitation" fees levied by private institutions of higher learning was challenged. Interestingly, both of these instances dealt with higher education issues yet eventually ended in decisions affecting primary education.

While addressing the constitutional position of the right to education in *Unni Krishnan P v. State of Andhra Pradesh*, the Supreme Court voiced its displeasure with the apparent disregard for article 45 that it is worth noting that, of the various articles in Part IV, only Article 45 mentions a time limit; none of the others do... Isn't it true that the passage of 44 years—more than four times the term specified in Article 45--converts the duty generated by the article into an enforceable right? In this backdrop, we are compelled to state that distributing available monies to various education sectors in India reveals a reversal of priorities as stipulated by the Constitution.

The Supreme Court ruled that the right to an education stemmed from Article 21-a of the Constitution, which guarantees the right to life and personal liberty. The Court was informed not only by articles 45, 41, and 46 of Part IV of the Indian Constitution, but also by the International Covenant on Economic, Social, and Cultural Rights in formulating such an interpretation.<sup>60</sup>

The Court emphasised that the rights embodied in the Directive Principles are both necessary for governance and useful in interpreting the content of the Fundamental Rights. The Court

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<sup>58</sup> A.I.R. 1992 S.C. 1858

<sup>59</sup> A.I.R. 1993 S.C. 2178

<sup>60</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. G.C.I.A.O.R., 21st Sess., Supp. No. 16, at 49, U.N. Doc A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.



interpreted the relevant constitutional clauses to mean that every kid in the country had a right to free education until the age of fourteen, after which his access to education was limited by the state's economic capacity and progress.

## **2.5 The aftermath of the Unni Krishnan decision**

Although the decision in *Unni Krishnan JP v. State of Andhra Pradesh*<sup>61</sup>, reignited the debate in India about the limits of judicial review, the immediate effect of the decision was that any child under the age of fourteen who was denied access to primary education could petition a court for a writ of mandamus directing the authorities to take appropriate action. This was a potent weapon, and members of civil society and non-governmental groups began to use it as a strategic tool to pressure the president and legislature into taking significant action on primary education.

This problem has become a rallying point for activists and educators in India throughout time. As the push for a constitutional amendment ensuring the right to education gathered traction, other non-governmental organisations and independent actors began to collaborate. One such initiative resulted in the formation of the National Alliance for the Fundamental Right to Education (N.A.F.R.E.), which at its peak constituted a coalition of nearly 2,400 grassroots N.G.O.s from fifteen Indian states. Surprisingly, this coordination of efforts saw like-minded groups working on distinct but connected concerns join forces and brainstorm on the most likely to succeed techniques. So, for instance, groups committed to the abolition of child labour, such as the South Asian Coalition on Child Servitude (S.A.C.C.S.)<sup>62</sup> which is a conglomeration of over 400 human rights groups throughout South Asia; and the Campaign against Child Labour (C.A.C.L.), realising the importance of the right to education for their causes, joined forces with groups such as N.A.F.R.E. The South Asian Coalition on Child Servitude (SACCS) conducts rescue and raids to free child labourers.

According to the International Labour Organization, there are more than 60 million bonded child labourers in India. Because they are compelled to work more than 12 hours each day, these youngsters are denied their fundamental rights to childhood, education, fair remuneration,

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<sup>61</sup> 1993 AIR 217

<sup>62</sup> SACCS: South Asian Coalition on Child Servitude (2000), <https://books.google.co.in/books?id=mvTdjwEACAAJ> (accessed on 11 April 2021)

proper health care, and living conditions. The vast majority of them are held as slaves in factories, where they are exposed to beatings and sickness.

Responding in part to the impetus produced by such organisations, the central government submitted the Constitution (Eighty-third Amendment) Bill, 1997 in 1997, which attempted to make the right to education a Fundamental Right. The bill was referred to a parliamentary committee, but after a change of government at the centre, it was reintroduced as the Constitution (Ninety-third Amendment) Act, 2001 by the current National Democratic Alliance (N.D.A.) government.<sup>63</sup>

## **2.6 Provisions in the Constitution promoting and strengthening the educational framework in India<sup>64</sup>.**

The freedom to attend religious instruction or religious worship in educational institutions is guaranteed by Article 28 of the Indian Constitution. Article 29 guarantees that no citizen would be denied entrance to any state-owned or supported educational institution because of their race, caste, or language. Article 30 addresses rights of the minority communities to establish and manage educational institutions.

Article 45 states that the state must dispense providing free and obligatory education for all children in the country until they reach the age of 14 within ten years after the Constitution's adoption. The obligation for delivering primary education falls under the purview of the state government, the federal government, local governments, and voluntary organisations, as well as any other government agency. Article 46 provides for the special care required for the advancement of education and economic interests of Scheduled Tribes, Scheduled Castes, OBCs, and the poorer sections of society.

Article 337 of the Indian Constitution governs the particular provision for educational subsidies for the benefit of the Anglo-Indian population. In addition, Article 350B provides funds and opportunities for linguistic minorities.

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<sup>63</sup> Vijayashri Sripati & Arun K. Thiruvengadam, India - Constitutional Amendment Making the Right to Education a Fundamental Right, 2 INT'L J. Const. L. 148 (2004).

<sup>64</sup> INDIA CONST. Act of Parliament, (1950)

## 2.7 86th Constitutional Amendment Act<sup>65</sup>

The eighty-sixth constitutional amendment was enacted to preserve citizens' right to an education. It introduced three additional amendments to the Constitution in order to improve its functioning and protect the right of children aged six to fourteen years to free and compulsory education.

One of the most notable changes brought about by the 86th Amendment Act is the addition of a new Article, 21A, in Part III of the Indian Constitution, which states that every child has the right to free and compulsory education of equitable quality, subject to certain norms and standards.

It also brought about changes and modifications to Article 45, which reads that "The State shall endeavour to provide early childhood care and free and compulsory education for all children until they reach the age of six." Furthermore, as a result of this new fundamental obligation, it included a new phrase, (K), under Article 51A, which stipulates that whoever is a parent or guardian has a duty to provide chances for education to his child or, as the case may be, ward between the ages of six and fourteen years.

When the Act came into force on April 1, 2010, India became one of 135 countries to make education a basic right for its citizens. It elevated the right to education to the same level as the right to life. This legislation binds all stakeholders, including parents, schools, society, states, and federal governments, to perform their duties in providing free and compulsory education to children aged 6 to 14. All educators applaud the act's objective and see it as a watershed moment in the nation's effort to universalize elementary education.

In the case of *State of Tamil Nadu & Ors vs K Shyam Sunder & Ors*<sup>66</sup>, the court ruled that a child's "right to education should not be limited to free and compulsory education, but should be expanded to include quality education without regard to economic, social, or cultural background."

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<sup>65</sup> INDIA CONST. (Eighty-sixth Amendment) Act, 2002

<sup>66</sup> (2011) 8 SCC 737

## **2.8 The Right of Children to Free and Compulsory Education Act, 2009<sup>67</sup>**

The right to education act is a parliamentary act proposed on August 4, 2009<sup>68</sup>, that demonstrates and emphasises the idea of the importance of free and compulsory education for children aged 6 to 14 in India. India has become one of the 135th countries to recognise the right to education as a fundamental right guaranteed to every child in our Constitution under Article 21A. This Act came into effect on April 1, 2010.

The right to education requires governments to ensure the satisfaction of basic learning for all. "These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, develop their full capacities, live and work in dignity, participate fully in development, improve the quality of their lives, and make informed decisions," according to the World Declaration on Education for All of 1990.<sup>69</sup>

After a rigorous process of drafting and redrafting, the right to education act was enacted as a tool to fully meet the primary demand and ensure social justice for all children. The entire policy is based on 4As, which provides us an idea of what they planned to cover with this legislation.

Availability - In that sense, education is free, and the government is obligated to pay education, and there are expert teachers in his/her topic who are well qualified, as well as adequate infrastructure capable of supporting educational framework.

Accessibility entails education being available to all; there is no discrimination, with the goal of primarily assisting the weakest members of society.

Acceptability - The value of education is appropriate, there is no discrimination, and it is culturally acceptable; the school environment is safe, and the teachers are properly qualified.

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<sup>67</sup> Act No. 35 of 2009

<sup>68</sup> Saini, Ashok, The Right of Children to Free and Compulsory Education Act – 2009: As One of the Most Pioneering Academic Reforms in India, 10.5430/irhe.v1n2p58

<sup>69</sup> World Declaration on Education for All Meeting Basic Learning Needs: A Vision For The 1990's, Jomtein Thailand, 5-9 March 1990.

Adaptability - That education is dynamic and evolves in response to society's and its people's changing demands, and that it contributes to the elimination of disparities such as sex discrimination.

## **2.9 Main Features of Right to Education Act**

Right to Education Act provides that, every child between the ages of six and fourteen has the right to free and obligatory education in a neighbourhood school until the completion of elementary school<sup>70</sup>. The Act specifically specifies that no kid will be required to pay any fees or penalties that would preclude him or her from pursuing primary school. A school created by the government or a local authority will provide free and obligatory basic education to all admitted pupils under the terms of the RTE Act. Furthermore, all independent schools are obligated to give free education to at least 25% of children from the poorer parts of society who live in their community.<sup>71</sup> In the case of *Society for Un-Aided Private School of Rajasthan v. Union of India & Anr*<sup>72</sup>., the Supreme Court upheld the constitutionality of the Right to Education Act, 2009, which guarantees 25% free seats for the needy in government and private unaided schools across the country. Children who have either dropped out of school or have not attended any school will be enrolled, and no school will be able to refuse them admittance. The act also includes a provision for providing special education to children who have not been admitted to any school or who have not completed their elementary education to an age suitable class. It further states that any such child will be entitled to special education.<sup>73</sup>

Furthermore, Section 6 of the RTE Act stipulates the development of a school in areas/neighbourhoods where such a provision does not exist within a specified length of time from the Act's inception. The Central Government and the State Governments shall share financial obligations for carrying out the Act's provisions.<sup>74</sup>

According to Section 12(1c) of the RTE Act, private unaided schools must admit students from weaker and disadvantaged groups to the level of at least 25% of their class strength. According to Section 12(2) of the RTE Act, private unaided schools shall be paid for their expenses up to

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<sup>70</sup> Right to Education Act, S. 3(1) and 3(2), Act of Parliament (2009), India

<sup>71</sup> Right to Education Act, S. 12 (g), Act of Parliament (2009), India

<sup>72</sup> 2012 6 SCC; writ petition (c) No. 95 of 2010

<sup>73</sup> Right to Education Act, S. 4, Act of Parliament (2009), India

<sup>74</sup> Right to Education Act, S. 7(1), Act of Parliament (2009), India

the lesser of the per-child cost incurred by the government or the actual amount charged for the kid.

Section 13(1) of the RTE Act clearly prohibits any school or person from collecting any capitation fee and subjecting a child or his/her parents or guardians to any screening procedure in order to ensure that all children aged six to fourteen have access to quality primary education. Furthermore, Section 2(o) requires that only random techniques be used to accept a kid to a school. If the number of students applying to a particular school exceeds the available seats, a lottery mechanism will be employed to fill the seats under the random approach.<sup>75</sup>

The Supreme Court upheld the legality of parts of the law that established the Right to Education a fundamental right of children aged 6 to 14 years in *Society for Un-Aided Private School of Rajasthan v. Union of India & Anr.* The Right to Education law was enacted by inserting Article 21A into the Constitution, which states that the state shall provide free and compulsory education to all children aged 6 to 14 years in the manner determined by law. The Supreme Court bench consisting of Chief Justice S.H. Kapadia and Justice Swatanter Kumar, confirmed the constitutionality of Section 12(1c) of the RTE Act, which gives a 25% discount. The Supreme Court of India confirmed the constitutionality of the RTE Act, 2009, which mandates 25% free seats for the needy in government and private unaided schools across the country.

Section 24 of the RTE Act describes the key duties of teachers in order to improve their professionalism, including maintaining regularity and punctuality, completing the entire curriculum within a specified time, accessing each child's learning ability, and providing appropriate instruction, including supplementary instruction, if necessary. Teachers are also expected to meet with parents and guardians on a regular basis to update them on vital details concerning their wards' progress.

The RTE Act prescribes norms and standards for schools<sup>76</sup> (appended in the schedule of the act), highlighting key parameters such as ideal pupil-teacher ratio, school building guidelines, minimum number of working days, instructional hours in an academic year, minimum number of working hours per week for teachers, library facility, and guidelines on teaching or play material.

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<sup>75</sup> Right to Education Act, S. 13(1) and 2(o), Act of Parliament (2009), India

<sup>76</sup> Right to Education Act, S. 18(1) and 19(2), Act of Parliament (2009), India

Similarly, under Section 18(1) of the RTE Act, no school will be permitted to operate unless it obtains a certificate of recognition from a competent local authority, subject to compliance with Section 19 of the RTE Act. If a school is found to be in violation of the terms of its accreditation, the authority will revoke its accreditation.

The National Commission for the Protection of Child Rights (N.C.P.C.R.), as well as state commissions, monitor the implementation of the act. Before the introduction of the R.T.E. Act, the central government initiated many efforts such as five-year plans, Sarva Siksha Abhiyan (S.S.A.), Mid-Day Meal Scheme, and Rashtriya Madhmayak Siksha Abhiyan (R.M.S.A.) to promote primary education universalization. To make this act the most effective weapon for eradicating illiteracy, we must fill gaps based on the experience obtained from previously launched programmes, track the roles being played with diverse parties, and take corrective actions to avoid deviations from the established path of achieving the goal.

## **2.10 Criticism raised against the RTE Act**

One of the most serious criticisms levelled at the Act was that it did not apply to children in the age group of zero to six. During this time, a child's crucial development takes place. It will not be beneficial to the youngster if he or she is not given adequate opportunities to grow and develop. Second, there is anxiety about the quality of education. In order to carry out Article 21 –A of the Constitution in its genuine sense, citizens must have access to high-quality education. The majority of the subject provided to students is foreign to the average child. There is a demand for more non-formal education that is learner-cantered and activity-based.

Third, private schools are proliferating these days. They have a robust infrastructure and are also meeting the parents' expectations. As a result, the majority of parents choose private schools to public schools. The issue of quality education is with the government schools, which has remained ignored even after the passage of the R.T.E. Act.

Fourthly, the Act specifies that monies will be shared between the centre and the states in order for the Act to be effectively implemented. There is a major paucity of funds for execution. The allocation of funds required for the implementation of free and compulsory education under the RTE Act 2009 should be estimated at the government level by the department. The allocation must be planned in stages. Coordination among multiple government departments is critical for the implementation of government programmes and avoiding duplication of

beneficiaries, budget utilizations, and so on. Finally, existing monitoring systems may be streamlined, and a comprehensive monitoring system that considers academics and administration should be established to attain the desired goals. Fifth, the Act is attacked because the Act's No Detention Rule will prevent students from receiving a quality education. Section 16 of the Right of Children to Free and Compulsory Education (R.T.E.) Act, 2009 stipulates that 'No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education. Thus, the policy covers the elementary stage of schooling covering classes 1 to 8.

## **2.11 R.T.E. Amendment Bills<sup>77</sup>**

In January 2019, the parliament enacted the Right of Children to Free and Compulsory Education (Amendment) Bill, 2018. The no-detention policy mentioned in the statute is repealed by the amended bill. Prior to this modification, the RTE Act of 2009 forbade the detention of minors until they completed elementary school, or class eight.

This clause is amended by the legislation to say that a regular examination will be held in classes 5 and 8 at the end of each academic year. If a child fails the exam, he will be offered more education and must retake the exam. Such youngsters will receive two months of remedial instruction in order to perform better in another examination administered by their schools. If he fails the re-examination, the appropriate national or state government may decide to detain the youngster in schools.

The right to free and compulsory education to children (Amendment) Bill, 2017<sup>78</sup>, proposes to alter the Right of Children to Free and Compulsory Education Act (R.T.E.) of 2009 to extend the deadline for teachers to obtain the necessary basic credentials for the purpose of appointment.

Unqualified and untrained elementary teachers must complete their training, and all primary teachers must meet a particular threshold of certification. It will help to ensure that all teachers have the minimal qualifications required to maintain the standard of teaching quality.

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<sup>77</sup> Bill No. 166-C of 2017 and Bill No. 75 of 2017

<sup>78</sup> Ibid



## **2.12 Right of Children to Free and Compulsory Education Act, 2009: Analysis**

According to the decennial census (2011) conducted by the Registrar General and Census Commissioner of India under the Ministry of Home Affairs, Government of India, there are over 158 million children under the age of 18 in India<sup>79</sup>. This accounts for 39% of the entire population of the country.

According to the District Information System of Education<sup>80</sup>, only 13% of all schools have met the R.T.E. standards. Apart from poor administration and a lack of cash, there are a number of other reasons for not adopting the R.T.E norms and requirements. For example, if a school is located in densely populated metropolitan areas, it will be difficult to incorporate a playground. There may be multiple schools like this, and they may be the only school in the area; so, closing these schools based on 'non-compliance of standards will be futile, and it can affect students' education; non-compliance should be checked on a case-by-case basis.

There are significant differences in total enrolment numbers between states; for example, in the age group of 10 years, enrolment was more than 97% in Odisha but fewer than 80% in Andhra Pradesh. According to the Ministry of Statistics and Programme Implementation, the Government of India, the states of Bihar, Uttar Pradesh, and Rajasthan, for example, have experienced a constant increase in their enrolment numbers in upper primary school of 6.5 percent, 1.1%, and 4.5 percent, respectively. In contrast, states such as Madhya Pradesh, Assam, and West Bengal showed significant decreases in upper primary school enrolment of 2.7%, 5.1%, and 1.5%, respectively.

According to Section 12 (1)(C) of the R.T.E. Act, all schools, private, aided or unaided, must reserve at least 25% of their entry-level seats for underprivileged students from economically challenged sections and classes. According to the government's response in parliament, more over 3.3 million students were admitted under this provision in 2018-19.

