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Child Rights in India Comprehensive Analysis of Legal Frameworks and Implementation Challenges

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ABSTRACT

This research paper provides a comprehensive examination of child rights in India, with a focus on the legal frameworks and policies established to protect and promote the welfare of children. It examines the main aspects of child rights as defined by the Convention on the Rights of the Child (CRC) and India's efforts to comply with its obligations under the CRC. The paper also addresses the obstacles to implementing child rights, particularly in vulnerable and disadvantaged communities. This research aims to cast light on the progress made and areas requiring further attention to guarantee the effective protection and fulfilment of child rights in India by analysing existing literature and legal documents.

The results of this study will contribute to the ongoing discussion on child rights in India and provide policymakers and other stakeholders with recommendations to strengthen the implementation of child rights laws and policies. In order to create a more inclusive and equitable society for all children in India, the study will also emphasise the significance of confronting the social, economic, and cultural barriers that impede the realisation of child rights. This research paper provides a comprehensive examination of child rights in India, with a focus on the legal frameworks and policies established to protect and promote the welfare of children. It examines the main aspects of child rights as defined by the Convention on the Rights of the Child (CRC) and India's efforts to comply with its obligations under the CRC.

The paper also addresses the obstacles to implementing child rights, particularly in vulnerable and disadvantaged communities. This research aims to cast light on the progress made and areas requiring further attention to guarantee the effective protection and fulfilment of child rights in India by analysing existing literature and legal documents.

Keywords: *Child Rights, Human Rights.*

I. INTRODUCTION

Children are among the most vulnerable members of society, and protecting their rights is essential for their development and well-being as a whole. Ensuring that children have access

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to quality education, healthcare, and a safe environment is crucial for their overall growth. Additionally, promoting their participation in decision-making processes and providing them with opportunities to express themselves fosters their individuality and empowers them to become active contributors to society.

The CRC, ratified by India in 1992, establishes the principles and provisions for the rights of the child. The CRC recognizes that children have the right to be protected from all forms of abuse, neglect, and exploitation. It also emphasizes the importance of providing children with equal opportunities and eliminating discrimination against them. By adhering to the principles outlined in the CRC, India is committed to ensuring that every child's rights are respected and upheld, ultimately contributing to their overall development and well-being. This research paper examines the legal and policy landscape in India pertaining to children's rights, highlighting the key aspects and implementation challenges.²

II. CHILD RIGHTS IN INDIA: LEGAL FRAMEWORK

Everyone has the right to education, according to Article 26 of the Universal Declaration of Human Rights, Everyone has the right to education, according to Article 26 of the Universal Declaration of Human Rights. At least the elementary and primary levels of education should be provided without cost.

(A) The International Convention on the Economic Social and Cultural

The Articles 13 and 14 of the ICESCR define the purpose of education systems and their content. It also includes the obligation to develop equitable access to higher education through the progressive introduction of free higher education and the right to free and compulsory education for all. Individuals who have not completed primary education have the responsibility to be provided with a fundamental education under this privilege.³

(B) Convention on the Rights of the Child (CRC)

The United Nations General Assembly in 1989 adopted the Convention on the Rights of the Child (CRC) an international human rights treaty that establishes a comprehensive set of rights for children worldwide. India signed the Convention on the Rights of the Child on December 11, 1992, and subsequently ratified it, reaffirming its commitment to uphold and protect the rights of children within its borders. The CRC contains 54 articles that address the civil, political, economic, social, and cultural rights of minors as well as their right to development.

² Convention on the Rights of the Child

³ Articles 13, **The International Convention on the Economic Social and Cultural**

The Convention on the Rights of the Child recognises children as individuals with unique requirements and vulnerabilities, deserving of special care and protection. It emphasises the role of the state and society in fostering an environment in which children can develop, learn, and participate actively in society. India is required by the CRC to adopt all legislative, administrative, and other measures necessary to effectively implement the convention's rights. This includes incorporating the CRC's principles into its national laws, policies, and programmes and allocating sufficient resources to achieve the goals of promoting and protecting children's rights.

In accordance with the CRC, India has enacted several domestic laws and policies addressing juvenile rights concerns. Despite India's commitment to the CRC, effective implementation of child rights continues to face obstacles. These obstacles include poverty, lack of access to quality healthcare and education, child labour, child marriage, and violence against children, especially in rural and disadvantaged communities. To address these issues, the government, civil society, and other stakeholders must collaborate to ensure that children's rights are protected, promoted, and fulfilled nationwide. Regular monitoring, evaluation, and development of policies and programmes are essential for fostering an environment in which every child in India can flourish and realise his or her entire potential.

