

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 2

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Decoding India's Right to Education: Access, Quality and Challenges

ARLEEN KAUR SETHI¹

ABSTRACT

The Right to Education (RTE) is a fundamental right enshrined in the Constitution of India, aiming to provide accessible and quality education to every child. This paper presents an analysis of the current status and significance of the Right to Education in India, exploring the effectiveness of its implementation and the challenges hindering its full realization. The study delves into the legal and policy framework surrounding the Right to Education, emphasizing the constitutional amendments and legislative acts that have shaped its trajectory. A comprehensive review of government initiatives, educational infrastructure, and budgetary allocations reveals the strides in enhancing access to education. However, the research also highlights persisting challenges, such as regional disparities, socio-economic inequalities, and insufficient resources, which impede the universalization of quality education. The significance of the Right to Education is assessed through its impact on social development, economic growth, and the empowerment of marginalized communities. Furthermore, the research sheds light on the qualitative aspects of education, evaluating the curriculum, teaching methodologies, and the overall learning environment. Insights from educational experts, teachers, and students contribute to an in-depth understanding of the ground realities and the need for continuous improvement.

Keywords: Right to Education, Constitution, legal, policy, amendments, act.

I. INTRODUCTION

The Right to Education Act in India was implemented to ensure that every child has the right to free and compulsory education. This act aims to provide quality education, making it accessible to all children in the country. The implementation of the RTE Act has led to significant progress in the education sector, but it also continues to face various challenges. On April 1, 2010, the RTE Act and Article 21-A were enacted. All children between the ages of 6 and 14 are eligible for free and compulsory education under the terms of the Right to Education title. In *Mohini Jain v. State of Andhra Pradesh*², the Supreme Court acknowledged the right to education as a basic right for the first time in 1992. According to the court, the right to life

¹ Author is a student at Alliance University, India.

² (1992) SCC (1) 645

immediately precedes the right to education. Since education is the only thing that preserves a person's dignity, the state must offer its citizens access to all levels of education.

Furthermore, the current scenario also highlights the importance of addressing systemic and fundamental problems within the education system.³ Without addressing these underlying issues. Therefore, policymakers and stakeholders must address these challenges and work towards creating an environment that promotes accessible and quality education for every child.⁴ The inclusion of socially disadvantaged children in private schools through an allocation of 25% of places is a step in the right direction towards achieving this goal. This measure aims to bridge the gap between privileged and marginalized communities, allowing children from underprivileged backgrounds to access quality education. By creating new infrastructure, sharing physical resources, and actively involving non-government schools and colleges in providing education to economically weaker students, the goal of universal education for all children in India can be closer to reality. However, it is important to note that the success of these interventions lies not only in their implementation but also in their evaluation.

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine," states Article 21A of the Indian Constitution.

(A) Research gap

Previous studies have focused on issues such as teachers' qualifications, students' school attendance, and elementary education, and this research study contributes to the field further by highlighting aspects like quality, mid-day meals, infrastructure, shortage of qualified teachers, and economically weaker sections. This research also deals with the increase of the age limit of 6-14 years for free and compulsory education provided to children as a basic right.

(B) Literature Review

The foundation and source of ideas for significant, beneficial research has been called the literature review. A literature review in this thesis serves three purposes. As a beginning point for identifying knowledge and its applicability to one's research, it first examines previous studies. To learn more about the topic and conduct research. Additionally, it permits the author to assess the scholarly literature level and pinpoint the greatest research. Thirdly, literature analysis can assist in explaining how it will be unique from previous research, putting your thesis in context, and making it an original addition to the topic.

³ Dubey, M. (2019). <https://journals.sagepub.com/doi/10.1177/004908570904000102>

⁴ Ashokkumar, G. B. (2015). <https://rrjournals.com/index.php/rrijm/article/view/92>

- Islam, I. (2020, November). Carried out the perspectives, challenges, and recommendations of teachers concerning the RTE Act, a questionnaire with open-ended objective questions was formulated. The study's findings reveal a substantial disparity between policy initiatives and their practical implementation in the field. The data underscores the existence of challenges and underscores the need for a closer examination of the alignment between policy intentions and their effective execution in primary education.
- Bajpai, B.K. (2014) conducted a study focusing on the norms outlined in the Right to Education (RTE) Act and their impact on the performance of elementary education. The primary objective was to evaluate the advancement and execution of the RTE Act, 2009 in fostering the development of elementary education. The findings from the study indicated a significant influence of the progress and implementation of the RTE Act, 2009 on the overall enhancement of elementary education. Additionally, in another study conducted in the same year by Chandrappa, the relationship between RTE norms and the performance of elementary education was explored.