The Act also empowers state governments to establish their own laws governing the eligibility and income levels of economically disadvantaged and underprivileged groups. This provision

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<sup>79</sup> CensusInfo India 2011, <https://censusindia.gov.in/2011-Common/CensusInfo.html> (last visited on 7th may 2021)

<sup>80</sup> Unified District Information System for Education (UDISE), <https://dashboard.udiseplus.gov.in/#/home>, (last visited on 5<sup>th</sup> May 2021)

resulted in the creation of more than 2.1 million seats for children in 2016-17; however, according to the bright spots: status of social inclusion through R.T.E. section 12(1) (c) 2018<sup>81</sup>, Indus Action, due to implementation challenges such as funds allocation and various state contexts, the fill rates of these seats have hovered between 20 and 26 percent since 2013.

While the Act is applicable throughout India, as of January 2019, only 15 states and union territories (excluding Lakshadweep) had notified the central government of a per-child cost in order to claim compensation. The data provided by the states, however, was also scrutinised; for example, Himachal Pradesh and Bihar have not revised the per-student cost since 2014-15. Furthermore, one outstanding topic is what will happen to pupils who completed their class eight in the year 2019, who would pay for them from class nine onwards, as the 25% quota ceases to be necessary beyond the age of 14.

According to the Annual Survey of Education Report 2016 (A.S.E.R.)<sup>82</sup>, despite increasing enrolment, the much-touted R.T.E. has not improved the quality of education: the number of children in class V who can read class II level literature is an appalling 41.6 percent in 2016. This was at 50.7% in 2010; instead of improving this poor-quality R.T.E. Act, it appears to be decreasing.

### **2.13 State-wise analysis of the impact of the RTE Act**

A closer look at some of the states and the challenges they face in implementing RTE throws light at the diverse profile of Indian states; hence the difficulty policymakers face while formulating such a national Act.

#### **Kerala**

Kerala achieved a PTR ratio of 26:1, which is better than the mandate. The state government contrasts between Kerala's division-based PTR ratio of 45:1 and the 30-35:1 ratio mandate for the entire school, claiming that they have already achieved a better than required mandate for overall PTR.

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<sup>81</sup> The bright spots: status of social inclusion through R.T.E. section 12(1) (c) 2018, [https://issuu.com/features/statistics?issuu\\_product=header&issuu\\_subproduct=document\\_page&issuu\\_content=link&issuu\\_cta=statistics](https://issuu.com/features/statistics?issuu_product=header&issuu_subproduct=document_page&issuu_content=link&issuu_cta=statistics) (last visited on 6<sup>th</sup> June 2021)

<sup>82</sup> Annual Status of Education Report (Rural) 'Young Children', [www.asercentre.org](http://www.asercentre.org) (last visited on 7<sup>th</sup> June 2021)

The infrastructure facilities in the majority of schools have already been created in accordance with the RTE Act's norms. However, due to the difficulty of allocating funds for construction and teacher deployment based on the RTE Act's elementary classification, the Kerala government order states that upper primary schools with Class V will be designated as lower and upper primary schools, and high schools with Class VIII will be designated as upper primary and high schools, a deviation from class I to V being designated as lower primary and Class VI to VIII as upper primary. Kerala is a role model for the nation due to its high levels of literacy even before the introduction of the Act. This, however, has raised concerns about the Act's devolution of funds under the act.

The state has already achieved universalization of education up to the age of 16, and attempts have been launched to provide free education until the upper secondary levels. In such cases, the stipulations of the RTE Act entail administrative complications and significant costs for the state.<sup>83</sup>

### **Assam**

Corruption has been one of the systemic impediments to the effective implementation of the RTE Act. The relatively slow pace at which the government, both central and state, implements policies can stymie the implementation of the Act in government schools. In Assam, the city-based NGO Sangrami Krishak Shramik Sangha (SKSS) conducted a survey in which it retrieved receipts for fee payments made by minors under the age of 14, which should have resulted in punitive measures. However, the authorities have been unable to act because the receipts have not been confirmed.<sup>84</sup>

ActionAid North East, a part of the National RTE Forum, commissioned research to investigate the impact of the SSA and the RTE Act on Assam's underprivileged populations. Assam is a state where environmental disasters and militancy have had a serious detrimental impact on the livelihood of the local people for many decades, therefore providing free and compulsory education for children from rural areas remains a pipe dream. There are numerous issues at both the policy and operational levels.

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<sup>83</sup> NEW INDIAN EXPRESS, <http://www.newindianexpress.com/states/kerala/Implementation-of-RTE-Act-will-be-a-smooth-process-claims-government/2013/05/23/article1601834.ece>, accessed on 2 August 2021

<sup>84</sup> TIMES OF INDIA, <http://timesofindia.indiatimes.com/city/guwahati/RTE-Act-going-MGNREGA-way-in-state/articleshow/11917620.cms>, accessed on 2 March 2021

The state harshly condemned the no-detention policy, claiming that teachers found it difficult to teach children who had had a poor elementary education and were unable to cope with academics once they entered high school. Other major concerns for the state include a dearth of expert teachers in Science and Mathematics, a high number of vacant seats for teachers based on sanctioned criteria, and regularly changing courses and curricula to which existing teachers have not adapted.

Another important challenge for Assam is the lack of access to roads and transportation for a vast number of schools. The RTE Act has mostly ignored the state's inaccessible areas. Such locales are outside the purview of the government, who only provide assistance visits to places with accessible roads. Enrolment in public schools is steadily declining in comparison to enrolment in private institutions. Because of the under-resourced government schools, enrolment in Assamese medium private schools is increasing. In December 2014, the Assam State Commission for Protection of Child Rights expressed concern that the state might not be able to meet its March 2015 RTE Act target due to infrastructure issues such as vacant teacher seats, drinking water availability, separate toilets for boys and girls, library facilities, and boundary walls in many primary schools.

### **Rajasthan**

Private schools in Rajasthan are defrauding the government in a similar manner. The provision in the RTE Act requiring that 25% of seats be allocated for underprivileged groups is only in effect on paper and is far from the grim reality. The slow pace of action of the government will be a significant impediment to the success of one of the significant policies of India. In 2014, 1.78 lakh students were admitted under the state's 25% reservation policy, out of a total enrolment of 6.4 lakh in 31,496 registered schools, implying that EWS kids accounted for more than 27.5 percent of total registrations. Among the cities in Rajasthan, Jaipur and Ajmer have admitted 27 per cent and Jalore 30 per cent students under the Act. However, a closer examination of the school profiles reveals that it is only the lower and middle-level schools that have exceeded the RTE Act's minimal 25% stipulation. The elite schools in almost all municipalities have disobeyed the regulation, while lesser schools have admitted more than 50% under the Act, resulting in a skewed implementation result.<sup>85</sup>

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<sup>85</sup> Ibid

According to a Financial Express report, during the Chief Minister's 'Sarkaar Aapke Dwar' Programme, parents in the state expressed their disapproval of the CCE policy and the ban on exams until Class 8, and stated that the policy is against the interests of the students. As a direct consequence, the Rajasthan State Government intends to re-introduce exams in at least three classes from Class 1 to Class 8.<sup>86</sup>

## **2.14 Conclusion**

It has been almost 10 years since the RTE Act was implemented, yet it is clear that it still has a long way to go before it can be considered effective in its aim. After 62 years of independence, India gained the right to education as a fundamental right, but the R.T.E. Act, whose main goal was to provide quality education to all, has mostly failed to accomplish so. The government must reconsider the R.T.E. Act, as well as its viability and execution. To prevent additional complexity in its implementation, the government should explore further revisions to the R.T.E. Act. India's future can only be bright if all children, regardless of socioeconomic status, receive a proper quality education. There are significant gaps in the R.T.E. Act that must be filled because it is the most important Act that prioritises improving school education for children. The scope of the Right to Education Act should not be confined to children under the age of 14; it should be extended to include high school students as well. The creation of a favourable environment and a sufficient quantity of resources would pave the way for a brighter future for individuals as well as the nation as a whole.

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<sup>86</sup> INDIAN EXPRESS, <http://indianexpress.com/article/india/education-news/bring-back-exams-more-weight-on-learning-teachers/>, accessed on 4 April 2021

## Chapter 3

### Landmark decisions dealing with the right to education in India

#### **3.1 Introduction**

The founding fathers of our Constitution provided education of children at the different pedestal in part IV of the Indian Constitution provides that the State shall, within the limits of its economic capacity and development, make adequate provision for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement, and in other cases of undeserved wants<sup>87</sup>. Furthermore, provides that the State shall endeavour to provide free and compulsory education for all children until the age of fourteen years<sup>88</sup> within ten years of the commencement of this Constitution, and provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, particularly the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice<sup>89</sup>. The introduction of Article 21A by the 86th Amendment Act of the Indian Constitution in the year 2002 led to the complete comprehension of its significance.

Along with the executive and legislative institutions of government, the Supreme Court of India has been tasked with ensuring and enforcing social justice as envisioned in the Preamble, Fundamental Rights, and Directive Principles of State Policy. It has played an important role in upholding different constitutional principles, providing a sense of security to minority groups, and helping to enhance the status and working circumstances of teachers since independence. The judgements of several High Courts and the Supreme Court have cleared the path for better educational possibilities for children who are struggling to survive in grinding poverty.

The judiciary has always been particularly supportive of citizens' right to education. The Supreme Court has directed the government to provide adequate educational facilities, economic support, and a proper environment to children from low-income families through a number of significant judgements. This aided them in reaping the benefits of compulsory

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<sup>87</sup> INDIA CONST. art. 41.

<sup>88</sup> INDIA CONST. art. 45.

<sup>89</sup> INDIA CONST. art. 46.

schooling. It has expressed its concern about the non-fulfilment of the promises made under Article 45 of the Constitution through its decisions in *Mohini Jain* (1992), *Unnikrishnan* (1993), and many other similar cases, and has held that the objectives of social justice cannot be achieved unless all illiterates receive free and compulsory education. The judiciary expressed a strong desire to provide free and obligatory education to all children under the age of 14. In the year, the Supreme Court of India issued decisions in two Public Interest Litigation cases, *Mohini Jain* and *Unni Krishnan*, in which the court upheld the right to education. In both cases, the court used the opportunity to construct a precedent that governed the public supply of basic education as well as the influence of certain state regulations on private educational institutions of higher learning. This chapter examines key instances that altered the landscape of India's right to education.

### **3.2 Mohini Jain v. State of Karnataka- Significance of the decision**

In *Mohini Jain v. State of Karnataka*<sup>90</sup>, the Supreme Court determined on the legitimacy of the practise of charging capitation fees through a division bench comprised of Justices Kuldeep Singh and R. M. Sahai. The practise of collecting capitation fees has heralded a new era in which education is regarded as a new lucrative sector<sup>91</sup>. The problem originates from the country's lack of adequate educational facilities.

In brief, *Mohini Jain*, a Meerut resident, was a candidate for admission to the MBBS programme at a Medical College in Tumkur, Karnataka. Her admission was denied due to her inability to pay the fees. She challenged the constitutional validity of the notification under Section 5(1) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, which required Indian students from outside Karnataka to pay Rs. 60,000 per annum as tuition fee, while students from Karnataka were only required to pay Rs. 15,000 per annum.

The court read the Preamble, Articles 21,38,39(c) and (f), 41 and 45 of the Constitution cumulatively and decided that the "right to education" falls under the purview of Article 21's "right to life."

The right to education was brought within Article 21 in the case of *Ananda Vardhan Clumdel v. Delhi University* (1978)<sup>92</sup>, read with Article 19(1)(a), (b), and (c) (c). The petitioner was

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<sup>90</sup> 1992 (2)SCALE 90

<sup>91</sup> "The entrepreneur-politician nexus", Deccan Herald, 9 September 1992.

<sup>92</sup> AIR 1978 Delhi 308.

unable to run in the Delhi University Students Union elections since he was admitted just after the deadline for submitting entries had passed. He claimed that this violated his right to an education, which is guaranteed by Articles 19(1)(a), (b), and (c), as well as Article 21. It was ruled by the Delhi High Court's division bench. According to V. S. Deshpande J., the only difference between the rights under Part III and IV of the Constitution is that the former is 'natural rights, those which men have always enjoyed and which do not require the State to create certain socioeconomic conditions before they can be enforced,' whereas the latter are 'man-made rights.' When the state provides educational facilities, this distinction disappears, and the right to education becomes a fundamental right<sup>93</sup>. The logic appears to be creditable and desirable insofar as it would serve to energise the mandate underlying the Directive Principles of State Policy. However, this was merely a High Court judgement based on aspects of students' right to express themselves and participate in student union activities.

As a result, the ruling in Mohini Jain's case represents a turning point in the history of judicial interpretation of Article 21. It ruled that the state has a fundamental obligation to provide educational institutions and facilities to its citizens "at all levels." The imposition of a capitation charge was deemed a clear violation of this right.

The right to education is inextricably linked to the right to life. In the instant case, the petitioner challenged the legality of a government notification issued under the Karnataka Education Institution (Prohibition of Captivation Fee) Act 1984, which was passed to regulate tuition fees paid by private medical colleges in the state. According to the division bench of two judges, the right to education at all levels is fundamental to the citizen under Article 21 of the Constitution, and charging admission fees to educational institutions is illegal and amounts to denial of the citizen's right to education, as well as a violation of Article 14 for being arbitrary, unfair, and unjust.

### **3.3 Unni Krishnan, J.P. v. State of Andhra Pradesh**

The changes brought about by the landmark verdict of *Unni Krishnan, J.P. v. State of Andhra Pradesh*<sup>94</sup>, has led to the education system as it exists now in India. The court found that the right to education is implicit in and flows from the right to life given by Article 21 of the Indian

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<sup>93</sup> Ibid

<sup>94</sup> AIR (1993) SC 2179-2254.



Constitution, notwithstanding the fact that Article 21A was added as a fundamental right in 2002. As a result, numerous variables have played an essential part in making it universal and fundamental for all because education has an impact on a nation's social, cultural, and economic well-being. Furthermore, looking at our nation's current educational policy, it would not have been conceivable without the dynamic role played by our Constitution through its judicial decision-making process, which relies not only on binding authority but also on non-binding national and foreign sources. Non-binding authority, such as lower court rulings, obiter dictum, dissenting judgments, foreign judgements, international declarations, treaties, and conventions, has played a critical role in changing the status of education as a fundamental right. The realisation of relying on various sources for change in society was articulated by former Prime Minister of India Jawaharlal Nehru when speaking about the Draft Constitution on November 8, 1948, in the following words:

"The Constitution is, after all, some kind of legal body given to the ways of government and the life of the people. A Constitution that is disconnected from the people's lives, goals, and aspirations becomes rather empty; if it falls behind those goals, it drags the people down. It should be something ahead to keep people's eyes and minds focused on a certain goal... Remember that, while we want this Constitution to be as strong and lasting as possible, there should be some wiggle room. When you make anything stiff and permanent, you halt the evolution of a nation, the formation of a living, vital, organic people."<sup>95</sup> He went on to say that "a living constitution must be adaptive, flexible, and changeable." As a result, it is desirable and beneficial for people to recognise that this very nice Constitution that we have fashioned after years of labour is good in so far when it goes, but as society changes and conditions change, we update it appropriately.<sup>96</sup>

Furthermore, as Bhagwati, J correctly observed, the Supreme Court is the "ultimate interpretation" of the Constitution. For example, in *Pathumma v. State of Kerala*,<sup>97</sup> the Supreme Court stated that while acting as a sentinel on the qui vive to protect fundamental rights guaranteed to citizens of the country, the court must strive to strike a just balance between fundamental rights and the more significant and broader interests of society. In *Pathumma*, the court stated that the judicial approach to interpreting the Constitution should be dynamic rather than static, pragmatic rather than pedantic, and elastic rather than rigid. Thus, the justification

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<sup>95</sup> <http://legallaffairs.gov.in/sites/default/files/chapter1.pdf> (Last visited Aug. 20, 2021, 1:23 PM).

<sup>96</sup> *Ibid*

<sup>97</sup> 1978 AIR 771 1978 SCR

for relying on non-binding authority and foreign sources is seen in the statements of former Prime Minister Jawaharlal Nehru and the case of Pathumma. As a result, it can be referred to as persuasive instruments of legislation, a word that is valid because it is vehemently instrumental in bringing about social transformation in society, and the roles it plays cannot be underestimated.

The education of children is enshrined in the Indian Constitution under the Directive Principles of State Policy (DPSP). DPSP is vital to governance, but it is not justiciable, therefore it remains a persuasive policy statement until the State can implement it as a justiciable right. Education was recognised as a non-negotiable human right in India. Recognizing that this Supreme Court brought the right to education within the purview of Article 21 as part of the right to education prompted by cases such as Mohini Jain and Unni Krishnan.

The Supreme Court decided in this case that the right to education came from Article 21 of the Indian Constitution, but that the parameters of this right, which is not absolute, had to be defined in light of directive principles found in Articles 45 and 41 of the Constitution. Furthermore, it was determined that the right to an education till the age of 14 is enshrined in article 21, and so it is a fundamental right. Following that point, the state's commitment to provide education is determined by its economic capabilities and progress.

The court revised the principles laid down in Mohini Jain by holding that the right to education up to the age of 14 years forms a part of the right to life under Article 21. However, the right to an education after the age of 14 is subject to the State's budgetary limits. The court also ruled that once an educational institution is recognised and affiliated, it must follow government laws. It is transformed into a tool of the state. Articles 41, 45, and 46 impose obligations on the state, which can be met by either establishing its own institutions or assisting, recognising, or providing affiliation to private organisations.

Thus, by rightly and harmoniously interpreting the provisions of Parts III and IV of the Constitution, the Supreme Court has elevated the right to education to the status of a basic fundamental right. Because what cannot be done directly cannot be done indirectly, these organisations cannot charge capitation fees because doing so would be a violation of Part III of the Constitution.

In finding a balance between the Directive Principles of State Policy and the Fundamental Right, the court in the Unni Krishnan Case cited the US Supreme Court judgement in *Oliver*

*Brown v. Board of Education of Topeka*<sup>98</sup>, in which it was stated that education has become possibly the most essential job of state and local governments. Compulsory school attendance rules, as well as large educational expenditures, indicate our understanding of the value of education in our democratic society. It is required to carry out our most basic public duties, including military duty. It is the bedrock of good citizenship. Today, it is a key tool in exposing children to cultural values, preparing them for eventual professional training, and assisting them in adjusting to their surroundings normally.