III. CONSTITUTIONAL RIGHT TO EDUCATION

(A) Fundamental Rights

The Article 21A of the Indian Constitution (added by the 86th Amendment) is a fundamental right that mandates that all minors between the ages of six and fourteen receive free and mandatory education. In accordance with Article 21A, "free education" means that no child, other than one whose parents have admitted him or her to a school not supported by the applicable government, shall be required to pay any type of fee or charge.⁴

(B) Directive Principles

The Constitution's Article 41 recognises the "Right to Education." It states that the state shall, within the limits of its economic capacity and development, make effective provisions for securing the right to education, even though a citizen cannot enforce the directive principle stated in section IV of the Constitution.⁵

⁴ Article 21A, The Indian Constitution Act

⁵ Article 41, The Indian Constitution Act

The article 45 of the Constitution stipulates that the state shall endeavour to provide free and mandatory education for all children up to the age of fourteen. The state shall make every effort to provide early childhood care and education for all children up to the age of six.⁶

The Article 45 requires the state to provide free and compulsory education for all students, but the State Government is not legally obligated to provide free education, nor are they required to pay teachers or cover any expenses incurred by private institutions. The Indian Constitution's Article 46 promotes the economic and educational interests of SC/ST and other disadvantaged groups. This Article is only promoted with special consideration for the economic and educational interests of the disadvantaged section of the population, in particular the Schedule Cast and Schedule Tribe. It is not desirable for the State to stigmatise the entire Indian society to advance the economic and educational interests of Schedule Tribes and Schedule Castes.⁷

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IV. THE NATIONAL POLICY OF EDUCATION

(A) Domestic Legislation: Right to Education Act (RTE)

The National Education Policy (NEP) of 1968 emphasised retention rather than enrolment as a means of enhancing school quality. In 1967-68, the retention rate fell to 35%, resulting in a dearth of access to and quality of education. In 1976, education became a concurrent subject, and in 1986, Parliament adopted the National Policy on Education (NPE). The NPE defined universal retention and universal achievement and advocated for a Common School System. However, most of these policies were neither enforceable nor justifiable, prompting 1992

⁶Article 45 ,The Indian Constitution Act

⁷A 45,The Indian Constitution Act

⁸Article 46 ,The Indian Constitution Act

revisions. Up until 1992, the Revised Program of Action 1992 resolved to provide free and mandatory education of adequate quality to all children.

The Sarva Shiksha Abhiyan 2001 programme seeks to provide all students aged 6 to 14 with a useful, pertinent education by 2010. This initiative seeks to expand access to education and enhance its quality. In the past 50 years, India has made significant strides in education, launching numerous initiatives and programmes to attain the Universal Elementary Education objective. The goal of the Sarva Shiksha Abhiyan Program is to provide all students aged 6 to 14 with a useful and relevant elementary education. With the advent of British education in India, the Indian education system has developed since the dawn of ancient civilization. Although the British introduced education in India for their own benefit, it is because of British education that we are learning English today.

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(B) Right to Education Act (RTE) of 2009:

The Right to Education Act (RTE) of 2009 is a landmark law in India that has transformed the educational landscape by establishing education as a fundamental right for children aged 6 to 14 years old. The act seeks to ensure that all children, regardless of socioeconomic status, caste, gender, or religion, have access to free and mandatory education in a neighbourhood school. It is axiomatic that an individual receives equal opportunities under the right to education to fully develop his faculties and become a whole person. To realise the right to universal education, Article 21A of the United States Constitution requires the State to provide education.

The Right of Children to Free and Compulsory Education Act, 2009 (RTE)³³ was enacted on 1 April 2010 and went into effect on the same date.

The RTE Act of 2009 is child-centred and calls for a reorientation of the teacher to adapt to the circumstances of the child. It seeks to make primary education a fundamental entitlement for all students aged 6 to 14 years old. The act also mandates a 25% reservation for disadvantaged segments of society, such as SCs and STs, Socially Backward Class, and children with special needs. It provides for the inclusion of dropouts and other children in age-appropriate classes. Providing safety and security by eradicating fear, trauma, and anxiety by establishing a child-friendly and child-centred learning environment are a few of the Act's most essential features. The RTE Act seeks to provide free and mandatory education for children ages 6 to 14, eliminating barriers to attendance caused by financial constraints or societal pressures. It

prohibits discrimination on the basis of gender, caste, religion, or socioeconomic status, promoting inclusiveness and equal opportunities for all children.