(C) Research Objective

- To understand the challenges of ensuring quality education
- To assess each policy's effectiveness in defending the right to an education.
- To examine the reason behind the decrease in the enrolment of students in higher studies.
- To understand several legal problems relating to lack of education.
- To study and know about the role of the Supreme Court in India in developing Article 21 by bringing various constitutional provisions.

(D) Research Questions

1. Whether RTE Act is justified in its limited availability to the 6–14 age group?
2. Is there any advantage of a 25% quota for students in educational institutions who are weaker and less privileged
3. Is there any policies and measures to ensure accessible and quality education?

(E) Hypothesis

The current legal structure falls short in compelling government authorities to meet the envisioned objectives outlined in the Right to Education (RTE) Act.

(F) Research Methodology

The method used by the researcher for the present research is doctrinal. This paper relied on and has been done with the help of secondary sources. The secondary sources have been taken from several legal documents, journals, reputed research articles, Government reports, and publications. Throughout the case study, legal, historical, analytical, and comparative methods were taken into account to assess a diverse range of secondary sources. An in-depth study has been done on the case laws related to the Right to Education in India and also several case laws were read and considered.

II. A CONSTITUTIONAL ANALYSIS: RIGHT TO EDUCATION

Education is " the collective efforts of a human community to transmit a body of knowledge, skills, and a moral code to its succeeding generations, ensuring the existence of that community."⁵ Emile Durkheim, widely acknowledged as the founding figure of modern social science, defined education as the influence of older generations on those not yet prepared for social life. The primary objective is to stimulate and cultivate in individuals the physical, intellectual, and moral qualities demanded by society and the specific environment to which they are destined."⁶

The 86th Amendment Act of December 2002 has established free and compulsory education as a fundamental right under Article 21A of the Indian Constitution. In an earnest endeavor to actualize this constitutional provision, the Right of Children to Free and Compulsory Education Act was enacted on August 4, 2009. This legislative measure represents a decisive response to rectify the extensive disparities prevalent in elementary education. The Act aims to facilitate universal access to education, ensuring that every individual can engage in and derive benefits from the educational system. This chapter seeks to elucidate the legal framework of the Right to Free and Compulsory Education while also undertaking a critical evaluation of the provisions embedded within the Act.

The formal recognition of the right to education occurred with the landmark case of *Mohini Jain v. State of Karnataka*.⁷ Following this pivotal decision, subsequent judicial pronouncements, including *Unni Krishnan, J.P. v. State of Andhra Pradesh*⁸, *TM.A. Pai Foundation v. State of Karnataka*⁹, and *P.A. Inamdar v. State of Maharashtra*¹⁰, further

⁵ Mialaret, G. (n.d.). Amadou-Mahtar M'Bow "Introduction," *The Child's Right to Education*, 9, 14-15.

⁶ Emile Durkheim, *Education et. Sociologie* (1992) T.B. Bottomore, *Society* (1986) p. 262.

⁷ 1992 AIR 1858

⁸ 1993 AIR 217

⁹ 1994 AIR 2374

¹⁰ (2005) 6 SCC 567

elaborated on and solidified the legal foundation for the enforcement of the right to education. The Constitution of India is rooted in the principles of 'Justice,' 'Liberty,' 'Equality,' and 'Fraternity,' signifying a commitment to fostering a social revolution. This commitment is at the core of Parts III and IV, encompassing Fundamental Rights and Directive Principles, respectively. India, having signed the United Nations Universal Declaration of Human Rights (1948), integrates numerous concerns from the UDHR into its constitutional framework. The right to education, articulated in Article 26 of the UDHR, is mirrored in the Indian Constitution through Articles 41 and 45 under the Directive Principles of State Policy. These constitutional provisions underscore the state's responsibility to provide free and compulsory education at the primary and fundamental stages.

Article 41¹¹ emphasizes the state's duty to secure the right to education, taking into account its economic capacity and development. In contrast, Article 45¹² imposes a more stringent demand, urging the state to provide education for all children up to the age of 14 years within a decade, irrespective of economic conditions. While Article 41 anticipates the state making adequate provisions for education within economic limits, Article 45 places a more rigorous demand on the state to provide education to all children up to the age of 14 years within ten years, regardless of economic constraints.

The Constitution perceives education as a religious obligation of the state, as noted in Article 41. Additionally, Article 42 encourages the state to make unwavering efforts to provide free and compulsory education for all children up to the age of fourteen within a decade of the Constitution's adoption. However, it is crucial to note that, under the Directive Principles, the right to education is not justiciable, meaning any denial or neglect of this right cannot be contested in a court of law.

The constitutional framework places a significant emphasis on the state's responsibility to provide education, striking a balance between economic considerations and the urgent need to fulfill the educational rights of the population. While the judiciary has demonstrated a keen interest in various matters, the implementation and realization of these constitutional provisions remain pivotal for achieving the envisioned social revolution through education.