The court also took cognizance of the Universal Declaration of Human Rights, which has explicitly recognised education as a human right from its establishment, owing to the fact that education is essentially a vital tool for humankind's personal empowerment. Article 26 of the UDHR focuses explicitly on three significant educational goals: (1) the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms; (2) the promotion of understanding, tolerance, and friendship among all nations, racial or religious groups; and (3) the advancement of the activities of United Nations for the maintenance of peace.

The court in this case went on to examine the language employed in Articles 45 and 49 of the Constitution, concluding that, whereas Article 49 imposed a 'duty' on the State, Article 45 obliged the State to make a 'effort.' The court determined that children in this country had a basic right to free education until the age of fourteen.

The court highlighted that the "fundamental purpose of education is to transfigure the human personality into a pattern of perfection through a synthetic process of bodily development, intellect enrichment, emotional sublimation, and spiritual illumination." Education is the preparation for a living and a life, both now and in the future.' The court went on to say that in the framework of a democratic form of governance, which is based on the populace's enlightenment, education is both a social and a political imperative.

This decision has focused the country's attention on implementing free and compulsory education in its true spirit, by making education a fundamental right of children. A committee comprised of education ministers from 13 states, led by Minister of State for Human Resource Development MR Saikia, was formed to investigate and consider the legal, academic, administrative, and financial implications of amending the Constitution to make free and

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<sup>98</sup> SCR (1953) 98 Law Ed 873 atpg 880(US.)

compulsory education a fundamental right. The committee made a number of recommendations, including that the Constitution may be amended to include free and compulsory education as a fundamental right. State governments should collect an educational cess to generate cash and supplement their resources for education and school facility improvement. Because education is a state topic, there is no need for a "Central Legislation" mandating primary schooling. Instead, states should either alter their existing legislation or the centre should release guidelines outlining a broad framework for the enactment of new compulsory education legislation. State laws should include "permissive compulsion to enable state governments and municipal governments to implement the law selectively and in a gradual manner."

While allowing states the leeway to develop their own approaches to education while taking into account local situations, the study underlines the necessity for uniformity. Exemption from tuition fees, provision of free textbooks for all primary school children and girls up to primary level, and provision of essential stationery to all primary school children are all examples of free elementary education.

In this backdrop, the 83rd Constitutional Amendment Bill (1997) was introduced in Parliament to include education as a fundamental right for children up to the age of 14. The 83rd amendment would make free and compulsory education legally justifiable. This would make the provision of elementary education facilities legally binding for the state, and parents would be required to take their children to school. Education as a basic right has been included in the Common Minimum Programme of the Union government, and states would receive particular help in implementing the proposal to make elementary education a fundamental right. The scheme had been suggested as part of the 'Sarva Shiksha Abhiyan' (Education for All).

The amendment to the Constitution to make compulsory education for children a fundamental right underlined the country's need for political will and administrative will to achieve universalization of elementary education and the abolition of illiteracy.

To give legislative recognition to the fundamental right to education, the Government of India added a new Article 21A to the Constitutional (86th Amendment Act) Act of 2002, which states that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine." It has strengthened Article 21A further by adding

clause (K) to Article 51-A, which imposes an obligation on the parent or guardian to provide educational opportunities for his or her child or ward between the ages of 6 and 14 years. The same amendment reworded Article 45 of the Constitution, which now states that "the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

### **3.4 Bandhua Mukti Morcha v. Union of India & Ors.**

In the case of *Bandhua Mukti Morcha vs. Union of India and others*<sup>99</sup>, the court ruled that it is the solemn duty of the state to provide basic education to children who work in various industries or factories, and the court ordered the government to take such steps and develop a scheme to ensure education for all children, either by the industry itself or in collaboration with it.

This public interest lawsuit (PIL) petitioned the Supreme Court of India to direct the state of Uttar Pradesh (UP) to take steps to stop child labour.

Following that, a Court-appointed committee detailed the magnitude of child exploitation in UP's carpet industry, discovering that many children were kidnapped from Bihar, that the sector predominantly employed underage children under the age of 14, and that many suffered physical abuse.

In this decision, the Supreme Court addressed how important it is to defend children's rights to education, health, and development in order to ensure India's progress as a democratic country. While acknowledging that child labour could not be eliminated quickly owing to economic necessity and limits, the court found that realistic efforts might be implemented to protect and promote children's rights in India's poor and vulnerable communities. To support its conclusion, the court cited various fundamental rights and directive principles of the Indian Constitution, including Article 21 (the right to life and personal liberty), Article 24 (which prohibits the employment of children under the age of 14 in factories, mines, or other hazardous industries), Article 39 (e) (which prohibits forcing citizens into vocations unsuited to their age or strength), and Article 39(f) (which describes the State's duties to protect children from exploitation) (mandates the State to provide free compulsory education for all children below 14 years). The court also referred to India's obligations under the Universal Declaration of

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<sup>99</sup> (1997) 10 SCC 549.

Human Rights (UDHR) and the Convention on the Rights of the Child to offer free basic education to all children in the country and to protect children from economic exploitation. The court referred to and incorporated in orders to the states of Uttar Pradesh and Bihar the steps required to ban child labour in an earlier case, *M.C. Mehta v. State of Tamil Nadu & Ors*,<sup>100</sup> were referred by the court and incorporated them into orders issued to the states of Uttar Pradesh and Bihar. The orders directed states to take effective steps in developing policies to gradually eliminate the employment of children under the age of 14; to provide compulsory education to all children employed in factories, mining, and other industries; to ensure that the children receive nutrient-rich foods; and to conduct periodic health check-ups.

Furthermore, the court requested in its judgement that periodic updates on progress in implementing the judgement be sent to the Court's Registry. Furthermore, in terms of enforcement, a supplementary effect of this case, as well as other important public interest litigation actions, was that the National Commission for Protection of Child Rights (NCPCR) drafted the regulations forming the National Child Rights Commission in 2006. This Commission was tasked with assessing conformity with the Convention on the Rights of the Child and, as a result, supervising the provision of free primary education to all children in the country as well as protecting children from economic exploitation. This case, along with other public interest litigation suits filed on the problem of child labour, as well as a variety of child labour eradication initiatives, has successfully raised awareness about the issue of child labour and placed it firmly on the government's agenda.

### **3.5 TMA Pai Foundation v. State of Karnataka - Right of Minorities to Establish Educational Institutions**

The scheme formulated by the court in the case of Unni Krishnan was found to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution in the case of *TMA Pai Foundation vs. State of Karnataka*<sup>101</sup>, because it resulted in revenue shortfalls, making it difficult for educational institutions. As a result, all orders and instructions issued by the State in furtherance of the orders in Unni Krishnan's case were deemed unlawful. According to the court, the right to establish and operate an institution includes the right to enrol students,

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<sup>100</sup> (1996) 6 SCC 756

<sup>101</sup> 1994 SCC (2) 734

draw up a reasonable tuition structure, form a governing body, hire employees, and conduct disciplinary action. For the first time, the TMA Pai foundation's case established the concept of education as in "occupation," a term used in Article 19(1)(g) of the Constitution. In response to a question about fundamental rights and the freedom to establish an educational institution, the court pointed to three Articles of the Indian Constitution, namely Articles 19, 26 and 30. To begin, Article 19(1) of the Indian Constitution empowers Indian citizens to engage in any vocation, trade, or business (subject to the limitations imposed by Article 19). (6). Second, Article 26 of the Indian Constitution grants religious groupings the right to maintain and construct religious institutions.

As a result, Article 26 of the Indian Constitution provides for religious denominations to establish educational institutions. Third, and most importantly, Article 30(1) of the Indian Constitution grants religious and linguistic minorities the right to establish educational institutions. In interpreting Article 19(1)(g), the court deemed education to be a benevolent activity with no financial motive, and hence classified the establishment of educational institutions as an 'occupation.' According to the majority, Articles 19(1)(g) and 26 grant all citizens and religious denominations the right to establish and maintain educational institutions.

### **3.6 Islamic Academy of Education vs. State of Karnataka**

Another issue arose in *Islamic Academy of Education vs. State of Karnataka*<sup>102</sup>, over the determination of fees structure in private unaided professional educational institutions. The administration has been allowed entire authority in terms of student enrolment and price structure, which could include a reasonable revenue surplus to improve and expand education.

Finally, in *PA Inamdar and Ors. v. State of Maharashtra and Ors.*,<sup>103</sup> another Supreme Court bench of seven judges convened in 2007 to explain the Pai Foundation case and resolve questions raised by the Islamic Academy case. The judgement in the Inamdar case exposed numerous critical features that were helpful in clarifying several problems raised following the Pai Foundation and Islamic Academy instances.

However, even after the judgement in the Inamdar case, there are still certain doubts or grey areas regarding the level of state regulation over private unaided educational institutions. The

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<sup>102</sup> 2002 8 SCC 481

<sup>103</sup> (2005) 6 SCC 537

following conclusion can be drawn from reading Paragraph 153 of the Inamdar judgement, which is referenced here:

*"There are various questions that have remained unaddressed, and there are some questions that have sprung up since Pai Foundation and Islamic Academy. To the extent that the area is left open, the Benches hearing individual cases following this decision would find the answers. Issues pertaining to areas already covered by Pai Foundation that remain unresolved must be addressed by a Bench of a greater coram than Pai Foundation. Those difficulties will be dealt with by posterity."*

In some of its recent decisions, the Supreme Court has indicated a similar viewpoint. The Supreme Court observed in *Modern Dental College & Research Centre v. State of M. P.*<sup>104</sup>, that "it is evident that even in the Inamdar case, there are still some doubts or grey areas in relation to the question of the extent of State control over private unaided institutions imparting professional education."

In *Action Committee, Unaided Private Schools of Delhi v. Director of Education*<sup>105</sup>, the Supreme Court reiterated the above notion vis-à-vis fee structure. In this regard, the criteria for determining price structure have been presented in the T.M.A. Pai Foundation Case and the Islamic Academy of Education. They were, however, not exhaustive. They did not address the determination of excess and the allocation of savings.

The Supreme Court further ruled that the right to education includes the right of citizens to petition the government to provide educational facilities within the limits of the government's economic capabilities and growth.<sup>106</sup> In this regard, the Supreme Court observed in the case of *State of Bihar and others vs. Project Uchcha Vidhya, Sikshak Sangh and others*<sup>107</sup> that the establishment of High Schools may not be a constitutional function in the sense that citizens of India over the age of 14 years may not have any fundamental right in relation to it, but education as a component of human development is undeniably a human right. Dr. A.K. Lakshmanan, Chief Justice of India, in the case of *Ajay Goswami v. Union of India*<sup>108</sup>, correctly observed that perhaps the most important function of a state or local government is education. It is

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<sup>104</sup> (2009) 7 SCC 751

<sup>105</sup> (2009) 10 SCC 1. Para 24

<sup>106</sup> *Modern School v. Union of India*, AIR 2004 SC 2236.

<sup>107</sup> 2006 (2) SCC 545.

<sup>108</sup> AIR 2007 SC 493.



required in the accomplishment of our most basic tasks, including military service. It is the bedrock of good citizenship. Today, it is the primary tool for exposing children to cultural values, preparing them for subsequent professional training, and assisting them in adjusting properly to their surroundings. It is uncertain these days, and a youngster may legitimately be expected to achieve in life if he is deprived the opportunity to educate himself.

In the case of *Election Commission of India vs. Sant Merry's School & Others*<sup>109</sup>, Justice S.B. Sinha made similar observations about the fundamental significance of education. In the case of *Ashoka Kumar Thakur vs. Union of India and others*<sup>110</sup>, it was correctly stated that India has suffered in the past due to significant underinvestment in higher education. This is due, in part, to thinking that views primary and secondary education as either/or. As a result, particular care is required to strengthen the nation in order to effectively repair the education system.

As a result, particular care is required to strengthen the nation in order to effectively repair the education system. Illiteracy has several negative implications in a democracy controlled by the rule of law, according to Justices K. Ramaswamy and Sagar Ahmad<sup>111</sup>. An educated citizen can meaningfully exercise his political rights, fulfil his social responsibilities, and cultivate a spirit of tolerance and reform.

As a result, compulsory education is one of the states' responsibilities for the maintenance of democracy, social integration, and the abolition of social problems. The Supreme Court has established the right to education a core fundamental right by correctly and coherently construing the provisions of Parts III and IV of the Constitution.

The Government of India inserted a new Article 21-A to the Constitutional (86th Amendment) Act of 2002, which states that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by legislation determine."<sup>112</sup>

Based on the constitutional mandates established in Articles 41, 45, 46, and 21A, as well as several Supreme Court judgements, the Government of India has taken multiple initiatives to eradicate illiteracy, improve educational quality, and re-enrol children who have dropped out for various reasons.

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<sup>109</sup> AIR 2008 SC 655.

<sup>110</sup> 2010 (4) SCR 1.

<sup>111</sup> *Bandhua Mukti Morcha vs. Union of India* (1997) 10 SCC 549.

<sup>112</sup> Constitution of India, 1950, Article 21-A.

### 3.7 Avinash Mehrotra v Union of India

The Constitution (Eighty-Sixth Amendment) Act was passed in December 2002, enshrining the right to education in Article 21A, which states: 'The State should provide free and compulsory education to all children aged six to fourteen years in such manner as the State may, by law, designate.' Article 21A is a basic right because it falls under Part III of the Indian Constitution. Enabling legislation was anticipated in Article 21A. The Right of Children to Free and Compulsory Education Act, 2009 (RCFCEA) was passed in August 2009 and took effect on April 1, 2010.

In 2002, the right to education was declared a fundamental right in the Indian Constitution, and Article 21A states: 'The State should offer free and compulsory education to all children aged six to fourteen years in such manner as the State may, by legislation, designate.'

The Supreme Court of India construed the right to education to include the right to a safe environment in schools in the case of *Avinash Mehrotra v. Union of India*<sup>113</sup> and imposed a responsibility on schools to comply with particular fire safety procedures, which were enumerated in the judgement. This judgement stated that the State's obligation cannot be fulfilled by providing dangerous schools. The state must ensure that children are not harmed while enjoying their fundamental right to education, and as a result, schools must offer safe facilities as part of compulsory education.

This case originated from a fire that erupted in a Madras middle school. The school, a single thatched roof building with no windows and only one entrance and exit, was a private school that 'sprang up in response to significant cuts in government funding on education.' The fire began in an adjacent improvised kitchen where cooks were preparing a lunchtime meal, killing 93 children and injuring many more. Under Public Interest Litigation, a writ petition was filed to safeguard schoolchildren from similar future tragedies and to improve the standards of the country's schools.

The Supreme Court served notice on the Union of India, state governments, and union territories. Twenty-seven states and union territories filed affidavits admitting that many schools failed to satisfy their own safety standards (which were in any event below the standards of the National Building Code of India, 2005).

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<sup>113</sup> (2009) 6 SCC 398

The major question in the case was whether there is a fundamental right to an education devoid of fear of security and safety, and if the state is required to maintain minimum safety standards in schools. According to Articles 21 and 21A of the Constitution, there is a fundamental right to an education free of fear of security and safety, and the right to education includes the provision of safe schools. Whether a family wishes to educate its children (even through private schools), the State must ensure that children do not suffer any harm as a result of enjoying their fundamental right to education.

State governments and union territories were mandated to guarantee that schools conform to basic safety requirements and that school buildings are safe and secure in accordance with the safety norms specified by the National Building Code, and authorities were obliged to provide affidavits of compliance.

Dalveer Bhandari, J. reasoned in interpreting the right to education that educating a kid required more than a teacher and a blackboard or a classroom and a book. A child's right to an education necessitates that he or she attend a good school, and a good school should not endanger the child's safety.

Although the Supreme Court did not invoke international law, its reasoning is compatible with international interpretations of the right to an education. One of the '4As' developed by the first UN Special Rapporteur on the right to education, which the Committee on Economic, Social, and Cultural Rights later adopted in its General Comment 13 on the right to education, is that education is 'acceptable,' i.e., that the content of education is relevant, non-discriminatory, and culturally appropriate, and of high quality; schools are safe, and teachers are qualified.

The decision is also compatible with international law's requirement to ensure that private schools satisfy minimum education standards imposed or recognised by the state (Article 13(4) of the International Covenant on Economic, Social, and Cultural Rights).

### **3.8 Conclusion**

The right to education is critical for understanding the right to development as a human right. Similarly, the right to development is seen as a fundamental human right, as is the desire to obtain further qualifications. The Right of Children to Free and Compulsory Education Act,

2009, the Consequential Legislation to Article 21(A), was adopted by Parliament to provide free and compulsory education to children aged 6 to 14 years. Judiciary has played a significant role in paving the way for the realization of the right to education. From the judgment of Mohini Jain to Avinash Mehrotra, the judiciary has interpreted and analysed the right and ensured that the weaker section of the society benefits from the RTE Act.

## Chapter 4

### Right to Education – International Prospective

#### 4.1 Introduction

Education is a basic right enshrined in the United Nations Convention on the Rights of the Child (CRC)—the most widely ratified human rights treaty in history, ratified by all states except the United States—as well as in many other UN and regional treaties.<sup>114</sup>

Education will break the cycle of poverty by allowing children to gain the life skills and knowledge needed to address today's challenges. Education is strongly linked to concrete improvements in health and nutrition, increasing children's dreadful chances of survival. Education prepares children to be full and active members of society, able to exercise their rights and participate in civil and political life. Education is also a powerful deterrent: children who attend school are less likely to run afoul of the law and are far less vulnerable to widespread forms of child exploitation, such as child labour, trafficking, and recruitment into the military.

One hundred ninety-six member states have adopted legal obligations to all children in their territories, and countries that sign specific international and regional conventions are de jure required to defend the right to education and to adhere to detailed guidelines on how to do so.

International human rights law states unequivocally that all children have the right to free, compulsory primary education that is free of discrimination<sup>115</sup>. State Parties should also ensure that various types of educational activity are available and accessible to all children, and take appropriate measures, such as progressive implementation of free education<sup>3</sup> and providing monetary help in the event of omission.