The act specifies norms and requirements for school infrastructure, teacher qualifications, student-teacher ratios, and learning outcomes. It establishes a maximum pupil-to-teacher ratio to prevent overpopulation and envisions a neighbourhood school system that minimises travel distances for students. Teacher training and professional development are also emphasised to improve learning outcomes and enhance the quality of instruction. The RTE Act recognises the need for inclusive education for children with disabilities, ensuring that all children have equal access to education. Since its implementation, school enrolment rates and educational infrastructure have improved significantly, with more children from marginalised communities gaining access to education. However, obstacles such as inadequate infrastructure, teacher shortages, and high attrition rates persist, especially in rural and poor regions. To fully realise the RTE Act's potential, increased budgetary allocations, teacher capacity development, and a collaborative approach involving all stakeholders are required. Advocacy, monitoring, and evaluation are necessary to ensure that every child in India has access to a quality education, allowing them to realise their maximum potential and contribute to the nation's advancement. Children older than six who have not been admitted to school or who cannot conclude their elementary education are admitted to an age-appropriate class. They could receive free education and specialised training until completion. Birth certificates issued under the Births, Deaths, and Marriages Registration Act of 1856 or other prescribed documents are accepted as proof of age for admission. Certificates are awarded to students who conclude elementary school.

The Right to Education Act (RTE) of 2009 is a landmark law in India that has transformed the educational landscape by establishing education as a fundamental right for children aged 6 to 14 years old. The act seeks to ensure that all children, regardless of socioeconomic status, caste, gender, or religion, have access to free and mandatory education in a neighbourhood school. It is axiomatic that an individual receives equal opportunities under the right to education to fully develop his faculties and become a whole person. In order to realise the right to universal education, Article 21A of the United States Constitution requires the State to provide education to all citizens. It states, "The State shall provide free and compulsory education to all children between the ages of six and fourteen in such manner as the State may determine by law.

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inclusiveness and equal opportunities for all children. The act specifies norms and requirements for school infrastructure, teacher qualifications, student-teacher ratios, and learning outcomes. It establishes a maximum pupil-to-teacher ratio to prevent overpopulation and envisions a neighbourhood school system that minimises travel distances for students. Teacher training and professional development are also emphasised to improve learning outcomes and enhance the quality of instruction.

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a. Physical punishment and mental harassment of children

One of the most important provisions of the Right to Education Act (RTE) of 2009 is its explicit prohibition of physical punishment and mental harassment of students within the school setting. This provision emphasises the importance of creating a secure, nurturing, and respectful environment for children in which they can learn and develop without fear or intimidation. By eliminating detrimental disciplinary practices, the RTE Act seeks to foster a positive and conducive learning environment for all students.

The 2009 RTE Act prohibits corporal punishment categorically under Section 17 prohibits physical punishment and mental harassment of children and specifies disciplinary action for violators in accordance with applicable service rules. The well-being and development of a child can be negatively impacted by physical and mental abuse. These practices not only result in physical injuries, but also mental trauma, dread, and anxiety. Children who experience corporal punishment or mental harassment may develop a negative attitude towards school and learning, thereby impeding their educational advancement. The purpose of the Act's Sections 8 and 9 is to ensure that children from disadvantaged and disadvantaged social groups are not discriminated against or prevented from pursuing elementary education.⁹

⁹ Section 17, **Right** to Education Act (RTE) of 2009

Even the provisions of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, can be used against the perpetrators if they subject children to corporal punishment for belonging to inferior castes. 1860 Penal Code of India (IPC).

The IPC addresses multiple offences involving varying degrees of physical injury and intimidation; these can be used to prosecute an adult perpetrator for inflicting corporal punishment on children in an institutional setting.

The section 23 of the Juvenile Justice (Care and Protection of Children) Act of 2000 applies primarily to those who have "actual custody or control" over a minor. The Section encompasses parents, guardians, instructors, employers, or anyone in a position of authority over a minor. Cultural norms and traditional disciplinary approaches have historically perpetuated the use of corporal punishment in certain educational settings.¹⁰

However, the RTE Act acknowledges the need for a cultural transition towards more child-centred and positive disciplinary methods that promote constructive behaviour and instil a sense of discipline without the use of violence or humiliation. The prohibition of physical punishment and mental harassment in the RTE Act is grounded in the principle that every child has the right to be treated with dignity and respect. The purpose of schools is to provide academic, emotional, and social opportunities for children's growth. The RTE Act emphasises the significance of teacher training to equip educators with alternative disciplinary methods and classroom management techniques. Providing instructors with tools to effectively manage student behaviour contributes to the development of an environment where students feel safe and valued. The act establishes accountability mechanisms to ensure that the ban on physical punishment and mental harassment is adhered to. Institutions and instructors who violate these provisions may encounter disciplinary measures and legal consequences. The RTE Act promotes familial and community involvement in establishing a supportive school environment. Schools are urged to engage parents and communities in comprehending the significance of positive discipline and promoting child-friendly practices at home and in school.