(A) Development of Education System in India

Across India's historical narrative, esteemed intellectuals consistently emphasized the significance of education. They regarded Vidya, or education, as the 'third eye' for individuals,

¹¹ Indian Constitution (Article 41)

¹² Indian Constitution (Article 45)

providing profound insights into various aspects of life and guiding appropriate actions. These scholars believed that education serves as a path to redemption, fostering comprehensive progress and success in worldly pursuits.¹³

Towards the end of the 18th century, India established a vast educational system delivered through a network of schools, colleges, and universities. However, following independence, India inherited an education system plagued by extensive regional disparities, both within and between regions. This system catered to a privileged few, intensifying the stark contrast between the educated and the illiterate. Economic disparity, gender bias, and rigid social hierarchies further exacerbated these educational inequalities. Under the traditional educational model, formal education remained confined to higher learning institutions and a limited number of elementary schools.¹⁴

While the Indian Constitution ensures various human rights for its citizens, it delineates between Fundamental Rights and Directive Principles of State Policy. Article 37 of the Constitution explicitly states that, although the Directive Principles are deemed "essential in the governing of the country," and the state is obligated to execute them, they are not meant to be justiciable and "must not be enforced in any court." The interpretation of the wording of Article 37 has been a subject of considerable discourse.

While various provisions of the Constitution influence the right to education, Article 45, situated within the Directive Principles, holds particular significance. Initially, it declared: "The State shall strive to ensure, within ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years." Notably, this is the sole clause among the Directive Principles that imposes a time limit, underscoring the earnest intent of the Constitution's framers toward ensuring its effective implementation.¹⁵

Despite the brief statistical study provided earlier, there was no significant improvement in the following three decades. By 1991, India's literacy rate remained low at 52.21 percent, trailing behind other emerging countries. Consequently, even after three decades beyond Article 45, it became evident that neither the federal government nor individual state governments were making progress in achieving the stated goal of Article 45 in the Constitution.¹⁶

¹³ S. Gupta, *Education in Emerging India*, 2nd Ed. (2008), Shipra Publications, Delhi, p.1.

¹⁴ Education system in pre-independence India <https://www.coursehero.com/file/95179395/HPEE-Newdocx/> (last visited on February 2024)

¹⁵ Indian Constitution

¹⁶ Educational Statistics (2000-2001)1

(B) The Right to Education Act Encompasses Nine Main Features:

1. It stipulates that every child aged between six and fourteen possesses the right to receive free and compulsory education in a local school until the completion of elementary school¹⁷.
2. The Act explicitly states that no child should be compelled to pay fees or penalties hindering their access to primary school.
3. Government or locally administered schools are mandated to provide free and compulsory basic education to all admitted students under the provisions of the RTE Act.
4. Independent schools are obligated to offer free education to at least 25% of children from economically disadvantaged sections of society within their community¹⁸.
5. In the case of Society for Un-Aided Private School of Rajasthan v. Union of India & Anr¹⁹, the Supreme Court affirmed the constitutionality of the Right to Education Act, 2009, ensuring 25% free seats for economically disadvantaged students in both government and private unaided schools nationwide.
6. The Act ensures the enrollment of children who have either dropped out of school or have not attended any school, and no school can refuse them admission.
7. The legislation includes a provision for providing special education to children who have not been admitted to any school or have not completed their elementary education, placing them in an age-appropriate class.
8. It asserts that any child meeting such criteria is entitled to receive special education.
9. Overall, the Right to Education Act aims to guarantee universal access to quality education for all children aged six to fourteen, addressing issues of fees, enrollment, and special education provisions.

Additionally, under Section 6 of the RTE Act, it is mandated to establish a school in areas or neighborhoods where such a facility is absent within a designated timeframe from the commencement of the Act.

Section 13(1) of the RTE Act explicitly prohibits any school or individual from collecting capitation fees or subjecting a child, their parents, or guardians to any screening procedure. This

¹⁷ Right to Education Act, S. 3(1) and S.3(2), Act of Parliament (2009)

¹⁸ Right to Education Act, S. 12(g), Act of Parliament (2009)

¹⁹ 2016 6 SCC

provision aims to ensure that every child between the ages of six and fourteen has equitable access to quality primary education. Additionally, Section 2(o) specifies that only random methods should be employed for admitting a child to a school. In instances where the number of applicants exceeds the available seats, a lottery mechanism is to be utilized under the random approach to allocate seats.²⁰

The Supreme Court, in the case of Society for Un-Aided Private School of Rajasthan v. Union of India & Anr²¹, affirmed the Right to Education as a fundamental right for children aged 6 to 14 years. The RTE Act inserted Article 21A into the Constitution, mandating the state to provide free and compulsory education to all children in this age group as determined by law. The constitutionality of Section 12(1c) of the RTE Act, which ensures a 25% reservation, was upheld by the Supreme Court bench led by Chief Justice S.H. Kapadia and Justice Swatanter Kumar. This legal decision confirmed the constitutionality of the RTE Act, of 2009, which mandates a 25% allocation of free seats for disadvantaged students in both government and private unaided schools nationwide.