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<sup>114</sup> United Nations International Children's Emergency Fund (UNICEF), "Convention on the Rights of the Child: Frequently asked questions," undated, [http://www.unicef.org/crc/index\\_30229.html](http://www.unicef.org/crc/index_30229.html) (accessed July 23, 2021).

<sup>115</sup> United Nations Economic and Social Council, "Preliminary report of the Special Rapporteur on the right to education, Ms. Katarina Tomasevski, submitted in accordance with Commission on Human Rights resolution 1998/33," E/CN.4/1999/49, 13 January 1999, <https://documents-ddsny.un.org/doc/UNDOC/GEN/G99/101/34/PDF/G9910134.pdf?OpenElement> (accessed July 20, 2021).

This chapter sets forth the historical development of the right to education, the philosophical basis of the right and the right to education as an empowerment right, the compulsory nature of primary education, and the universality of the right to education.

At the international level, instruments dealing with the right to education are generally prepared by the UN. At the regional level, instruments have notably prepared in the European, American and African contexts. Instruments at the international level include those adopted by the Specialized Agencies of the UN, presently the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Labor Organization (ILO). Furthermore, this present chapter also deals with the protection of the right to education by international instruments, regional instruments, and its protection by instruments of the UN Specialized Agencies and analyses how far these instruments have been successful in fulfilling the right.

## **4.2 Definition**

Education in simple terms refers to the transmission to a subsequent generation of those skills needed to perform the tasks of daily living effectively and further to the inculcation of the social, cultural, spiritual and philosophical values of the particular community.

This broad meaning has been attributed to the term "education" in article 1(a) of UNESCO's Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms of 1974. According to this definition, education implies "the entire process of social life through which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their capacities, attitudes, aptitudes and knowledge".

However, in a narrower sense, education means "instruction imparted within a national, provincial or local education system, whether public or private".<sup>116</sup> In this sense, education refers to formal institutional instruction. Generally, international instruments use the term in a narrow sense. For example, UNESCO Convention against Discrimination in Education of 1960 defines education in article 1(2) as "all types and levels of education, including access to education, the standard and quality of education, and the conditions under which it is given".

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<sup>116</sup> M'Bow, A., "Introduction", in: Mialaret, 1979, p. 11.

The European Court of Human Rights has also drawn the distinction between education in a wide and in a narrow sense.

The European Court of Human Rights has also drawn the distinction between education in a wide and in a narrow sense,<sup>117</sup> the court stated that education in a wider sense refers to the whole process whereby, in any society, adults' endeavor to transmit their beliefs, culture and other values to the young, whereas teaching or instruction education in a narrower sense refers in particular to the transmission of knowledge and intellectual development.<sup>118</sup>

As protected in international instruments, the right to education refers primarily to education in its narrower sense. Education connotes teaching and instruction in specialized institutions. It means formal teaching or instruction, comprising primary, secondary and higher education.

### **4.3 Historical Development of the Right to Education**

Before the Age of Enlightenment of the eighteenth and nineteenth centuries, education was the responsibility of parents and the church<sup>119</sup>. It was only with the French, and American Revolutions did education establish itself also as a public function<sup>120</sup>.

It was understood that by assuming a more active role in the sphere of education, the state could promote the idea of education being available and accessible to all. Previously, education had been the prerogative of the upper social classes. However, later on, public education was perceived as a means of realizing the egalitarian ideals the French and American revolutions were based on.

The liberal concept of human rights envisaged that parents retained the primary duty to give their children an adequate education in the nineteenth century. The state was entrusted with the obligation to ensure that parents complied with their obligations. To this end, many states had enacted legislation making school attendance compulsory. Child labor laws were enacted to restrict the number of hours per day children could be employed and ensure that children would go to school. States became involved in the legal regulation of curricula and laid down minimum educational standards. The duty of the state to directly provide education remained

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<sup>117</sup> The wide and narrow meanings may be referred to in German and French as “Bildung”—“Ausbildung” and “culture générale”—“education/instruction”, respectively. Delbrück, 1992.

<sup>118</sup> Campbell and Cosans v. United Kingdom, Judgement of 25 February 1982, Publications of the European Court of Human Rights, Series A, Vol. 48, para. 33.

<sup>119</sup> Nowak, 1995b, p. 191

<sup>120</sup> Hodgson, 1998, p. 8.

subsidiary, however. John Stuart Mill in his famous treatise on liberty remarked that “An education established and controlled by the State should only exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence”.<sup>121</sup>

The dangers with over involvement of the state in education were recognized in nineteenth-century liberal thought. Nonetheless, it relied on state intervention to reduce the church's dominance and to protect children's rights against their own parents.

Educational rights were incorporated into domestic bills of rights in the latter half of the nineteenth century. Educational rights provisions, like other fundamental rights provisions, reflected liberal ideas about human rights.

This can be illustrated by referring to the Constitution of the German Empire of 1849, better known as the “Paulskirchenverfassung”, which had a significant impact on subsequent constitutional development in Europe.

Education was the focus of Articles 152 to 158 of the Constitution's bill of rights. They sought to strike a fair balance between children, parents, the church, the state, and those in charge of educational institutions. Education was recognized as a state function, separate from the church. Surprisingly, the poor were declared to have a right to free education.

The nineteenth century also saw the expression of Karl Marx and Friedrich Engels' views on socialism. According to socialist theory, the state was a beneficial institution whose primary task was to ensure the community's economic and social well-being through positive governmental intervention and regulation. Education was regarded as one of the individual's welfare rights.

Following the 1917 Russian Revolution, socialist ideas came to fruition. Article 121 of the Soviet Constitution of 1936 was the first provision in a constitution that expressly recognized a right to education, as well as the state's obligation to provide such education. It provided for free and compulsory education at all levels, as well as a system of state scholarships and

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<sup>121</sup> J. S. Mill, *On Liberty*, quoted in Nowak, 1995b, p. 192.



vocational training in state enterprises. Along with the right to work and the right to social security, the right to education is a prominent right in socialist state constitutions.<sup>122</sup>

For the first time, educational rights were protected at the international level in a series of minority treaties, concluded after the First World War under the auspices of the League of Nations.<sup>123</sup>

These treaties, which were concluded as an adjunct to the peace treaties between the Allied and Associated Powers and the defeated nations, sought to safeguard the religious, linguistic and educational rights of certain minorities in post-war Europe where many national boundaries had been redrawn.

The League of Nations adopted the Declaration of the Rights of the Child, also known as the "Geneva Declaration," in 1924. The Declaration was written in the style of a Child Welfare Charter. The right to an education was not explicitly recognized in the Declaration. However, three of its five operative principles implied such a right. According to Principle I, a child must be provided with the resources necessary for normal development. Principle II dealt with assisting backward children, and Principle IV stated that the children must be placed in a position to earn a living. As a result, this Declaration was the first step toward the development of general international norms for the protection of the child.

Earlier instruments had concentrated on specific issues affecting children, such as child labour. The five basic principles of the Declaration served as the foundation for the 1959 Declaration of the Rights of the Child, which established more detailed standards. The Declaration imposed no legal obligations on League members. The instrument was an aspirational document that imposed moral obligations. The Declaration's principles were to guide members' efforts in child welfare.

#### **4.4 Philosophical Basis of the Right to Education**

Analyzing the philosophical foundations of the right to education aids in understanding why it is critical to recognize the right to education as a fundamental right. There are several

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<sup>122</sup> socialist thought and its perception of education, see Nowak, 1995b, p. 192 and Hodgson, 1998, p. 9 and p. 11.

<sup>123</sup> Hodgson, 1998, p. 10. For a thorough treatment of the post-World War I minority treaties and their protection of educational rights, see Lonbay, 1988, pp. 75–134.

arguments that can be used to support the claim that education should be recognized as a fundamental human right.

The first is the social utilitarian argument. The importance of education in society is emphasised here. In the case of *Brown v. Board of Education*<sup>124</sup>, the United States Supreme Court emphasised the importance of education for the performance of public responsibilities and the proper exercise of citizen rights. A certain level of competence is thought to be required in order to exercise one's right to vote and participate in political activity meaningfully. A well-educated citizenry is regarded as essential for the preservation of democratic structures and ideals. Education is also regarded as the primary means of transmitting societal values to future generations.

The words of the United States Supreme Court in *Plyler v. Doe*<sup>125</sup>, "we have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government, and as the primary vehicle for transmitting the values on which our society is founded," capture the essence of the social utilitarian approach.

A second rationale is that education is required for personal development. The consideration is that without education, an individual is unable to develop as a person and realize his or her full potential. Many international human rights treaties mention the role of education. Article 26(2) of the 1948 Universal Declaration of Human Rights states that "education shall be directed to the full development of the human personality." Article 29(1)(a) of the 1989 Convention on the Rights of the Child states, in more specific terms, that education of the child shall be directed to the full development of the child's personality, talents, and mental and physical abilities. According to this viewpoint, education should be recognized as a fundamental right because it is only through education that one's abilities can be realized.

The individual welfare argument is a third rationale. It is argued that the individual has a right to such community-provided welfare necessities that he is unable to provide for himself. It is believed that education is a social necessity that the individual cannot meet on his or her own. As a result, he should be granted a claim to receive education because he would suffer a significant and long-term disability if he did not. He should be helped in achieving such a level of literacy and numeracy that can help him to function effectively in his community. Education

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<sup>124</sup> 347 U.S. 483 (1954).

<sup>125</sup> 457 U.S. 202 (1982).

should place the individual in a position to find work and thus meet his personal needs, such as food and shelter.

To some extent, all of the preceding arguments provide a foundation for the recognition of education as a fundamental human right. The most important foundation for a human right to education, however, must be seen as man's inherent dignity<sup>126</sup>. Human dignity should be acknowledged as the foundation of human rights. Education should be regarded as a requirement of human dignity and thus recognized as a human right. It could be argued that human dignity, as a metaphysical concept, cannot adequately serve to justify a right's status as a human right. Some see human dignity as nothing more than a prejudicial assumption. Nonetheless, the concept of human dignity is now widely accepted as the moral foundation of human rights. According to the first preambular paragraph of the 1948 Universal Declaration, "*while recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world, the General Assembly proclaims the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations...*"<sup>127</sup> The Declaration then proclaims a human right to education in Article 26. In effect, the recognition of human dignity is seen as necessitating the recognition of a human right to education. Article 13 of the 1966 International Covenant on Economic, Social, and Cultural Rights establishes a clear link between education and dignity. According to Article 13(1), education is to be directed toward the full development of the human personality and a sense of its dignity. As a result, the Covenant regards education as a requirement for a dignified existence. Education that provides knowledge and skills while also training the individual in logical thought and reasoned analysis is regarded as a requirement for dignity. As a result, human dignity should be regarded as the ultimate justification for recognizing education as a human right.

#### **4.5 The Universality of the Right to Education**

The question of the universal validity of the right to education concerns whether the right to education, once recognized, applies to everyone. The right to education falls under the umbrella of economic, social, and cultural rights. These rights ensure a decent standard of living. They

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<sup>126</sup> Lonbay, 1988, pp. 27–34. At p. 28.

<sup>127</sup> Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966 recognise in their second preambular paragraph that the rights respectively protected "... derive from the inherent dignity of the human person ...".

emphasize the importance of living a good life. As a result, everyone has the right to an education. This finding is supported by international treaties that safeguard the right to an education. For instance, Article 13(1) of the 1966 International Covenant on Economic, Social, and Cultural Rights states that "the States Parties to the present Covenant recognized the right of everyone to education."

The same idea is expressed in a declaration on adult education that the right to education is a fundamental human right whose legitimacy is universal: the right to learn cannot be confined to one segment of humanity; it cannot be the exclusive privilege of men, or of industrialized countries, or of the wealthy classes, or of young people fortunate enough to attend school.<sup>128</sup>

The debate on universal acceptance of the right to education concerns whether the right to education is valued by all political, social, religious, and cultural communities.<sup>129</sup> The question is whether all communities agree with the individual's claim to be educated. In general, Western states regard the right to education as an important individual entitlement.<sup>130</sup> Many of these countries in their constitutions guarantee the right to an education. Furthermore, article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) states that "no one shall be denied the right to education."

Education is viewed as a group function in African communities<sup>131</sup>. Children are educated by their families, villages, and tribes. The child's education focuses on his or her role as a responsible member of the group. National governments, in addition to local communities, play an important role in education. Governments recognize the importance of education. Education, on the other hand, has a collective character. It is not regarded as a personal right. Education is regarded as a tool for promoting economic development. It is regarded as a means of combating illiteracy and advancing nation-building. As a result, the state wields considerable power in the field of education. As a result, the state wields considerable power in the field of education. There is a clear tendency to monopolies education. Private educational institutions are subject to stringent controls. It should be noted, however, that article 17 of the African

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<sup>128</sup> Recommendations of the Fourth International Conference on Adult Education, held at Paris, 19–29 March 1985. UNESCO Doc. ED/MD/81, p. 67.

<sup>129</sup> Coomans, 1992, pp. 260–265

<sup>130</sup> Ibid

<sup>131</sup> Ibid

Charter on Human and Peoples' Rights of 1981 states succinctly that "every individual shall have the right to education."<sup>132</sup>

The Islamic faith regards the right to education as a fundamental right that is necessary for the exercise of other rights.<sup>133</sup> Education should impart the knowledge and skills required to live in accordance with the principles of Islamic teachings and to carry out daily tasks. For example, paragraph (a) of the non-binding Universal Islamic Declaration of Human Rights of 1981 states that "every person is entitled to receive education in accordance with his natural capabilities," and paragraph (b) states that "every person is entitled to a free choice of profession and career, as well as the opportunity for the full development of his natural endowments." Islam further guarantees gender equality in the exercise of the right to education. Equality, on the other hand, refers to equality in accordance with Islamic principles. Women are given a subordinate position in society as a result of this. As a result, women do not have equal access to or treatment in the field of education. Article 10 of the 1979 International Convention on the Elimination of All Forms of Discrimination Against Women guarantees women equal access to and quality of education. Moreover, there is no clear separation between state and religion in Islamic states. The state intends to impose Islamic education in public schools. As a result, it is not surprising that private schools were abolished in Iraq and Iran in 1975 and 1979, respectively.

Socialist states place a premium on the right to an education.<sup>134</sup> According to some, the right to education falls under the umbrella of economic, social, and cultural rights. Socialist states regard these rights as critical to the systematic realization of a socialist society. Marxist-Leninist ideology underpins communist education systems.

Additionally, education is strongly anti-religious and atheistic. The government has a monopoly on education. Private schools are not permitted. It is not permissible for parents to establish and direct educational institutions. In education, there is no pluralism. As a result, it is clear that socialist states do not protect educational freedom. They only pay lip service to this crucial principle of international human rights law.

It is possible to conclude that the right to education is widely accepted in various political, social, religious, and cultural communities. It is widely acknowledged that education is critical

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<sup>132</sup> Ibid

<sup>133</sup> Coomans, 1992, pp. 261–262

<sup>134</sup> Coomans, 1992, pp. 262–264.

for both individual and societal growth. States recognize that education is primarily their responsibility. It should be mentioned, however, that educational freedom is not yet universally embraced in many African, Islamic, and socialist countries.

Formal universality refers to whether or not states legally recognise the right to education. Proper indicators include, among other things, ratification of the International Covenant on Economic, Social, and Cultural Rights of 1966 and other international treaties protecting the right to education, as well as membership in the United Nations Educational, Scientific, and Cultural Organization (UNESCO).

The 1966 International Covenant on Economic, Social, and Cultural Rights, which safeguards the right to education in articles 13 and 14, has been ratified by 151 of a possible 194 states. This accounts for 78% of the community of states. It should be noted, however, that the United States of America has not ratified the Covenant.<sup>135</sup> Furthermore, states from all over the world, representing various economic, social, and cultural systems, have ratified the pact. There are few objections to Article 13. Algeria, Barbados, India, Ireland, Japan, Madagascar, and Zambia have all expressed reservations.<sup>136</sup>

Furthermore, almost all states are members of UNESCO and can thus be regarded to support its goals. One of UNESCO's goals is to provide educational opportunities for all people and to promote equal opportunities and treatment in education. In practice, much of UNESCO's work is focused on providing universal primary education for all children and eliminating adult illiteracy. Ninety states have ratified UNESCO's 1960 Convention Against Discrimination in Education.

Given these realities, it is reasonable to conclude that "there can be little doubt that a considerable majority of the community of states has formally accepted the right to education."<sup>137</sup>

Material universality is concerned with the subject of whether the right to education is genuinely achieved in the various states of the world has been stated that the major obligation

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<sup>135</sup> The Convention on the Rights of the Child of 1989, which protects the right to education in its arts. 28 and 29, has been ratified by an impressive 192 states (99% of states). ([www.ohchr.org](http://www.ohchr.org)).

<sup>136</sup> "Status of the International Covenant on Economic, Social and Cultural Rights and reservations, withdrawals, declarations and objections under the Covenant", accessed on 1 June 2021, UN Doc. E/C.12/1993/3/Rev.6.

<sup>137</sup> Coomans, 1992, p. 266

for realizing the right to education rests with the state. It is necessary to take steps, to the best of its ability, toward gradually implementing the right to education. Many states fall short in this area. Governments, not just in the third world, cut education budgetary expenditures, forcing parents and children to bear the costs. Child labour is still prevalent in many nations.

In some nations, active discrimination in education is still practiced on the basis of gender, language, and religion. Such discrimination disproportionately affects women and members of minorities. Similarly, static discrimination is still an issue. Certain social groups, such as lower-income groups, are underrepresented in many national education systems. It has also been stated that academic freedom is not practiced widely in many African, Islamic, and socialist countries.

Consequently, the material universality of the right to education has yet to be attained. To be sure, some states are making strides in implementing the right to an education. Even so, for many people in other states, the right to education remains an open concept. At this point, point 5 of the Dakar Framework for Action, adopted by the World Education Forum in Dakar, Senegal from April 26 to 28, 2000, maybe cited:

The Education for All 2000 Assessment shows that several countries have made significant progress. However, it is unacceptable in the year 2000 that more than 113 million children do not have access to primary education, 880 million adults are illiterate, gender discrimination continues to pervade education systems, and the quality of learning and the acquisition of human values and skills falls far short of individual and societal aspirations and needs. Therefore, *"the material realization of the right to education in many ways still leaves much to be desired."*<sup>138</sup>

#### **4.6 International Instruments**

The right to education is asserted in a range of international treaties and documents of varied legal nature, and both legally binding and non-binding instruments have recognised it. The right to an education is established in the International Bill of Human Rights, which serves as the foundation for the UN's expanding human rights activities. The Universal Declaration of Human Rights establishes the moral grounds of the right to an education (1948). According to Article 26 of the Universal Declaration of Human Rights<sup>139</sup>, every person has the right to an

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<sup>138</sup> Coomans, 1992, pp. 268.