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b. Case laws

Bandhua Muti Morcha v Union of India and others, the court held that the right to life guaranteed by Article 21 does take in “educational facilities”. The right to education has been treated as one of transcendental importance in the life of an individual’s has been recognized not only in this country for thousands of years but all over the world.¹¹

S. Jai Singh & Ors. v. State & Anr. (2021) In a case involving children being asked to do a duck walk as punishment for lateness, research has shown that duck walking can increase knee joint vulnerability to injury. The staff and physical training mentors were found to be careless in their actions. The court observed that professional teachers should have knowledge of their field and stay updated with advancements. Teachers should act with responsibility and caution, as their actions directly affect students' physical health. The case serves as a reminder of the duty of teachers to stay informed and informed about scientific advancements. The bench deemed it appropriate to invoke the petitioners' moral obligation to pay monetary compensation to the aggrieved families.

c. Criticism of the RTE Act

The RTE Act is a step towards free and mandatory education in India, but it has been criticised. Among these are the hasty draught, disregard for the quality of education, exclusion of children under the age of six, corruption allegations, and ineffectiveness of programmes such as the Sarva Shiksha Abhiyan. In addition to requiring documents such as birth certificates and BPL certificates, the Act may have precluded orphans from receiving benefits. Implementational obstacles include discriminatory behaviour towards parents and difficulties for students to integrate into various sociocultural environments. In 2019, an amendment instituted regular annual exams for the fifth and eighth grades, allowing students to retake failed exams. This was done in response to complaints that the learning levels of children could not be effectively evaluated without regular exams. Six states, including Andhra Pradesh, Karnataka, Kerala, Goa,

¹¹ *Bandhua Muti Morcha v Union of India and others* 984 AIR 802 1984 SCR (2) 67 1984 SCC

Telangana, and Maharashtra, which had superior learning outcomes due to their effective implementation of the Central Council of Education (CCE) system, opposed the amendment. Due to a dearth of teacher training and orientation, many states struggle to implement the CCE system. The Act is also criticised for increasing the standards and outcomes of the public education system while shifting the burden to private institutions. To promote equality, inclusion, and unity, the government and stakeholders should prioritise the quality of education and advance progressively towards a national unified educational system.

V. RECOMMENDATIONS

The Indian government must ensure that all births, fatalities, and migrations are recorded and monitored. The registrar general should include all registered births, funerals, migrations, and marriages in the monitoring of children's well-being and school enrolment. 6% of the gross domestic product or 20% of government expenditures should be allocated to education, with 50% of these funds allocated to elementary education. Teachers who are qualified and regularly employed should be recruited to assure a quality education, and child rights laws should be enforced to eliminate child labour, servitude, and trafficking. A quality education system with measurable indicators for parental and community monitoring should be established. Efforts should be made to ensure that all children, regardless of their parent's socioeconomic status, have access to the same educational system. Privatizations, such as Public Private Partnerships and franchising to corporate bodies, should be eliminated to prevent profiteering, commoditization, and a deterioration of the public education system. The state should allocate at least 6% of its total budget to education, spend the entire budgeted amount without deviations, and promote teaching faculty at all levels based on their teaching proficiency rather than their age. The RTE Act should be amended to cover the educational costs of 25% of students from disadvantaged communities. The current system of allocation may create dilemmas between the federal government and the states; therefore, responsibility must be assigned rigorously to either the federal government or the states to avoid confusion.

The education system in India should prioritise the holistic development of students by incorporating extracurricular activities, vocational and life-oriented subjects into the learning process. The commercialization of education should be placed under strict regulatory control, and state-sponsored or aided institutions should be encouraged in remote and socioeconomically disadvantaged areas. To implement the right to education without discrimination based on socioeconomic status or urban-rural status, a comprehensive education policy should be implemented.

VI. CONCLUSION

In its conclusion, the paper summarises the main findings and reiterates the significance of the RTE Act in advocating the right to education in India. It highlights the accomplishments and remaining obstacles in ensuring equitable access to quality education for every child, emphasising the need for continuous efforts and collaborative action by diverse stakeholders to surmount the obstacles and realise the RTE Act's maximum potential.

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