The RTE Act establishes guidelines and standards for schools,²² as outlined in the appended schedule of the act. These standards encompass critical aspects such as the ideal pupil-teacher ratio, specifications for school buildings, the minimum number of working days, instructional hours within an academic year, the minimum weekly working hours for teachers, the provision of a library facility, and guidance on teaching or play materials

(C) 86th Constitutional Amendment Act

The enactment of the eighty-sixth constitutional amendment aimed to safeguard the right to education for citizens. It introduced three constitutional amendments to enhance functionality and ensure the right to free and compulsory education for children aged six to fourteen. A prominent change brought about by the 86th Amendment Act was the addition of a new Article, 21A, in Part III of the Indian Constitution. This article asserts that every child has the right to free and compulsory education of equitable quality, subject to specific norms and standards.

The amendment also modified Article 45, which initially stated that "The State shall endeavor to provide early childhood care and free and compulsory education for all children until they reach the age of six." With the new fundamental obligation, a new phrase, (K), was included under Article 51A. This mandates that parents or guardians must provide educational

²⁰ Right to Education Act, S.13(1) and 2(o), Act of Parliament, (2009)

²¹ (2016) 6 SCC

²² Right to Education Act, S. 18(1) and 19(2), Act of Parliament, (2002)

opportunities for their children or wards between the ages of six and fourteen. Since the Act's enforcement on April 1, 2010, India joined 135 countries in recognizing education as 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 fulfill their responsibilities in providing free and compulsory education for children aged 6 to 14. Educators widely commend the act's objective, considering it a watershed moment in the nation's pursuit of universalizing elementary education.

In the case of *State of Tamil Nadu & Ors vs K Shyam Sunder & Ors*²³, the court emphasized that a child's "right to education should not be limited to free and compulsory education but should be expanded to include quality education regardless of economic, social, or cultural background."

(D) Free and Compulsory Education Act for Children²⁴

The Right to Education Act, proposed on August 4, 2009²⁵, is a parliamentary act that underscores the significance of providing free and compulsory education for children aged 6 to 14 in India. On April 1, 2010, India officially became the 135th country to recognize the right to education as a fundamental right guaranteed to every child under Article 21A of our Constitution.

The essence of the right to education is to ensure that governments take responsibility for fulfilling the fundamental learning needs of all individuals. These needs encompass essential learning tools, such as literacy, oral expression, numeracy, and problem-solving, as well as the fundamental learning content, including knowledge, skills, values, and attitudes. These elements are essential for individuals to survive, develop their full capacities, live and work with dignity, actively participate in development, enhance their quality of life, and make informed decisions. This commitment is in alignment with the World Declaration on Education for All of 1990.²⁶

(E) Conclusion

After 62 years of gaining independence, India acquired the right to education as a fundamental right. However, the primary objective of the Right to Education Act, which aimed to provide quality education for all, has largely fallen short. There is a critical need for the government to

²³ (2011) 8 SCC 737

²⁴ Act No. 35 of 2009

²⁵ Saini, Ashok, The Right of Children to Free and Compulsory Education Act – 2009

²⁶ World Declaration on Education for All Meeting Basic Learning Needs: A Vision For The 1990's, Jomtien Thailand, 5-9 March 1990

reconsider the viability and implementation of the R.T.E. Act. The future of India can only be promising if every child, irrespective of their socioeconomic background, receives a quality education. Recognizing significant gaps in the R.T.E. Act, crucial improvements must be made as it stands as the key legislation prioritizing the enhancement of school education for children. The ambit of the Right to Education Act should not be confined solely to children under the age of 14; it should be expanded to encompass high school students as well. The establishment of a conducive environment and an ample allocation of resources would pave the way for a brighter future, benefiting individuals and the nation as a whole.

III. RIGHT TO EDUCATION- INITIATIVES BY THE SUPREME COURT IN INDIA

In the 1990s, the Supreme Court had to determine the constitutional status of the right to education in two cases: *Mohini Jain v. State of Karnataka*²⁷ and *Unni Krishnan. P v. State of Andhra Pradesh*.²⁸ These cases involved challenges to state legislation aimed at curbing excessive "capitation" fees imposed by private higher education institutions. Interestingly, while both cases initially focused on higher education, they ultimately resulted in decisions impacting primary education.