<sup>139</sup> UN General Assembly. (1948), Universal declaration of human rights (Article 26).

education. Education must be free, at least in the primary and secondary levels. Elementary schooling will be mandated. Technical and professional education must be made widely available, and higher education must be made open to everybody on a merit-based basis.

Education shall be geared toward the complete development of the human personality and the reinforcement of respect for human rights and fundamental liberties. It shall encourage understanding, tolerance, and friendship among all nations, racial or religious groups, and support the United Nations' efforts to maintain peace. Parents have the right to choose the sort of education that should be provided to their children. This is the first explicit recognition of a general right to education in an international instrument.

In a nutshell, the following are the various elements of the provision-

It guarantees everyone the right to an education; elementary and fundamental education must be accessible. Whereas elementary education refers to formal schooling for children of primary school age, fundamental education refers to education for children, teenagers, and adults who did not have the opportunity to attend or complete primary school and is provided outside of the conventional primary school system.

Elementary education must be made mandatory, and technical and professional education should be made widely available. Technical and professional education is defined as education that includes, in addition to general information, the study of technologies and the acquisition of practical skills, know-how, attitudes, and understanding about employment in various economic sectors. Lastly, higher education must be equally available to everyone based on merit. Higher education encompasses all levels of higher education.

Article 26(1) must be read in conjunction with Article 22, which introduced the provisions of the UDHR which dealt with economic, social, and cultural rights. It asserts that "everyone is entitled to the fulfilment of the economic, social, and cultural rights fundamental to his dignity and the free development of his personality, through national effort and international cooperation, and in accordance with the organization and resources of each State."

The phrases "effort" and "cooperation" imply action on the side of the state rather than a passive attitude. The state must make concerted efforts to realize the right to an education. To that purpose, it must commit financial, technological, and other resources that are available locally or can be obtained from international sources.



Many states, particularly those in the developing world, lack the resources required to establish and sustain large-scale, all-inclusive educational institutions. As a result, article 22 refers to the individual's right to the realisation of economic, social, and cultural rights "in accordance with the resources of each State," limiting the scope of the state's duty to the extent of the available resources. As the state develops and its resources expand, its obligations regarding economic, social, and cultural rights must be construed more broadly in light of the expanding resource base. As a result, the state's role is to gradually realize the right to education and other economic, social, and cultural rights. The state is anticipated to gradually realize these rights in their entirety.

Article 26 was later reinforced and expanded upon by articles 13 and 14 of the International Covenant on Economic, Social, and Cultural Rights. Whereas article 13 recognizes the right to education in general and lays out the general responsibility of states parties in pursuing the realization of the right to education, article 14 articulates specific state obligations in relation to elementary education. The provisions in Articles 13 and 14 are thorough. In reality, they are among the ICESCR's most extensive rights provisions. Articles 13 and 14 may be interpreted as codifying the right to education in international law. The International Covenant on Civil and Political Rights also includes a provision addressing the right to education. Article 18(4) of the Covenant preserves parents' right to ensure their children's religious and moral education in accordance with their own convictions.

As previously stated, there are a number of international human rights instruments that have an impact on the right to education. For example, Article 5 of the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, Article 3(1) of the 1963 Declaration on the Elimination of All Forms of Racial Discrimination, Article 5(e)(v) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, Article 9 of the 1967 Declaration on the Elimination of Discrimination Against Women, and Article 10 of the 1967 Convention on the Elimination provides for the protection against discrimination in the field of education on the respective bases of religion, race and gender.

The right to education is protected in Principle 7 of the Declaration of the Rights of the Child of 1959, and in articles 28 and 29 of the Convention on the Rights of the Child of 1989. The provisions of the Convention, like articles 13 and 14 of the ICESCR, can be said to codify the

right to education in international law. The same can be said of the Convention against Discrimination in Education, adopted by UNESCO in 1960, in its entirety.

Similarly, instruments have been developed to address specific needs, such as those of refugees and stateless people, internally displaced people, and people caught up in armed conflict. Article 22 of the 1951 Convention Relating to the Status of Refugees and the 1954 Convention Relating to the Status of Stateless Persons concern, respectively, the educational rights of refugees and stateless persons. Internally Displaced Persons' Educational Rights are outlined in Principle 23 of the 1998 Guiding Principles on Internal Displacement.

Relevant provisions of the Geneva conventions on international humanitarian law outline the educational rights of individuals caught up in armed conflict. Other instruments establish migrant workers' rights. Article 8 of the 1985 Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live and articles 12(4), 30, 43, and 45 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families elaborate on the right to education as it pertains to migrant workers. The rights of disabled people in the field of education are described in Article 6 of the 1975 Declaration on the Rights of Disabled Persons, Article 23 of the Convention on the Rights of the Child, and Rule 6 of the 1993 Standard Rules on the Equalisation of Opportunities for Persons with Disabilities. The educational entitlements of older people are described in Principles 4, 7, and 16 of the Principles for Older Persons of 1991. Rule 77 of the Standard Minimum Rules for the Treatment of Prisoners applies to detained individuals in the same way. Furthermore, the educational needs of people from national or ethnic minorities, religious or linguistic minorities, and people of indigenous origin are of particular concern. When it comes to the educational needs of minorities, Article 27 of the International Covenant on Civil and Political Rights, Article 30 of the Convention on the Rights of the Child, and aspects of Articles 2 and 4 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, or Linguistic Minorities are relevant. Articles 15, 16, and 31 of the Draft Declaration on the Rights of Indigenous Peoples, in turn, are pertinent as far as the educational needs of indigenous people are concerned. The 1989 Convention on the Rights of Indigenous and Tribal Peoples in Independent Countries should also be mentioned. Part VI of the Convention addresses indigenous peoples' educational rights.

### **4.6.1 The International Bill of Human Rights**

At the international level, as mentioned previously, the 1945 United Nations Charter contains a specific commitment to preserving human rights for the first time. According to Article 1(3) of the UN Charter, one of the goals of the United Nations is to ensure international cooperation in promoting and strengthening respect for human rights and basic freedoms. Article 55(c) requires the UN to promote universal respect for and observance of human rights and basic freedoms, and article 56 requires member states to take joint and independent action in collaboration with the UN to achieve such respect and observance.

The Charter does not guarantee the right to education in and of itself; rather, it serves as the foundation for subsequent protection by the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social, and Cultural Rights (1966), and other human rights instruments. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights comprise what is frequently referred to as the "International Bill of Human Rights." The International Covenant on Civil and Political Rights offers substantial protection for the right to education.

### **4.6.2 The International Covenant on Economic, Social and Cultural Rights**

Article 26 of the Universal Declaration of Human Rights (UDHR) was later expanded upon by Article 13 of the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR).<sup>140</sup> The ICESCR is an international treaty that puts legally enforceable requirements on states who sign it. States parties recognize everyone's right to an education under article 13(1). The paragraph then goes on to define the goals of education. It reiterates the goals stated in article 26(2) UDHR, but adds two new ones.<sup>141</sup>

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<sup>140</sup> International Covenant on Economic, Social and Cultural Rights (1966) 993 UNTS 3, entered into force on 3 January 1976. On the protection of the right to education by the ICESCR, see Lonbay, 1988, pp. 167–285, Coomans, 1992, pp. 93–124, Hodgson, 1992, p. 270, Yudof, 1993, pp. 235–245, Hodgson, 1996, p. 243 and Hodgson, 1998, pp. 41–44. Generally, see the doctoral thesis of Gebert, 1996.

<sup>141</sup> Like art. 26(2) UDHR, art. 13(1) ICESCR mentions the following aims of education: 1. the full development of the human personality, 2. the strengthening of respect for human rights and fundamental freedoms, 3. the promotion of understanding, tolerance and friendship among various groups and persons and 4. the development of respect for the principles enshrined in the UN Charter. It should be noted that the ICESCR adds "ethnic groups" to the list of those among whom understanding, tolerance and friendship are to be promoted.

To begin with, it relates to the development of the human personality and a sense of dignity. Human dignity is the source of human rights, according to the preambles of the UDHR, the ICESCR, and the ICCPR. The reference to human dignity in article 13(1) tends to imply that education must make the individual aware of his own intrinsic value and the human rights that accrue to him as a result of this worth. Second, it emphasizes that education should enable all people to effectively participate in a free society. This goal appears to necessitate that education not just be theoretically oriented, but also teach students how to meet their practical requirements in life.

Article 13(2) expands on Article 26(1) of the UDHR. Article 13(2)(a) requires that primary education be made compulsory and free for everyone, article 13(2)(b) that secondary education be made widely available and accessible to all, and article 13(2)(c) that higher education be made equally available to all, regardless of ability. Access to secondary and higher education is to be achieved "by whatever acceptable means, particularly the progressive implementation of free education." Article 13(2) (d) mandates that basic education be supported or reinforced to the greatest extent practicable.

Article 13(2) establishes state obligations regarding the education system, which are defined by relation to the availability and accessibility of education standards<sup>142</sup>. The availability of education refers to the state's responsibility to assure the availability of schools, teachers, and teaching materials. More schools, teachers, and educational materials are made available, increasing availability. The term "general availability" refers to the availability of schools, teachers, and educational materials to everybody. Education accessibility, on the other hand, refers to the state's obligation to maximize an individual's chances of admission to one or more schools after schools are made available. It is improved by lowering barriers to admission. Thus, general accessibility implies that all barriers to entrance must be removed in order for education to be available to all. School costs are frequently an impediment to admission. Education accessibility is thus best fostered by initiatives aiming at making education free.

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<sup>142</sup> Gebert, 1996, pp. 355–360.

### **4.6.3 Convention against discrimination in Education (1960)**

The Convention Against Discrimination in Education (1960)<sup>143</sup> formalises the fundamental principles of nondiscrimination and equitable educational opportunities as international norms.<sup>144</sup>

In addition to discrimination, it addresses concerns of equality of opportunity, access to free basic education, and minority group rights. Article 4 of the CADE not only formulates the legally binding clause but also sanctions duties and actions for States Parties to implement for making primary education free and compulsory, to make secondary education in its different forms generally available and accessible to all, to make higher education equally accessible to all based on individual capacity, to assure compliance by all with the obligation to attend school as prescribed by law. Furthermore, to ensure that the standards of education are equivalent in all public educational institutions of the same level and that the conditions relating to the quality of the education provided are also equivalent and also encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education based on individual capacity.

The instrument also includes provisions for providing training for the teaching profession without discrimination. According to Article 5(1)(a) of the CADE, education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the United Nations' activities for the maintenance of peace.

It enjoins the States Parties to it to encourage and intensify, using suitable ways, the education of persons who have not received any primary education or who have not completed the entire primary school course, as well as to continue 'their education on the basis of individual capacity.' As a result, the Convention imposes a state commitment to enhance educational possibilities for all those who are still deprived of primary education. Furthermore, the

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<sup>143</sup> The Convention was adopted by the General Conference of UNESCO on 14 December 1960 at its eleventh session, held in Paris, and came into force on 22 May 1962. So far, 90 States have adhered to the Convention.

<sup>144</sup> The Convention defines 'Discrimination' to include 'any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose of nullifying or impairing equality of treatment in education' (Art. 1 of the Convention).

Convention safeguards the educational rights of national minorities while appreciating the diversity of national education systems.

Another notable United Nation instrument is the Convention on Technical and Vocational Education (1989), which has binding power in international law for States party to it. The Convention, like that of the Convention Against Discrimination in Education, reflects the principle of non-discrimination in education. The Contracting States agree, according to Article 1 (b) of the Convention, that "this Convention applies to all forms and levels of technical and vocational education provided in educational institutions or through co-operative programmes conducted jointly by educational institutions, on the one hand, and industrial, agricultural, commercial, or any other undertaking related to the world of work, on the other."

Furthermore, under the provisions of Article 2 (I), the 'Contracting States agree to frame policies, define strategies, and implement, in accordance with their needs and resources, programmes and curricula for technical and vocational education designed for young people and adults, within the framework of their respective education systems, in order to enable them to acquire the knowledge and know-how that are essential to economic and social development,'

The 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) creates a worldwide bill of rights for women. Article 10 ensures their right to an education. It supports gender equality by giving every woman the same educational rights as men, from pre-school to higher technical education. It refers to educational possibilities, career and vocational assistance, scholarships or other study awards, continuing education (adult learning) programmes, and the abolition of illiteracy. It also calls for the abolition of any gender stereotyped concept of men's and women's duties in all levels and forms of education.

#### **4.6.4 The Convention on the Rights of the Child, 1989**

In 1989, the Convention on the Rights of the Child (CRC) was adopted<sup>145</sup>. The purpose of the Convention was to augment and build on the provisions of the United Nations General Assembly's Declaration of the Rights of the Child, which stipulates that the child has the right

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<sup>145</sup> Convention on the Rights of the Child (1989) 1577 UNTS 3, entered into force on 2 September 1990. On the protection of the right to education by the CRC, see Lonbay, 1988, pp. 312–347, Coomans, 1992, pp. 152–157, Dorsch, 1992, pp. 179–189, Hodgson, 1992, pp. 276–278, Hodgson, 1996, pp. 243–245, Gomez del Prado, 1998, paras. 23–28 (UN Doc. E/C.12/1998/23) and Hodgson, 1998, pp. 44–47.

to free and compulsory education, at least in the primary levels. He will be given an education that will improve his general culture and allow him to develop his abilities, individual judgment, and sense of moral and social responsibility and become a productive member of society on the basis of equal opportunity. The best interests of the child must be the driving concept for those responsible for his education and supervision, which begins with his parents.

Whereas the Declaration lacks legal force, the Convention is a legally binding treaty. The CRC claims to be a comprehensive statement of a child's rights. A child is defined in Article 1 of the Convention on the Rights of the Child as "any human being under the age of eighteen years, unless majority is acquired earlier by the law applicable to the child."<sup>146</sup> The CRC safeguards CPR and ESCR. It safeguards the right to education in two articles, namely 28 and 29.

States parties recognizes the right to education under article 28(1). Article 28 provides free compulsory basic education for all; progressive free secondary education, which should in any event be available and accessible to all; and capacity-based access to higher education. It states the State's obligation to adopt efforts to improve school attendance and discipline. It promotes international collaboration in education-related issues, particularly the abolition of ignorance and illiteracy, as well as access to scientific and technological information. Article 29 outlines the goals of education and recognizes parents' freedom to choose the type of education they want to provide for their children, as well as the freedom to build and direct educational institutions in accordance with the State's minimal criteria.

The Convention on the Rights of Persons with Disabilities, which was ratified on December 13, 2006, pertains to people with disabilities and emphasises that all people with disabilities, regardless of kind, must have access to all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to people with disabilities, and it identifies areas where adaptations must be made so that people with disabilities can effectively exercise their rights, as well as areas where their rights have been violated and where rights protection must be strengthened. Article 24 recognizes the right of people with disabilities to an education that is free of discrimination and based on equal opportunity, with the state obligated to provide an inclusive education system at all levels and to promote lifelong learning.

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<sup>146</sup> The Committee on the Rights of the Child, which supervises the CRC, has emphasised in General Comment No. 4 (Thirty-Third Session, 2003) Adolescent health and development in the context of the Convention on the Rights of the Child [Compilation, 2004, pp. 321–332], para. 1, that art. 1 CRC, therefore, covers adolescents

The International Convention on the Rights of All Migrant Workers and Members of Their Families, which entered into force on July 1, 2003, seeks to prevent and eliminate migrant worker exploitation throughout the entire migration process by providing a set of binding international standards to address the treatment, welfare, and human rights of both documented and undocumented migrants, as well as the obligations and responsibilities of migrant workers. This Convention provides each child of a migrant worker the fundamental right to an education on the basis of equality with nationals of the state, even in circumstances of irregular migrant status. It establishes additional standards for migrants and their families in the sphere of education and guarantees parental freedom in their children's moral and religious education. The right to an education is guaranteed under Articles 12, 30, 43, and 45. However, this Convention has received only a small number of ratifications.

#### **4.7 Recommendations and Declarations**

Another type of instrument developed by UNESCO is recommendations and declarations. They are classified as soft law since they lack the legal force but are significant in terms of moral impact.

The Recommendation against Discrimination in Education, adopted by the UNESCO General Conference at the same time as the Convention against Discrimination in Education in 1960, also corresponds to UNESCO's constitutional mandate to advance the ideal of equal educational opportunities without regard to race, gender, or any economic or social distinctions. Except for changes in phrasing and legal scope inherent in the structure of these two types of agreements, the content of the Recommendation and the Convention is identical. The Convention and also the Recommendation, like the UNESCO Constitution, ban discrimination in education based on race, colour, sex, language, religion, political or other viewpoint, national or social origin, economic status, or birth. Similar requirements can be found in Articles 1–7 of the Convention and the Recommendation.

The Revised Recommendation Concerning Technical and Vocational Education (2001) recognises that "technical and vocational education" is included in the definition of "education" in the Convention and the Recommendation Against Discrimination in Education (1960). This Recommendation established general concepts, goals, and recommendations for each particular country to use in light of its socioeconomic requirements and available resources in a changing world.



According to UNESCO's normative instruments, equal opportunity, equitable, and universal access to education is frequently intertwined. The World Declaration exemplifies Higher Education for the Twenty-First Century (1998), which said that education is a crucial cornerstone of human rights, democracy, sustainable development, and peace and should thus be accessible to all throughout life. Article 4 (d) asserts that access to higher education for members of certain special target groups, such as indigenous peoples, cultural and linguistic minorities, disadvantaged groups, people living under occupation, and those with disabilities, must be actively facilitated, because these groups, both collectively and individually, may have experience and talent that can be of great value to the development of societies and nations.

Thus, UNESCO's standard-setting instruments establish the right to education for all: for national, ethnic, religious, and linguistic minorities, indigenous peoples, the socially and economically marginalized, vulnerable groups, immigrants, the disabled and handicapped, refugees, the rural-urban poor, and millions of those who are deprived of education due to poverty. Furthermore, they serve as normative foundations for education in its various forms, such as adult education, community education, special education, and so on. They embody essential ideals such as inclusive educational approaches, continuous education, and life-long learning.

## **4.8 Regional Instruments**

### **4.8.1 Africa**

Both the African Charter on Human and Peoples' Rights of 1981 and the African Charter on the Rights and Welfare of the Child of 1990 affirm the right to education in Africa. The African Charter on Human and Peoples' Rights (1981), which was created to promote and preserve human rights and basic freedoms on the African continent, has a modest provision for the right to education (Article 17), as well as an overall prohibition on discrimination (Article 2).

The African Charter on the Rights and Welfare of the Child (1990), which entered into force in 1999, establishes a considerably larger and more comprehensive right to education than the African Charter on Human and Peoples' Rights (1981). Article 11 emphasises that every child has the right to an education and mandates actions that states must take as part of their attempts to fully realise this right, including school discipline and pregnant girls. It describes the goals

of education and recognises parents' right to choose the type of education they desire for their children based on their religious and moral views.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) aims to abolish gender discrimination and to ensure the protection of women's rights as outlined in international declarations and treaties. Article 12 guarantees their right to education and training based on non-discrimination and equal opportunity principles. It advocates for the abolition of all stereotypes and the inclusion of gender sensitization in all levels of education curricula. It relates to their safety from sexual harassment. It also recognises the necessity for targeted positive action, such as promoting literacy among women.

The African Youth Charter (2006) is Africa's first legal framework to support national policies, programmes, and actions promoting youth development. It relates to young people's rights, freedoms, and responsibilities in Africa, especially the right to an education. Article 13 recognises every young person's right to a high-quality education. It refers to several types of education, including non-formal and informal education. It defines the goals of education and establishes the responsibility of states. It also calls for gender equality and the use of African languages in the classroom (Article 20).

#### **4.8.2 Europe**

There are two major institutions in Europe concerned with human rights: the Council of Europe and the European Union. The Council of Europe was established in 1949 and currently has 47 member countries. The European Union consists of 28 member countries. They collaborate to promote and preserve human rights throughout Europe.

The EU Charter consolidates existing rights that were previously scattered across a variety of sources, including the European Convention on Human Rights and Fundamental Freedoms, as well as other Council of Europe, United Nations, and International Labour Organization agreements.

Its provision on the right to education which is contained in article 14, comprises the right to equitable access to education and vocational training; it preserves the right to compulsory education and the freedom to create educational institutions. The EU Charter also safeguards children's rights; Article 32 outlaws child labour and stipulates that the minimum age for employment cannot be lower than the age at which compulsory education is completed.

Furthermore, Article 13 of the EU Charter guarantees academic freedom and includes a specific non-discrimination clause (Article 21).

The EU Charter only applies to EU institutions and organisations and EU Member States when they operate by EU legislation. This means that EU directives/policies/actions must be compatible with the Charter, and Member States should uphold the Charter when executing EU law at home.

According to Article 2 of the first Protocol to the European Convention on Human Rights, dated March 20, 1952, the right to education is recognised as a human right and is understood to establish an entitlement to education. The right to education, according to the International Covenant on Economic, Social, and Cultural Rights, includes the right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all, particularly through the progressive introduction of free secondary education, and an obligation to develop equitable access to higher education, particularly through the progressive introduction of free higher education. The right to education includes the need to provide basic education to those who have not completed primary school. In addition to these requirements concerning access to education, the right to education includes the need to eliminate discrimination at all levels of the educational system, to establish minimum standards, and to improve quality. This standard has been applied by the European Court of Human Rights in Strasbourg, for example, in the Belgian linguistic case.<sup>147</sup>

The European Social Charter was established in 1961 to protect fundamental social norms. It recognises a broad range of economic, social, and cultural rights, including the right to an education. On 3 May 1996, it was updated to expand on the rights expressed in the original Charter. Article 17 states that states must provide free primary and secondary education to children and young people, as well as encourage regular attendance in school. Article 7 of the Convention on the Rights of the Child stipulates those persons who are still subject to compulsory education shall not be employed because doing so would deprive them of the full benefit of education. Article 10 ensures the right to vocational training, while Article 15 assures the right of disabled people to an education.

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<sup>147</sup> A Human rights-based approach to Education for All: a framework for the realization of children's right to education and rights within education (2007)

The Council of Europe's Framework Convention for the Protection of National Minorities is concerned with the general protection of national minorities. Its goal is to specify the legal principles that states agree to follow in order to protect national minorities. Article 12 recognises the ideal of equitable access to education at all levels for members of national minorities. Their right to create private educational establishments is guaranteed by Article 13. Article 14 refers to their right to study their minority languages and, to the greatest extent practicable, to be taught or instructed in this language.

## **4.9 Assessment of fulfilment**

Education is widely regarded as a critical resource for both individuals and nations. Indeed, in most countries, basic education is now seen not just as a right, but also as a duty — governments are often expected to facilitate access to basic education, while citizens are frequently required by law to achieve education up to a particular degree.

From a historical standpoint, the world has seen a significant development in education over the last two centuries. This is visible across all quantity measures. Global literacy rates have risen over the last two centuries, owing primarily to rising rates of elementary school enrolment. Secondary and tertiary education have also grown dramatically, with global average years of schooling now far greater than a century ago. Despite all of these global advancements, certain nations have lagged, particularly in Sub-Saharan Africa, where literacy rates among young people remain around 50%. Literacy rates in Burkina Faso, Niger, and South Sudan — the African countries at the bottom of the rankings – remain below 30%.<sup>148</sup>

Data on education output reveal that schooling is generally sponsored by public funds around the world, while there is considerable variation between countries and world areas. Because disparities in national education spending do not explain well cross-country variances in learning results, the research shows that generic policies that raise spending on standard inputs, such as the number of teachers, are unlikely to enhance education outcomes.

Even though literacy is higher than it has ever been, many developing countries face significant obstacles. However, data on literacy rates by age groups demonstrate that there are huge generational gaps in most nations, and particularly in practically all developing countries:

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<sup>148</sup> Max Roser and Esteban Ortiz-Ospina (2016) - "Global Education". Published online at OurWorldInData.org. Retrieved from: '<https://ourworldindata.org/global-education>'

younger generations are progressively better educated than older generations. This suggests that literacy rates for the general population will continue to rise in these countries. According to reports from the International Institute for Applied Systems Analysis (IIASA), education rates will rise as the world improves – and by 2050, only five nations are anticipated to have a percentage of no education exceeding 20%: Burkina Faso, Ethiopia, Guinea, Mali, and Niger.<sup>149</sup>

While these forecasts are based on a few assumptions, the conclusion appears to be that by 2050, most of the cross-country literacy gaps should be filled.

As previously stated, school enrolment has expanded dramatically during the last two centuries. According to a study conducted by Lee and Lee in 2016 on primary school enrolment rates for a sample of 111 nations from 1870 to 2010, the enrolment rate has surpassed 100% in countries such as the United Kingdom, India, China, Argentina, and America.<sup>150</sup>

Net enrolment rates in most developing nations are higher than attendance rates. This reflects the fact that many children who are formally registered do not attend school on a regular basis. According to the UNESCO report *Measuring Exclusion from Primary Education* (2005), "among the 59 countries with comparable data, participation rates for the primary school-age group decline by five percentage points in 24 countries when household surveys are utilised instead of administrative data."<sup>151</sup> Children drop out of school for three main reasons: poverty, scarcity, and inaccessibility. While developing countries such as India have made tremendous headway in increasing primary school enrolment rates, they have been less successful in reducing dropouts during this important learning age.

However, a notable increasing trend in gender ratios has been recorded across all world regions, indicating that the gender gap in access to education is narrowing. Indeed, Latin America and Eastern Europe caught up with the group of 'advanced economies' in the 1980s, and gender

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<sup>149</sup> International institution for applied systems analysis (IIASA) report on world population and human capital in the twenty-first century (2015)

<sup>150</sup> Lee and Lee (2016), *Journal of Development Economics*, [http://www.barrolee.com/Lee\\_Lee\\_LRdata\\_dn.htm](http://www.barrolee.com/Lee_Lee_LRdata_dn.htm)

<sup>151</sup> *Children Out of School, Measuring Exclusion from Primary Education*, UNESCO Institute for Statistics, Montreal, 2005, [http://uis.unesco.org/sites/default/files/documents/children-out-of-school-measuring-exclusion-from-primary-education-en\\_0.pdf](http://uis.unesco.org/sites/default/files/documents/children-out-of-school-measuring-exclusion-from-primary-education-en_0.pdf) (accessed on 7<sup>th</sup> June 2021)

differences in these regions have already been nearly eliminated (i.e., the gender ratios approximate the 100 percent benchmark for education gender parity).<sup>152</sup>

Based on the data presented above, it is possible to conclude that, while there are several international, regional, and national instruments in place to ensure the right to education for all, and these instruments have been successful in fulfilling the right to a large extent, there are still obstacles that must be overcome in order to ensure free and equal education for all.

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<sup>152</sup> Lee and Lee (2016), Journal of Development Economics, [http://www.barrolee.com/Lee\\_Lee\\_LRdata\\_dn.htm](http://www.barrolee.com/Lee_Lee_LRdata_dn.htm) accessed on 5 April, 2021.

## **Chapter 5**

### **Conclusion and Suggestions**

#### **5.1 Introduction**

Elementary education forms the basis of mental development in a child and equips them with the analytical skills, confidence and competencies which help pave the way for a successful future. Hence, nations must prioritise providing excellent primary education to their inhabitants, particularly the poorest segments of society, and empowering the masses with a quality education that would help them to break free from the shackles of poverty.

With the formation of a free Indian state, the vision of the then leaders of the nation were to establish a programme that would provide free and compulsory education to children aged six to fourteen years, and to achieve the stated objectives within ten years of the coming into force of the Constitution of India. This chapter includes the conclusions that can be drawn from analysing the impact of the Right to Education Act and the various suggestions the researchers put forth for overcoming the shortcomings of the Act.

#### **5.2 Progress in the educational sphere in India since 1950**

The constitutional and legal policies of the nation have paved the way for and supported the vision of universalizing elementary education in India. Some of the important government policies and interventions that have shaped India's education landscape are mentioned below<sup>153</sup>:

The Constitutional Mandate of 1950 established education as a guiding component of state policy. It specifies that "the State shall endeavor to provide, within ten years of the commencement of this Constitution, for free and compulsory education to all children till the age of fourteen years."

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<sup>153</sup> National Policy on Education 1968, Ministry of Human Resource Development, GoI, [http://www.ncert.nic.in/oth\\_anoun/npe86.pdf](http://www.ncert.nic.in/oth_anoun/npe86.pdf), accessed 24 August 2021

Another important government policy is the National Policy on Education, 1986, under which the Government of India resolved to implement a radical overhaul in the education strategy in order to achieve national integration. Its principles include free and compulsory education for all children up to the age of 14, adequate and satisfactory emoluments and training for teachers, an emphasis on language development, equalization of educational opportunities, a high priority on science education and research, low-cost and high-quality textbooks for students, and the introduction of examinations as a continuous evaluation process for learning assessment. The decision in *Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors.*,<sup>154</sup> In this case, the Supreme Court accorded the status of a fundamental right to 'free and compulsory education for all children till they attain 14 years of age. The Mid-Day Meal Scheme (1995) enhanced enrolment, retention, and attendance of children in schools while also improving their nutritional levels.

The Education Ministers' Resolve (1998) and the National Committee's Report on UEE in the Mission mode (1999) both underlined the importance of pursuing a holistic and convergent approach to universal elementary education, as well as the development of District Elementary Education Plans for UEE.

Sarva Shiksha Abhiyan (2000) is a government programme aimed at universalizing primary education "in a time-bound way," with the goal of providing valuable and relevant elementary education to all children aged six to fourteen years by 2010 (Estimated to be 206 million children in 2001). However, the deadline has been extended indefinitely. It recognized the need to enhance the education system by active community participation and envisioned bridging widespread gender and social gaps, leading to a nationally integrated country.

In 2002, the 86th amendment to the Indian Constitution envisaged the Right to Education as a fundamental right in Part III of the Constitution. The same amendment added Article 21A, making the Right to Education a fundamental right for children aged 6 to 14.<sup>155</sup>

The Right of Children to Free and Compulsory Education (RTE) Act, 2009, was consequential legislation that was passed to achieve the vision that was envisaged under Article 21-A, which was inserted in the Indian Constitution by the Constitution (Eighty-Sixth Amendment) Act 2002, which stated: 'The State shall provide free and compulsory education to all children aged six to fourteen years in such a manner as the state may, by law, determine.' When the Indian

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<sup>154</sup> 1993 AIR 217, 1993

<sup>155</sup> INDIA CNST. Art 21A, amended by the Constitutional (Eighty-sixth Amendment) Act, 2002.



Parliament enacted the RTE Act on August 4, 2009, it became one of 135 countries to make education a fundamental right for all children.

From 1950 to 2005, education sector of India witnessed enormous progress in terms of an increase in the number of institutions, an increase in enrollments for primary and secondary education, an increase in the enrollment of girls and students from the weaker sections of society, and an increase in the number of teachers and teacher training institutes due to various government programmes and judicial decisions.

The number of schools imparting elementary education increased from 223,600 in FY1950-51 to 1,448, 712 in FY2013-14<sup>156</sup>. The enrollment in primary schools (in millions) when from 19.20 in FY1950-51 to 132.4 in FY2013-14. The Gross Enrollment Ratio (GER) in primary education increased from 95.7 per cent in FY2000-01 to 116.0 per cent in FY2010-11 and then declined to 101.4 per cent in FY2013-14. Whereas the GER in elementary education declined from 104.3 per cent in FY2010-11 to 97.0 per cent in FY2013-14.<sup>157</sup>

At present, India's education sector is experiencing fast-paced growth with the advent of private participation in education. The CAGR (2008-2014) of the education sector can be split into K-12, Vocational Education and Higher Education, together with stands, with K-12 CAGR at 13 per cent, Higher Education at 11 per cent and Vocational Education at 22 per cent.<sup>158</sup>

### **5.3 Right of Children to Free and Compulsory Education Act, 2009**

The RTE Act was a watershed moment in the efforts of the government to provide every child with the right to a quality and equitable elementary education in a formal school that met the acceptable standards as laid down by the act. The Act made it legally binding for state and local governments to follow the norms laid down by the act. The state has the authority to refuse to recognize schools or to revoke previously granted recognition for schools that do not meet the minimum quality, standards, and rules.

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<sup>156</sup> Statistics of School Education, 2007-08, MHRD, GoI; Educational Statistics at a Glance, 2011, MHRD, GoI; Statistics of School Education, 2010-11, MHRD, GoI; and U-DISE, National University of Educational Planning and Administration (NUEPA)

<sup>157</sup> Education for All, Towards Quality with Equity, Ministry of Human Resource Development, GoI and NUEPA, First Edition (2014)

<sup>158</sup> KPMG Social Infrastructure Report for CII, 2014

Almost a decade ago, India passed the Right to Education (RTE) Act, which recognized education a fundamental right and mandated free and compulsory schooling and education for children aged six to fourteen. The Act also requires age-appropriate enrolment for children, school infrastructure standards, inclusion, and facilities for community participation in the education process. Even with the Ministry of Human Resources Development's (MHRD) recent enhanced emphasis on skilling and higher education, RTE remains one of the critical catalysts for India to harvest its long-awaited "demographic dividend."

Since its inception, the RTE Act has achieved success in terms of overall enrolment rates, but it has been chastised for administrative and structural flaws. Several provisions have fallen short of their anticipated effect of dramatically boosting learning quality. While certain provisions have failed due to implementation challenges, others have struggled due to a lack of coordination, a lack of funding, or a delay in distribution. Furthermore, certain revisions to the Act have been made since that run counter to the spirit of the law.

Concerns have been raised about the loss of focus on providing quality education, with the current focus and attention being mostly on increasing enrollment numbers and improving school infrastructure standards. The ability to reach the inaccessible portions of society with quality education, resulting in equitable education opportunities in India for everyone, rather than an India divided between the elite and the underprivileged, has yet to be realized.

India is on the verge of economic growth, and its demographics are perhaps at their pinnacle, with approximately 63 percent of the population aged 15 to 59 years. It will be a challenge for the country to successfully employ this enormous population in the coming decades. The main challenge for the country at this time will be to conceive and implement effective policies that will benefit from the demographic dividend, thereby boosting the country's economic growth. Investing in social sectors such as education will be critical to reaping the advantages and possibilities of this demographic dividend. At this critical time, it will be worthwhile to reflect on one of the most important measures pertaining to education, namely the RTE Act.

The RTE Act not only establishes free and compulsory education as a fundamental right for all children, but it also establishes specific school guidelines. The Act states that a child must be admitted to an age-appropriate class and has the right to receive special training as prescribed in order to be on par with others, and that the Central Government and State Governments have a concurrent responsibility to provide funds for the establishment of schools in the neighborhood within three years of the enactment of the act. Furthermore, Private schools

reserve at least 25 per cent of the strength of the class for children belonging to weaker sections and disadvantaged groups in the neighborhood and provide free and compulsory education till completion. No school or individual shall collect a capitation fee or subject a kid, or his or her parents or guardian/s, to any screening method when admitting a child. No kid admitted to a school shall be held back in any class or expelled from school until he or she has completed elementary school.

No school, other than one established, owned, or managed by the appropriate government or local authority, shall be established or function without first receiving the required certificate of recognition. In case a school is established before to the commencement of this Act, it must take steps to meet such norms and requirements at its own expense within three years after the effective date. All government and aided schools must establish a School Management Committee comprised of elected representatives of the local authority, parents of children admitted to such schools, and teachers, with at least 75% of the members being parents or guardians. Any person who has the necessary credentials shall be eligible for appointment as a teacher. If a teacher does not have the minimum qualifications at the commencement of this Act, he or she must acquire them within five years. The academic authority shall ensure comprehensive and continual examination of a child's understanding of knowledge and ability to apply it while developing the curriculum. As a result, the RTE Act stipulates the minimal standards that every school must satisfy in terms of infrastructural and human resource requirements. The RTE Act has been successful in reaching some of the aims that it set out to achieve in 2010.