When addressing the constitutional aspect of the right to education in *Unni Krishnan P v. State of Andhra Pradesh*, the Supreme Court expressed dissatisfaction with the apparent neglect of Article 45. It is noteworthy that among the various articles in Part IV, only Article 45 specifies a time limit; none of the others do. Considering the passage of 44 years, more than four times the term specified in Article 45, the Court questioned whether this extended period converts the duty outlined in the article into an enforceable right. Against this backdrop, the Court asserted that the allocation of funds to different education sectors in India contradicts the priorities stipulated by the Constitution.

The Supreme Court concluded that the right to education is derived from Article 21-a of the Constitution, guaranteeing the right to life and personal liberty. The Court considered not only articles 45, 41, and 46 of Part IV of the Indian Constitution but also drew on the International Covenant on Economic, Social, and Cultural Rights to shape its interpretation.²⁹

The Court highlighted that the rights outlined in the Directive Principles are essential for effective governance and serve as valuable guidelines in interpreting the substance of the Fundamental Rights. The Court construed the pertinent constitutional provisions to signify that

²⁷ A.I.R 1992 S.C. 1858

²⁸ A.I.R 1993 S.C. 2178

²⁹ ICESCR (1993)

each child in the nation possessed the entitlement to receive free education up to the age of fourteen. Subsequently, beyond this age, the individual's access to education was constrained by the economic capability and advancement of the state.

(A) The Consequences of Unni Krishnan v/s State of Andhra Pradesh

While the ruling in *Unni Krishnan JP v. State of Andhra Pradesh*³⁰ reignited discussions in India about the boundaries of judicial review, its immediate consequence was that any child below the age of fourteen facing denial of access to primary education could seek legal recourse by petitioning a court for a writ of mandamus, compelling the authorities to undertake necessary measures. This legal avenue proved to be a powerful tool, as members of civil society and non-governmental organizations strategically utilized it to exert pressure on the president and legislature, urging them to enact substantial reforms in primary education.

Over time, this issue has been a focal point for every extremist and educationalist in India. As the momentum grew for a constitutional amendment securing the right to education, various non-governmental organizations and independent entities collaborated. One notable outcome was the establishment of the National Alliance for the Fundamental Right to Education (N.A.F.R.E.), a coalition comprising nearly 2,400 grassroots NGOs from fifteen Indian states at its peak. Remarkably, this collaborative effort saw like-minded groups addressing distinct yet interconnected concerns come together to brainstorm and devise strategies likely to yield success.

For example, organizations dedicated to eradicating child labor, such as the South Asian Coalition on Child Servitude (S.A.C.C.S.)³¹, a conglomerate of over 400 human rights groups across South Asia, and the Campaign against Child Labor (C.A.C.L.), recognizing the significance of the right to education for their causes, united with groups like N.A.F.R.E. The South Asian Coalition on Child Servitude (SACCS) engages in rescue operations and raids to liberate child laborers.³²

(B) Mohini Jain v/s State of Karnataka

In the case of *Mohini Jain v. State of Karnataka*³³, the Supreme Court, with a division bench consisting of Justices Kuldip Singh and R. M. Sahai, addressed the issue of the legitimacy of charging capitation fees in the field of education. This practice marked a shift in considering

³⁰ 1993 AIR 217

³¹ South Asian Coalition on Child Servitude

³² SACCS: South Asian Coalition on Child Servitude 2000 <https://books.google.co.in/books?id=mvTdjwEACAAJ> (last accessed on Feb 2024)

³³ 1992 (2) SCALE 90

education as a lucrative sector³⁴, stemming from the inadequate educational facilities in the country.

To provide a summary, Mohini Jain, a resident of Meerut, sought admission to the MBBS program at a Medical College in Tumkur, Karnataka. Her admission was denied due to financial constraints in paying the fees. She contested the constitutional validity of the notification under Section 5(1) of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. This notification mandated Indian students from outside Karnataka to pay Rs. 60,000 per annum as tuition fees, while students from Karnataka were only required to pay Rs. 15,000 per annum.

The court examined the Preamble, along with Articles 21, 38, 39(c) and (f), 41, and 45 of the Constitution collectively. It concluded that the "right to education" falls under the ambit of Article 21, which guarantees the "right to life." The inclusion of the right to education within Article 21 was established in the case of *Ananda Vardhan Clumdel v. Delhi University (1978)*³⁵, in conjunction with Article 19(1)(a), (b), and (c). The petitioner faced exclusion from the Delhi University Students Union elections as his admission occurred just after the entry submission deadline. He argued that this infringed upon his right to education, protected by Articles 19(1)(a), (b), and (c), along with Article 21. The Delhi High Court's division bench, led by Justice V. S. Deshpande, differentiated between rights in Part III and Part IV of the Constitution. Part III rights, being natural and not contingent on socioeconomic conditions, and Part IV rights, being man-made, converge when the state provides educational facilities, making the right to education a fundamental right³⁶. While commendable, this logic, emphasized in a High Court judgment focusing on students' expression and participation in student union activities, may be seen as aligning with the Directive Principles of State Policy.