#### **5.4 Impact of Right of Children to Free and Compulsory Education Act, 2009**

MHRD, Government of India, published a report in June 2014 that summarized the status of states adopting the Act, and it indicates that the central government has been successful in making sure most states have adopted the policies of the state. To understand the impact of the RTE Act on the people of this country and whether the Act is achieving the goals outlined in it, the RTE Act has been examined under four categories, namely Enrollment, Quality, Teachers, and Social Infrastructure.

### 5.4.1 Increase in enrollment rates

In the MHRD Annual Report 2014-15, the Government of India indicates that the total enrollment indicator for primary classes for FY2013-14 was 13,24,28,440. In upper primary schools, the RTE Act has had a positive impact on the enrollment rate of girls. The percentage of girls enrolled in upper primary school has increased from 48% in FY2009-10 to 49 per cent in FY2013-14. Furthermore, the gender parity index (the number of females enrolled at a given level divided by the number of males enrolled in a given level) grew from 0.93 in FY2009-10 to 0.95 in FY2013-14. Children with Special Needs (CWSN) enrolment has nearly doubled since FY2009-10, and the annual dropout rate has reduced from 9 per cent in FY2009-10 to 4.7 per cent in FY2013-14. This should be noted that the Net Enrolment Rate (NER) in primary education increased from 84.5 per cent in FY2005-06 to 88.08 percent in FY2013-14<sup>159</sup>.

Furthermore, the RTE Act has resulted in an increase in upper primary enrollment (Class 6-8). Between 2009 and 2016, the number of students in the upper primary level increased by 19.4 percent nationally. In rural India, only 3.3 per cent of children aged 6 to 14 were not attending school in 2016<sup>160</sup>. Since 2017, the enrolment of children aged 6 to 14 has been above 95 per cent, while the percentage of children who are not enrolled in school has declined below 3per cent, to 2.8 per cent in 2018.<sup>161</sup>

The RTE Act alone did not achieve this goal. Sanitation is one of the most important drivers to greater enrolment rates; there is a positive relationship between access to basic sanitation facilities and higher enrolment rates. This has resulted in a rise in female student enrollment and female teacher retention. As sanitation and cleanliness improved, sick days decreased, and students and teachers remained in school.

However, these national figures conceal massive state-wise discrepancies in the enrollment of children in schools. Regional disparities across India are prominent as per the latest reports. The All-India GER for primary schools is 101.36, it ranged between 80.59 per cent in Lakshadweep to 149.15 per cent in Manipur<sup>162</sup>. For states like Assam, Bihar, Delhi, Kerela,

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<sup>159</sup> Education for All, Towards Quality with Equity, Ministry of Human Resource Development, GoI and NUEPA, First Edition August 2014

<sup>160</sup> Annual Status of Education Report 2016, Pratham Education Foundation (2016), [http://img.asecentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser\\_2016.pdf](http://img.asecentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser_2016.pdf), accessed 30 July 2021,

<sup>161</sup> Annual Status of Education Report 2018, Pratham Education Foundation (2018), accessed 25 July 2021, [http://img.asecentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser\\_2018.pdf](http://img.asecentre.org/docs/Publications/ASER%20Reports/ASER%202016/aser_2018.pdf)

<sup>162</sup> ELEMENTARY EDUCATION IN INDIA, Progress towards UEE, U-DISE Flash Statistics Report 2013-14, NUEPA and MHRD, GoI

Odisha, Rajasthan and Tamil Nadu, the GER is 113.43, 97.96, 110.67, 95.42, 105.84, 101.53 and 102.56, respectively<sup>163</sup>. Similarly, in the age group of six to 10 years, the enrolment was more than 97 per cent in Odisha but less than 80 per cent in Andhra Pradesh<sup>164</sup>.

While enrollment in the upper primary section has steadily increased in Bihar, Uttar Pradesh, and Rajasthan, it has decreased significantly in Madhya Pradesh, Assam, and West Bengal during the same period. Because diverse regions and states have distinctive requirements, a single act or scheme cannot be universalized. Schemes should be modified in accordance with the requirements and capabilities of the state.

### 5.4.2 Quality

According to the quality indicators, the majority of states have implemented the curriculum mandate of the RTE Act<sup>165</sup>. There is an increase in the number of professionally qualified instructors; for example, in government schools, 80% of teachers have the required professional qualification. The average attendance of students and instructors in elementary and upper primary schools, however, remains a source of concern.

According to the 2018 ASER report, the percentage of all children in Std III who can read at the Std II level has been steadily increasing in the last few years. This ratio has risen from 21.6 percent in 2013 to 23.6 percent in 2014, 25.1 percent in 2016, and 27.2 percent in 2018. Six states (Punjab, Haryana, Mizoram, Uttar Pradesh, Gujarat, and Kerala) exhibit an improvement of more than five percentage points over 2016 levels among children enrolled in Std VIII in government institutions. A little more than half of all students in Std V can read at least a Std II level text. This proportion had risen from 47.9% in 2016 to 50.3 percent in 2018. According to the 2018 ASER report, the percentage of all children in Std III who can read at the Std II level has been steadily increasing in the last few years. This ratio has risen from 21.6 percent in 2013 to 23.6 percent in 2014, 25.1 percent in 2016, and 27.2 percent in 2018. Six states (Punjab, Haryana, Mizoram, Uttar Pradesh, Gujarat, and Kerala) exhibit an improvement of more than five percentage points over 2016 levels among children enrolled in Std VIII in

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<sup>163</sup> Education for All, Towards Quality with Equity, Ministry of Human Resource Development, GoI and NUEPA, First Edition August 2014

<sup>164</sup> School Education in India - UDISE flash statistics, National Institute of Educational Planning and Administration, September 2018, accessed 28 July 2021 [http://udise.in/Downloads/Publications/Documents/Flash\\_Statistics\\_on\\_School\\_Education-2016-17.pdf](http://udise.in/Downloads/Publications/Documents/Flash_Statistics_on_School_Education-2016-17.pdf)

<sup>165</sup> Ibid

government institutions. A little more than half of all students in Std V can read at least a Std II level text. This proportion had risen from 47.9 percent in 2016 to 50.3 percent in 2018.<sup>166</sup>

While the overall percentage for students in Std III who can do subtraction has remained stable, rising from 27.6 percent in 2016 to 28.1 percent in 2018. This rate was 20.3 percent for government school children in 2016 and 20.9 percent in 2018. Government schoolchildren in certain jurisdictions, on the other hand, are performing substantially better, increasing by three percentage points or more since 2016. Punjab, Haryana, Assam, Uttar Pradesh, Gujarat, Maharashtra, and Kerala are among them. In India, the proportion of children in Std V who can divide has increased significantly, from 26 percent in 2016 to 27.8 percent in 2018. Nonetheless, some states have achieved considerable improvements of 5 percentage points or higher above 2016 levels among children attending government schools. Punjab, Uttar Pradesh, Assam, Chhattisgarh, Maharashtra, Kerala, and Tamil Nadu are among them. The overall performance of students in Std VIII in basic arithmetic has not changed significantly over time. A 3-digit by 1-digit arithmetic division problem is correctly solved by approximately 44 percent of the children in Std VIII. While this figure has decreased in many states from 2016 to 2018, government school children in some states have improved significantly in the last two years, including Punjab (from 48 percent to 58.4 percent), Uttar Pradesh (from 25.5 percent to 32 percent), Maharashtra (from 32.4 percent to 41.4 percent), and Tamil Nadu (from 32.4 percent to 41.4 percent) (from 42.6 percent to 49.6 percent ).<sup>167</sup>

During the ASER survey 2018, children aged 14 to 16 were given a few tasks that required calculations to be done in everyday situations. Children were asked to calculate time, how many tablets would be needed to purify water (using the unitary method), where to buy books given two price lists (financial decision making), and how to compute a discount. Each of these tasks was completed in a one-on-one setting. Results are reported for those children in this age group who could do at least subtraction correctly.

In the 14-16 age group, there are gender inequalities in reading and arithmetic; for the 14-16 age group, the all-India number for the proportion of girls who can read at least a Std II level text is quite similar to that of boys. Both have a probability of roughly 77 percent. In many

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<sup>166</sup> ASER report 2018, <https://img.asercentre.org/docs/ASER%202018/Release%20Material/aserreport2018.pdf> accessed on 27 July 2021

<sup>167</sup> Ibid

places, however, girls surpass boys, including Himachal Pradesh, Punjab, West Bengal, Assam, Chhattisgarh, Maharashtra, Karnataka, and Tamil Nadu.

In basic arithmetic, boys seem to hold a substantial advantage. Nationally, 50% of all boys in the age group 14 to 16 can correctly solve a division problem as compared to 44% of all girls. However, girls in this age group are doing better than boys in arithmetic in states like Himachal Pradesh, Punjab, Karnataka, Kerala, and Tamil Nadu.

A little less than half of the 14–16-year-olds who could solve a numerical division problem correctly computed the time question, 52 percent correctly applied the unitary method to calculate how many tablets were needed to purify a given volume of water, about 37 percent correctly decided on the purchase of books, and less than 30 percent correctly computed the discount. In all circumstances, fewer females than boys were able to accurately answer questions. Furthermore, performance on these everyday activities was uniformly poorer among those in this age range who could do subtraction but not division compared those who could do division.<sup>168</sup>

All of these figures indicate that the quality of education provided in schools has improved exponentially, yet the primary focus is on increasing enrollment rates. A comparable emphasis should be placed on increasing the quality of education provided in schools.

### **5.4.3 Teachers**

The increase in the number of teachers working in government and aided schools is indicated by the teacher indicator. According to the MHRD Annual Report 2014-15, the total number of teachers (Government and Aided Schools) in India is 45,32,803. (As of FY 2013-14).

However, there has been a decrease in the number of schools that do not meet the Act's Pupil-Teacher Ratio (PTR). As stated in the RTE Act, the PTR ratio is intended to ensure that schools maintain smaller classrooms to allow teachers to provide personal attention to each student, which would serve as the foundation of the Continuous and Comprehensive Evaluation programme.

The number of elementary schools that do not match the PTR criterion has decreased from 46% in FY2009-10 to 33% in FY2013-14, while the percentage of upper primary schools has

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<sup>168</sup> Ibid

decreased from 36% in FY2009-10 to 31% in FY2013-14. 03 Nonetheless, the figure remains relatively high, emphasizing the significance of recruiting additional human resources and, as a result, the demand for quality teacher training institutes in the country.<sup>169</sup>

#### **5.4.4 Social infrastructure**

According to the AESR report 2018, there has been no significant increase in infrastructure facilities in government schools in rural India from 2010 to 2014 since the introduction of the RTE Act. Facilities such as boundary walls and usable toilets, particularly for females, have not improved in accordance with norms. The percentage of schools that have computers has also not increased significantly. Many schools still do not have playgrounds, boundary fences, or cooking sheds. However, the ratio of schools provided with toilets for female students has increased significantly, from 59 percent in FY2009-10 to 85 percent in FY2013-14, but there is still a long way to go to reach full compliance.<sup>170</sup> Though basic infrastructure at government schools in rural India has improved, the pace has been slow, and much more work need to be done to achieve the expected standards.

In 2014 an estimated 6.04 million children in the age group of six to 13 years are still out of school, and a million others drop out before they complete their elementary education. According to reports in the Indian Express published on 27 March 2015, only about 10 per cent of the schools across the nation are 100 per cent compliant.<sup>171</sup>

The government has launched a national initiative called Swachh Bharat: Swachh Vidyalaya, which translates as "Clean India: Clean Schools." A critical component of this effort is ensuring that every school has a set of functional water, sanitation, and hygiene facilities. A safe school atmosphere is essential for children to study and flourish. A clean and hygienic school will enhance children's health, increase attendance and lower dropout rates, aid in improving student achievement, and ultimately lead to economic prosperity. The technical components include providing drinking water, hand wash toilets, and soap facilities for instructors and kids to use in the school compound. According to research, such provisions help children,

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<sup>169</sup> ASER report 2016, <https://img.asercentre.org/docs/ASER%202016/Release%20Material/aserreport2016.pdf> accessed on 27 July 2021

<sup>170</sup> ASER report 2018, <https://img.asercentre.org/docs/ASER%202018/Release%20Material/aserreport2018.pdf> accessed on 24 July 2021

<sup>171</sup> Education for All, Towards Quality with Equity, Ministry of Human Resource Development, GoI and NUEPA, First Edition August 2014



particularly girls and instructors<sup>172</sup>. Enrolment in basic schools increased by 12 percent, while enrollment in upper primary schools increased by 8 percent, resulting in low dropout rates. This has also aided in increasing the enrollment of female students and the retention of female professors. School sanitation increased girl enrollment by one-third in the Alwar District and improved academic performance for both boys and girls by 25 percent. (UN-Water 2008).

Though the coverage of schools with drinking water and toilet facilities has increased, one of the major challenges that should be addressed is inadequate performance and upkeep of these facilities. Second, poor building quality and noncompliance with rules and regulations shortens the life of infrastructure. As a result, it is critical to make a proper investment in order to gain long-term rewards.

Section 19 of the RTE Act specifies qualitative criteria such as a teacher-student ratio of 1:30, ramps for children with disabilities, office space for the principal, the provision of drinking water, and the presence of a playground. Even though infrastructure has improved, according to the District Information System of Education, just 13% of all schools in India have fully complied with these RTE criteria. Not only is bad management and a lack of cash to blame, but so is a failure to make the greatest use of available infrastructure. For example, schools' difficulty to incorporate a playground onto their grounds, particularly in packed urban areas.

Many schools in the country do not satisfy RTE standards, but they are the only option for pupils in the area. As a result, noncompliance must be dealt with on an individual basis. It is futile to close an educational institution that fails to fulfil infrastructure standards without first assessing the causes for the failure and the quality of instruction delivered to pupils. The RTE Act must focus less on "input" elements and more on "output," i.e., student learning results, when evaluating school performance.

While each state is responsible for enforcing the Act, their capacities differ greatly. As a result, setting a national date for compliance is difficult, and states must be free to determine their own deadlines. The Centre must set aside funds and incentivize adherence to these deadlines.

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<sup>172</sup> ELEMENTARY EDUCATION IN INDIA, Progress towards UEE, U-DISE Flash Statistics Report 2013-14, NUEPA and MHRD, GoI

## **5.5 Measures for ensuring the protection of the right to education of the disadvantaged groups of the society**

Although the RTE Act has been adopted by the majority of states, individual state performance varies greatly. Because India is a geographically large country, the obstacles that each state has in implementing the Act are unique to its internal structure.

### **5.5.1 Economically Weaker Section (EWS)**

The mandate for 25 percentage reservation of seats in private unaided schools for EWS groups was a key step in closing the gap between the quality of education provided by the government and private players. However, this necessitates a closer examination of how eligible children will be chosen, the criteria for EWS status, who chooses these criteria, and whether they are implemented.

One of the most far-reaching and comprehensive components of the RTE Act is its goal of ensuring equal access to elementary education for all children, regardless of socioeconomic condition. Previous attempts towards this goal were driven by policy decisions.

The RTE Act has aided in the development of a legislative ecosystem that recognizes "education for all" as a fundamental right and a legal and constitutional obligation. According to Section 12(1)(c) of the RTE Act, all schools, whether private, aided, unaided, or special category, must reserve at least 25% of their entry-level (class one) seats for children from economically weaker sections (EWS) and disadvantaged groups (DG).<sup>173</sup>

More than 3.3 million students were admitted under this provision in 2018–19<sup>174</sup>. States are free to set their own rules for EWS and DG eligibility and income levels, as well as the further classification of the 25% reservation, level of entry, and the type of documentation required for admittance. This provision's substance goes beyond the concept of "education for all." Its constitutional mandate is to gather youngsters "from different origins to share interests and knowledge on a same platform," and it works for social integration<sup>175</sup>. The central government will pay the schools for the costs spent as a result. According to the Act, this reimbursement

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<sup>173</sup> The Right to Education Act, Ministry of Law and Justice, Government of India, [https://mhrd.gov.in/sites/upload\\_files/mhrd/files/upload\\_document/rte.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/rte.pdf), accessed on 13 July 2021.

<sup>174</sup> LOK SABHA UNSTARRED QUESTION NO. 2122, Ministry of Human Resource Development, Government of India, accessed 1 August 2021, <http://loksabhadocs.nic.in/loksabhaquestions/annex/16/AU2122.pdf>

<sup>175</sup> State of the Nation: RTE Section 12(1)(c), Accountability Initiative, accessed 30 July 2021, [https://accountabilityindia.in/sites/default/files/state\\_of\\_the\\_nation\\_-\\_section\\_12\\_1\\_c\\_csf\\_march\\_2015.pdf](https://accountabilityindia.in/sites/default/files/state_of_the_nation_-_section_12_1_c_csf_march_2015.pdf)

will be equal to the lower of the state government's per-child spending or the fees paid by private schools.

This provision resulted in the creation of more than 2.1 million seats for children on the EWS and DG in 2016-17. However, due to implementation challenges such as funding allocations and varying state contexts, the fill percentage of these seats has remained between 20 and 26% since 2013.<sup>176</sup>

Filling up these EWS and DG seats varies greatly by state, just like enrolment numbers. For example, in 2013-14, Madhya Pradesh had a fill rate of 88.2 percent, whereas Rajasthan had a rate of 69.3 percent.<sup>177</sup>

The performance of these two states contrasts starkly with that of Uttar Pradesh, which had a fill rate of 3.62 percent, and Andhra Pradesh, which had a fill rate of 0.21 percent. These differences occur across parameters, emphasizing the importance of state-specific financial and policy measures.

Because India lacks a standardized education system, the 25-percentage quota system is prone to inequities at many levels even in the absence of execution challenges. Some of the critiques levelled at this provision include discriminatory behavior toward parents, pupils' troubles blending in with a foreign socio-cultural milieu, and reliance on the commercial sector to offer quality education. Aside from issues of social inclusion, there are other impediments to fully implementing the RTE law's quota provision.

However, the ground realities differ, and different states use their own criteria to determine EWS status. According to Himachal Pradesh laws, children who are SC/ST/OBC/BPL or have a disability are deemed disadvantaged. Similar rules apply in Madhya Pradesh and Rajasthan. Andhra Pradesh, on the other hand, has a distinct, well-defined eligibility condition for EWS.

Further, there is also a need to maintain the records of children by the local authority through a household survey. Various state rules do not even define whose agency or authority would be responsible for keeping these records. In Madhya Pradesh, for example, the Jan Shikshak or Cluster Resource Centre Coordinator (CRCC) is in charge, whereas in Rajasthan, the Block

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<sup>176</sup> The Bright Spots: Status of Social inclusion through RTE Section 12(1)(c) 2018, Indus Action, accessed 12 August 2021, <https://issuu.com/indusaction/docs/indusactionreportissue>

<sup>177</sup> Ankur Sarin, Amrishi Dongre, and Shrikant Wad, State of the Nation: RTE Section 12(1)(c), (Ahmedabad: IIM Ahmedabad, 2017), accessed 31 July 2021, [https://cprindia.org/system/tdf/policy\\_briefs/SOTN%20Report%202017\\_FINAL.pdf?file=1&type=node&id=6428](https://cprindia.org/system/tdf/policy_briefs/SOTN%20Report%202017_FINAL.pdf?file=1&type=node&id=6428)

Elementary Education Officer is in charge (BEEO). The School Management Committee (SMC) in Himachal Pradesh is obligated to provide these documents to the local authorities.

Some state rules do not even specify the name of the government official who will keep track of such documents. This is a major problem because these records will be used to determine whether or not children will be admitted under the EWS category.<sup>178</sup>

Variations in entitlement provisions for EWS children have also been noticed between states. For example, there is no explicit definition of what children are entitled to in private schools in Madhya Pradesh state rules, although Andhra Pradesh, Bihar, Maharashtra, and Rajasthan do in their state rules.

However, different states provide different benefits to EWS children. Private schools in Rajasthan, for example, are required to provide textbooks, uniforms, libraries, ICT facilities, and sports, whereas schools in Maharashtra are not required to provide ICT facilities or sports. Though such variances are to be expected in such a big country as India, the different levels represent a significant obstacle in executing this Act.

Given the recent increase in enrolment numbers in private schools in urban and rural India, as well as parents' preference for private schools in anticipation of higher-quality education, private schools are becoming an increasingly important stakeholder in the Indian elementary education landscape. However, while some states have effectively adopted the 25% criterion, others have failed terribly<sup>179</sup>. One of the main reasons for this is that most states have been unable to implement a mechanism requiring local authorities to keep a record of all children under the age of 14 within their jurisdiction. Such a process is required since students from the EWS or DG are frequently first-generation learners who must be sought out for admittance. Furthermore, families on the EWS and DG frequently find it difficult to complete out applications. In Gujarat, for example, over 33 percent of applications were either incomplete or incorrect. State governments' help desks have either been insufficient in number or have been centred in specific locations<sup>180</sup>. In certain instances, parents have claimed that they were requested to pay for the application form or help desk service, which is a clear violation of the RTE Act.<sup>181</sup>

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<sup>178</sup> Ibid

<sup>179</sup> Vol 7/Issue 1, SSA, Budget Briefs, Accountability Initiatives 2014-15

<sup>180</sup> The Bright Spots: Status of Social inclusion through RTE Section 12(1)(c) 2018, Indus Action, accessed 12 August 2021, <https://issuu.com/indusaction/docs/indusactionreportissue>

<sup>181</sup> Swati Gole, "Pune: Parents pay Rs100 to fill up admission forms," the website of Times of India, 16

Yet another recurring problem is the delay in the admission process. It is impossible to begin round two unless all students in the first round are admitted, and the procedure is further delayed. Often, the number of students admitted is much lower than the number of students that participated in the selection process.

### **5.5.2 Out of School Children**

According to the National Sample Survey (NSS), the percentage of Out of School Children (OOSC) in September 2014 was only 3% of all children aged six to thirteen<sup>182</sup>. However, a significant number of such OOSC children have enrolled in schools but have never attended. Such data sheds light on the reality that, despite the fact that specific metrics have been touted as success indicators, the ultimate benefits have not percolated to society. Other social issues to address include the avoidance of child labour, which is a crucial aspect of delivering benefits to OOSC children who are enrolled in schools but never attend.<sup>183</sup> There are also social issues to consider, such as child labour prevention, which is an important topic to examine while providing benefits to OOSC children who are enrolled in schools but never attend. The biggest concentrations of such OOSC pupils are found in Haryana and Rajasthan.

According to the UNESCO global education report, which was released in April 2015, India has made considerable success, reducing the OOSC by more than 90% and achieving the aim of "universal primary education." Despite the fact that enrolments are expanding, school infrastructure is improving, and access to schools is becoming more accessible, children's learning outcomes are not improving. Though infrastructure and school access are critical for a child and have received proper acknowledgment, it is now time for the government to shift its focus to learning results.

## **5.6 Challenges in implementing the Right to Education Act**

Despite the progress and improvement in statistics in the four broad areas described above, which can be considered some of the achievement that the RTE Act has accomplished, the quality of education in the country remains below the desired standards of quality education.

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March 2019, accessed 20 August 2021, <https://timesofindia.indiatimes.com/city/pune/parents-pay-rs-100-to-fill-up-rte-admission-forms/articleshow/68433472.cms>

<sup>182</sup> Vol 7/Issue 1, SSA, Budget Briefs, Accountability Initiatives 2014-15

<sup>183</sup> Ibid

A minimal standard is required, which is not specified in the RTE Act. One reason for this is because the RTE Act does not establish a minimum standard for the quality of education to be provided to children. The government's aim should be to provide high-quality education. In the RTE Act, the concept of quality education is quite theoretical and needs to be changed. The percentage of children with reading skills adequate to their level of study is much lower in rural schools than in urban schools. Even in metropolitan schools, economically disadvantaged students had lower learning standards than the others. As a result, the Act has not been modified to meet the needs of a divided and diversified Indian society.

The Act is overly input-focused rather than outcome-focused. A high enrolment ratio, improved infrastructure, and a low pupil-teacher ratio cannot justify the greater role that education will play in nation-building. What is required is an Act that focuses not only on inputs but also on output quality. Despite tremendous efforts by the Central and State Governments to implement the policies outlined in the Act, many aspects of the Act have been heavily criticised as being detrimental to the successful implementation of the act.

Another challenge faced was with the no-detention policy. An amendment (2019) to the RTE Act modified the erstwhile policy of “not detaining” students from classes one to eight that intended to prevent them from having to bear the social stigma of failing<sup>184</sup>. Students in classes five and eight must now appear for regular annual examinations. A student must be provided additional training in case of failure, and a re-examination is conducted within two months. If the student fails for a second time, they can be detained. This amendment came after several states argued that children could not be assessed adequately without exams, and learning levels were frequently found to be wanting after class eight.<sup>185</sup>

Only six Indian states opposed the amendment, namely Andhra Pradesh, Karnataka, Kerala, Goa, Maharashtra, and Telangana. Because of their relatively excellent implementation of the mandated Continuous Comprehensive Evaluation (CCE) of the RTE Act, these states have significantly greater learning outcomes among pupils than the national average. Only 58.46

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<sup>184</sup> THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION (AMENDMENT) ACT 2019, The Gazette of India, Government of India, accessed 21 July 2021, [https://mhrd.gov.in/sites/upload\\_files/mhrd/files/upload\\_document/rte\\_2019.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/rte_2019.pdf)

<sup>185</sup> Priyanka Deb Barman, "No-detention policy in school, may be scrapped from next academic year: Union minister," the website of Hindustan Times, 7 July 2017, accessed 21 July 2021, <https://www.hindustantimes.com/education/no-detention-policy-may-be-removed-from-next-academic-year-union-minister/story-M29zIElia6bDQD2DsxNX8I.html>

percent of secondary schools in the United States have implemented the CCE<sup>186</sup>. As a result, both exams and assessments were phased out in the recent decade, which runs counter to the RTE Act's aims. The CCE is a pedagogical strategy used to achieve measurable learning outcomes.

It entails evaluating students on different characteristics over the course of a year without the stress of exams. However, because most state education administrations are established to ensure schooling rather than learning, most states—with teachers' cadres acclimated to specific methods—found it challenging to shift to the CCE mode of evaluation. This is a direct outcome of insufficient orientation and teacher training. However, the no-detention policy was blamed, and as a result, it was toned down to its current form. In the future, the RTE must formalise some assessment norms.

Another criticism levelled about the RTE Act is that it particularly applies solely to students aged 6 to 14. The proposed National Education Policy of India advises that Early Childhood Care and Education (ECCE) be included in the scope of the RTE Act<sup>187</sup>. More than 164.47 million children in India are aged six or younger, an age group in which scientists believe cerebral development is substantially faster<sup>188</sup>. This is a persuasive case for expanding the scope of the RTE Act to include ECCE. The RTE cannot continue to ignore the latter's fundamental beliefs and the ripple effect they have on students' lives.<sup>189</sup>

Due to various economic and social factors, primary school students in India are not always admitted to an age-appropriate class. Children frequently follow a non-linear course of schooling, at least in their early years, which has a negative impact on learning results. The Act shall ensure that assessments are based on learning outcomes rather than the age or syllabus completion. Students in lower classes relative to their age are permitted as long as their learning levels are compatible with that class. The RTE Act must protect children from the shame of

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<sup>186</sup> LOK SABHA UNSTARRED QUESTION NO.4873, Ministry of Human Resource Development, Government of India, accessed 22 July 2021, <http://164.100.47.194/Loksabha/Questions/QResult15.aspx?qref=66755&lsno=16>

<sup>187</sup> Draft National Education Policy 2019, Ministry of Human Resource Development, accessed 20 July 2021, [https://mhrd.gov.in/sites/upload\\_files/mhrd/files/Draft\\_NEP\\_2019\\_EN\\_Revised.pdf](https://mhrd.gov.in/sites/upload_files/mhrd/files/Draft_NEP_2019_EN_Revised.pdf)

<sup>188</sup> Final Population Totals, CensusInfo India 2011, Census of India, accessed 13 August 2021, <http://censusindia.gov.in/2011census/censusinfodashboard/index.html>

<sup>189</sup> "The Science of Early Childhood Development," accessed on 30 July 2021

<https://developingchild.harvard.edu/guide/what-is-early-childhood-development-a-guide-to-the-science/#cps>  
ASER Report 2020, <https://img.asercentre.org/docs/ASER%202020/Release%20Material/aserreport2020.pdf>

failure while simultaneously providing acceptable learning levels and effective measurement of the same.

## **5.7 Effect of Pandemic on the education of the children**

Recent global estimates indicate that school closures, unequal access to technology-based educational inputs used for remote learning, and other related disruptions caused by the pandemic are likely to result in 'learning loss' and greater dropout rates, among other repercussions. Numerous studies on the impact of the COVID-19 epidemic in India have been conducted since the first lockdown was declared in March 2020, but relatively few have focused on children's education. Although much digital content has been generated and transmitted to assist children in continuing to learn while at home, there is limited research on the amount to which this content reaches children, whether they engage with it, and the influence it has on their involvement and learning.

Changes in school enrolment can only be reliably recorded once schools reopen and students return to their courses. According to ASER 2020, while the proportion of children not presently enrolled for the 2020-21 school year is greater than the equivalent data for 2018, the differences are negligible across most age groups. Higher rates of unenrolled children are noticeable mostly among the youngest children (ages 6 and 7), probably because they have not yet been admitted to school. This number is significant in Karnataka (11.3 percent of 6- and 7-year-olds are not enrolled in 2020), Telangana (14 percent), and Rajasthan (14.9 percent).<sup>190</sup>

While schools are closed, children rely mostly on resources at home to assist them in learning. These resources can include people who can assist them with their studies (for example, educated parents), technology (such as a television, radio, or smartphone), or materials (such as textbooks for the current grade). Today, just a small percentage of students are first-generation school-goers. More than three out of every four children have a parent who has completed primary school (Std V). More than a fifth have both parents who have completed secondary school.

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<sup>190</sup> ASER Report 2020, <https://img.asercentre.org/docs/ASER%202020/Release%20Material/aserreport2020.pdf> accessed on 4 July 2021



More than 60 percent of enrolled children live in families with at least one smartphone. In the last two years, this number has risen dramatically, from 36.5 percent to 61.8 percent among enrolled children. The percentage point gain is comparable across families with children enrolled in public and private schools. Maharashtra, Gujarat, Madhya Pradesh, Himachal Pradesh, and Tripura are among the states with a more than 30 percentage point increase in the proportion of children whose families own cell phones<sup>191</sup>.

More over 80 percent of children have textbooks for their current classes, whether purchased before or after school closures in March 2020. This proportion is larger (84.1 percent) among students enrolled in public schools than in private institutions (72.2 percent). Only three states, Rajasthan (60.4 percent), Telangana (68.1 percent), and Andhra Pradesh, have a lower proportion of children with textbooks at home than the rest of the country (34.6 percent).<sup>192</sup>

To ensure minimal disruptions to children's education, governments and others have employed a number of means to communicate varied learning materials with pupils during school closures. These include, among other things, activities that use traditional materials such as textbooks or worksheets, online or recorded lessons, and movies or other materials shared over the phone or in person. However, there has been no systematic, large-scale research on whether children can access and employ these processes to their advantage.

## **5.8 Conclusion**

From the chapters mentioned above, it can be concluded that the Right of Children to Free and Compulsory Education Act, 2009, which came into force on 4 August 2009 for providing free and compulsory education for children between the age of 6 to 18 years in India as envisaged under Article 21A of the Indian Constitution, has been successful in fulfilling the outlined in the commencement of the Act. However, after more than a decade of implementation, the RTE Act has successfully increased the number of children enrolled in schools, with rates increasing exponentially.

The number of schools being opened in rural areas has increased, and since the RTE Act lays down the qualifications required for a teacher, the number of qualified teachers has increased

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<sup>191</sup> Ibid

<sup>192</sup> Ibid

in number in rural and urban areas, making learning easily accessible. Various government efforts, such as the Mid-day Meal Scheme and Clean India: Clean School, have played important roles in keeping children in school. Furthermore, these initiatives promote school environments and children's activities that aid in the prevention of water, hygiene, and sanitation-related diseases.

Without a doubt, the Right to Education Act is an essential reform in the school education sphere in India; however, there is still a long way to go in terms of realising the true vision of an educated and competent India, where quality education is not a privilege provided only to the elite class, but the right of every child born in this country. From the research, it is clear that even after more than a decade since the act has come into place, not every child in the country receives the same quality of education. Research suggests that more emphasis has been given on the enrolment rate than on the quality of education imparted. Therefore, the RTE Act must now focus on increasing educational quality. Hence, this proves that the research hypothesis is correct as the existing legislative framework is inadequate in ensuring that the government authorities fulfil the objectives of the RTE act. It is necessary to ensure that any future revisions to the act are thoroughly thought out to minimise implementation complications. As a significant endeavour, the Right to Education act necessitates that the government invest significant funding to implement the activities envisaged successfully.

## **5.9 Suggestions**

1. Decentralized accountability and provide clarity on roles.

RTE should be decentralised, and the Act should explicitly define the roles and responsibilities of School Management Committees, state governments, and local governments to avoid uncertainty. This would contribute to the efficient operation of all agencies. The expertise of the local entities should determine the degree of autonomy and power distribution. It is necessary to raise the accountability of these establishments in order to compel them to perform and improve the state of education in the country. Furthermore, best practices from each state should be shared and tailored to the particular of a state in order to promote fast-track learning across authorities. State governments should monitor what schools are doing, assist schools financially, and the RTE programme as a whole should be well-planned for the simple fact that

we are dealing with children at a vulnerable age. There is also a need to unify inspection rules and create a school watchdog because not all schools are self-driven.

## 2. Provide single-window grievance redressal

Establishing a "one-window" RTE Commission that is directly accessible to all stakeholders is required to turn potential RTE into reality. The commission should be an independent organisation that acts as an ombudsman and has the authority to issue enforceable orders. The establishment of such an organisation will also effectively demonstrate the government's commitment to education and investment in India's future.

## 3. Fix the income limit for the EWS category

Since it is impossible to define the determinants for income restrictions in the legislation, each state should establish an income limit. If the authorities do not define a minimum income level, private unaided schools will be unable to evaluate eligibility for admitting pupils from the EWS group. To guarantee that these provisions are implemented, a writ of mandamus could be sought from the appropriate High Court, directing states to declare yearly income restrictions in order to define children who belong to the weaker segment.

Better categorisation of income levels and preferences for deserving children are required. Deserving parents with incomes somewhat higher than INR1 lakh (100,000) cannot have their children admitted under the RTE Act, even if their child is a deserving candidate. In this manner, we deprive excellent parents who are not economically disadvantaged but are unquestionably deserving. As a result, there is a need to modify the financial ceiling and prioritise potential students.

## 4. Conduct orientations for admission procedures

An orientation session for the administration and teachers participating in the admission process of the individual schools should be held to ensure that the admission procedure is not prejudiced and that the technique of selection is unbiased. Grouping by level rather than grade can help to make instruction more efficient, and basic skills can be learned more quickly.

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#### **CONVENTIONS AND TREATIES**

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- iii. International Covenant on Economic Social and Cultural Rights (1966)
- iv. Convention on the Elimination of All Forms of Discrimination against Women (1979)
- v. Convention on the Rights of the Child (1989)

- vi. International Convention on the Protection of the Rights of All Migrant Workers and Members of their families (1990)
- vii. Convention on the Rights of Persons with Disabilities (2006).

#### **STATUTES AND LEGISLATIONS**

- i. Constitution of India
- ii. Right of Children to Free and Compulsory Education Act, 2009

## APPENDIX

### THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES

Kalamassery, Kochi – 683 503, Kerala, India

#### CERTIFICATE ON PLAGIARISM CHECK

1.	Name of the Candidate	Athira Prasad
2.	Title of Thesis/ Dissertation	Right to Education: A Critical Analysis of the Indian Approach
3.	Name of the Supervisor	Dr Ambily P
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