In Mohini Jain's case, a significant shift occurred in the judicial interpretation of Article 21. The ruling asserted the state's fundamental obligation to provide educational institutions and facilities at all levels, deeming the imposition of a capitation charge a blatant violation of this right.

(C) TMA Pai Foundation v/s State of Karnataka

The *TMA Pai Foundation vs. State of Karnataka*³⁷ case declared the court's scheme in Unni Krishnan as an unreasonable restriction under Article 19(6) of the Constitution, leading to

³⁴ "The entrepreneur- political nexus", Deccan Herald

³⁵ AIR 1978 Delhi 308

³⁶ Ibid

³⁷ 1994 SCC (2) 734

financial challenges for educational institutions. Consequently, all state orders from Unni Krishnan were deemed unlawful. The court emphasized that the right to establish and operate an institution encompasses enrolling students, setting reasonable tuition, forming a governing body, hiring staff, and implementing disciplinary actions.

TMA Pai Foundation's case introduced the concept of education as an "occupation" under Article 19(1)(g) for the first time. Addressing fundamental rights and the freedom to establish educational institutions, the court referred to Articles 19, 26, and 30. Article 19(1) empowers citizens in any vocation, Article 26 grants religious groups the right to maintain religious institutions, and Article 30(1) allows religious and linguistic minorities to establish educational institutions. The court, interpreting Article 19(1)(g), characterized education as a benevolent activity without a financial motive, categorizing the establishment of educational institutions as an 'occupation.' In the majority's view, Articles 19(1)(g) and 26 afford all citizens and religious denominations the right to establish and maintain educational institutions.

(D) Avinash Mehrotra v/s Union of India

In the case of Avinash Mehrotra v. Union of India³⁸, the Supreme Court of India interpreted the right to education to encompass a safe school environment. The court imposed specific fire safety procedures on schools, emphasizing that the state's obligation cannot be fulfilled by providing unsafe educational facilities. It asserted that ensuring the safety of children is integral to their fundamental right to education, making it mandatory for schools to offer secure facilities.

The case originated from a fire incident in a Madras middle school, which was a privately owned structure with a thatched roof, no windows, and a single entrance and exit. This school emerged in response to significant cuts in government funding for education. The tragic incident occurred in an improvised kitchen during lunch preparation, resulting in the death of 93 children and numerous injuries. Public Interest Litigation was initiated to protect schoolchildren from such tragedies and elevate the standards of schools nationwide.

The Supreme Court issued notices to the Union of India, state governments, and union territories. Affidavits from 27 states and union territories admitted that many schools did not meet their safety standards, which were already below the standards outlined in the National Building Code of India, 2005. The central query in this case revolved around whether there exists a fundamental right to education that ensures security and safety, and whether the state is obligated to uphold minimal safety standards in schools. As per Articles 21 and 21A of the

³⁸ (2009) 6 SCC 398

Constitution, the fundamental right to education encompasses the absence of fear regarding security and safety, and this right includes the provision of secure educational environments. Irrespective of whether a family opts for private schooling, the State is responsible for ensuring that children do not face harm while exercising their fundamental right to education.

State governments and union territories were directed to ensure that schools adhere to essential safety standards and that school buildings comply with safety norms outlined in the National Building Code. Authorities were obligated to provide affidavits confirming compliance with these regulations.

Justice Dalveer Bhandari, in interpreting the right to education, argued that providing education to a child involves more than just a teacher, a blackboard, or a classroom with books. A child's right to education necessitates access to a good school, and a good school should not compromise the safety of the child.

IV. CHALLENGES AND SUGGESTIONS

Upon the establishment of an independent Indian state, the leaders envisioned implementing a program to offer free and compulsory education for children aged six to fourteen. The goal was to achieve these objectives within a decade of the Constitution of India coming into force. This chapter encompasses the findings derived from analyzing the impact of the Right to Education Act, along with the researchers' suggestions for addressing the shortcomings of the Act.

Despite the implementation of the Right to Education Act, there are still challenges that hinder its full effectiveness in ensuring accessible and quality education for all children in India.³⁹

(A) Challenges

The educational system in India is facing significant challenges, failing to fulfill its objectives as evidenced by various research studies. There is a noticeable decline in the learning levels of school students, compounded by persistent issues such as teacher absenteeism and vacancies in government schools. Dropout rates are on the rise, and the education sector is marred by nepotism, corruption, and bribery in teacher appointments, transfers, as well as the approval and recognition of institutes. The examination system has been overly focused on marks, neglecting a holistic approach. Despite these challenges, approximately 65% of India's population is under 35 years old, presenting an opportunity to revamp the education sector. Recognizing education as a powerful equalizer, it stands as the sole sustainable means to address societal disparities.

³⁹ Dubey, M. (2019). <https://journals.sagepub.com/doi/10.1177/004908570904000102> (last accessed on Feb 2024)

1. Inadequate Infrastructure and Facilities

The government has initiated a national program named Swachh Bharat: Swachh Vidyalaya, which translates to "Clean India: Clean Schools." This initiative's pivotal aspect is ensuring that every school possesses functional water, sanitation, and hygiene facilities. Creating a safe and clean school environment is crucial for children's learning and overall development. A hygienic school setting is expected to improve children's health, boost attendance, reduce dropout rates, enhance student achievement, and contribute to long-term economic prosperity. The practical measures involve providing drinking water, handwashing facilities, and soap for both students and instructors within the school premises, with a particular focus on addressing the needs of girls and educators⁴⁰. Research indicates that such provisions have led to a 12 percent increase in enrollment in basic schools, and an 8 percent rise in enrollment in upper primary schools, resulting in lower dropout rates. Additionally, these efforts have contributed to increased enrollment of female students and the retention of female teachers.

2. Shortage of qualified teachers

The growth in the count of educators employed in government and aided schools is reflected in the teacher indicator. As per the MHRD Annual Report 2014-15, the combined number of teachers in India, encompassing both Government and Aided Schools, stands at 4,532,803, based on the data from the fiscal year 2013-14. The percentage of the upper primary has decreased. There should be an emphasis on the significance of recruiting additional human resources and the demand for quality teacher training industries in India.

3. Children unable to attend school

The National Sample Survey (NSS) reported that in September 2014, only 3% of children aged six to thirteen were identified as Out of School Children (OOSC)⁴¹. However, a considerable number of these children, although enrolled, have never attended school⁴². This data highlights the gap between touted success indicators and the actual societal benefits. Addressing social issues like child labor is crucial in ensuring that OOSC children, even if enrolled, actively participate in education. Concentrations of such children are notably high in Haryana and Rajasthan.

The UNESCO global education report from April 2015 acknowledges India's significant success in reducing OOSC by over 90%, achieving the goal of "universal primary education."

⁴⁰ Elementary Education in India, Statistics Report 2013-14

⁴¹ Vol 7/Issue 1, SSA, Budget Briefs, Accountability Initiatives 2014-15

⁴² Ibid

Despite increasing enrollments, improving school infrastructure, and enhanced access, there is a concerning lack of improvement in children's learning outcomes. While infrastructure and access are crucial, the government must shift its focus towards enhancing learning results to advance the education system truly.

A crucial aspect of the Right to Education (RTE) Act is its ambitious objective of ensuring equal access to elementary education for all children, irrespective of their socioeconomic status. Previous endeavors to achieve this goal were shaped by policy decisions.

By Section 12(1)(c) of the RTE Act, all schools, including private, aided, unaided, or falling under special categories, are mandated to reserve a minimum of 25% of their entry-level (class one) seats for children belonging to economically weaker sections (EWS) and disadvantaged groups (DG)⁴³.

The challenge arose with the implementation of the no-detention policy. An amendment in 2019 to the RTE Act brought about a modification to the previous practice of not detaining students in classes one to eight. This policy, initially aimed at sparing students from the social stigma associated with failure, was altered. Under the amendment, students in classes five and eight are now required to undergo regular annual examinations. In the event of failure, students must receive additional training, followed by a re-examination within two months. If a student fails for a second time, they can face retention. This amendment was prompted by concerns raised by several states asserting that adequate assessment of children was not possible without exams, and learning levels were often found to be insufficient beyond class eight⁴⁴.

Another critique of the RTE Act is its exclusive focus on students aged 6 to 14. The proposed National Education Policy of India recommends the incorporation of Early Childhood Care and Education (ECCE) within the ambit of the RTE Act⁴⁵. With over 164.47 million children in India aged six or younger, a developmental phase where cerebral growth is believed to be significantly rapid, there is a compelling argument for extending the RTE Act to encompass ECCE⁴⁶. Ignoring the foundational principles of ECCE and the consequential impact on

⁴³ 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, accessed on February 2024.

⁴⁴ 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 February 2024, <https://www.hindustantimes.com/education/no-detention-policy-may-be-removed-from-next-academic-yearunion-minister/story-M29zIEIia6bDQD2DsxNX8I.html>

⁴⁵ Draft National Education Policy 2019, Ministry of Human Resource Development, accessed February 2024, https://mhrd.gov.in/sites/upload_files/mhrd/files/Draft_NEP_2019_EN_Revised.pdf

⁴⁶ Final Population Totals, CensusInfo India 2011, Census of India, accessed February 2024, <http://censusindia.gov.in/2011census/censusinfodashboard/index.html>

students' lives is a limitation that the RTE Act cannot afford to perpetuate⁴⁷.

(B) Suggestions

1. The age range should be extended from 3 to 17 years, as numerous studies have demonstrated that a child's brain undergoes significant development, especially up to the age of 5. This early stage is crucial for exposing learners to high-quality education.
2. The state should actively participate in introducing technical courses such as IT, Media, Entertainment, Telecommunications, Automobile Construction, food processing, etc.
3. The efficacy of the Common School System for ensuring quality education in the past suggests that it should now be integrated with a Model School System, tailored to the needs and demands of society. A successful model could be Public-Private Partnerships on a Build-Operate-Transfer basis.
4. The provision in the Right of Children to Free and Compulsory Education Act, 2009, stating that "no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education" should be amended, as it may undermine the fundamental concept of learning.
5. Active involvement of all stakeholders, including parents, villagers, welfare societies, and panchayats, is crucial. Education is a two-way process; desired results cannot be achieved without one-sided initiatives.
6. Continuous scrutiny of the quality of the Mid-Day Meal program is necessary.
7. Urgent attention should be given to infrastructure, including classrooms, furniture, toilets, and access to clean drinking water.
8. While the primary responsibility for providing education lies with the state, non-state actors and civil society organizations should extend their support.
9. Classrooms are identified as learning centers where children gain confidence, undertake tasks, interact freely, and expand their knowledge. The government should prioritize providing essential infrastructure for these learning environments.

V. CONCLUSION

Based on the discussed chapters, it can be deduced that the Right of Children to Free and Compulsory Education Act, 2009, implemented on 4 August 2009 to provide free and

⁴⁷ "The Science of Early Childhood Development," accessed on February 2024 <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>

compulsory education for children aged 6 to 18 years in India, as mandated by Article 21A of the Indian Constitution, has effectively met its initial objectives. Over a decade of implementation has seen a substantial rise in school enrollments, with rates experiencing significant exponential growth. The expansion of schools in rural areas has witnessed growth, and with the RTE Act specifying teacher qualifications, there has been an increase in the number of qualified teachers in both rural and urban regions, facilitating more accessible learning. Government initiatives like the Mid-day Meal Scheme and Clean India: Clean School have been instrumental in retaining children in schools. Additionally, these programs foster school environments and children's activities that contribute to the prevention of water, hygiene, and sanitation-related diseases.

The research makes it evident that even after more than a decade since the enactment of the act, uniform educational quality is not guaranteed for every child in the country. The findings indicate a disproportionate emphasis on enrollment rates rather than the actual quality of education provided. Consequently, the RTE Act must shift its focus towards enhancing educational quality. This substantiates the research hypothesis, highlighting the inadequacy of the existing legislative framework in ensuring the fulfillment of the RTE Act's objectives by government authorities. It is crucial to ensure that any future amendments to the act are carefully considered to minimize implementation complications. As a significant undertaking, the successful implementation of the Right to Education Act requires substantial government investment in the envisaged activities.

VI. BIBLIOGRAPHY**(A) Books**

- Jn Pandey. The Constitutional Law of India Edition Tenth: Dr Jn Pandey
- Aggarwal, R.D. (1982), Laws of Education and Educational Institutions, Volume III, Law Book Company, Allahabad
- Pandey, S. and Panda, P. (2001), Legislation and Development of Education, New Delhi (unpublished report)
- Klaus Dieter Beiter, The Protection of the Right to Education by International Law, Martinus Nijhoff Publishers, vol. 82 (2014)

(B) Articles

- Beiter, K. D. (2016, December 21). The protection of the right to education by International Law: Including a systematic analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights (Martinus Nijhoff, 2006, International Studies in Human Rights, vol.
- Right to Education Act (RTE) - know importance & responsibilities. CRY. (2023a, August 25).
- Kishore Singh, The Right to Education: International Legal Obligations, 1 INT'l J. EDUC. L. & POL'y 103 (2005).
- Asha Verma, Legislative Framework of Right of Children to Free and Compulsory Education in India - An Analysis, 9 GNLU J.L. DEV. & POL. 83 (2019).
- Rao, P. P. (2008). FUNDAMENTAL RIGHT TO EDUCATION. Journal of the Indian Law Institute, 50(4), 585–592.
- Sathe, S. P. "Supreme Court on Right to Education." Economic and Political Weekly, vol. 27, no. 35, Economic and Political Weekly, 1992.

(C) Statues and legislature

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