

Right to Education: The Right of Children to Free and Compulsory Education Act (2009)

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Abstract

The Right to Education (RTE) has developed into a fundamental human right acknowledged in international and national contexts. The paper discusses the historical evolution, constitutional development and legislative framework of Right to Education in India. The study traces the origins of educational rights to international human rights instruments, such as the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Rights of the Child (1989), all of which emphasised free compulsory and equitable access to education. The paper discusses the constitutional provisions related to education in the Indian context such as Article 21A, 41, 45, 46, 29, 350A and 51A(k) that together hold the state responsible for providing educational opportunities to all children. The study also highlights the historical efforts made during the colonial and post colonial period for promoting universal elementary education including the contribution of Maharaja Sayajirao Gaekwad, Gopal Krishna Gokhale, Patel Act of 1917, Wardha Education Plan, Sargeant Report, Kothari Commission and National Policy on Education (1986). Special focus is laid on landmark Unnikrishnan Judgement (1993), 86th Constitutional Amendment Act (2002) and the enactment of the Right of Children to Free and Compulsory Education Act (2009) which made education a legally enforceable fundamental right for children between the age group of six to fourteen years. Education, the paper argues, is not just an instrument for economic growth but a prerequisite for social justice, human dignity, equality and national development. India's commitment to achieve universal access to quality education is reflected in the continuing efforts of its policymakers, constitutional architects, educational reformers and judicial institutions. The study concludes that the Right to Education is a basis for empowering citizens and strengthening democratic governance while promoting inclusive and sustainable development .

Keywords: Right to Education (RTE) ,Constitutional Provisions, Compulsory and Free Education, Reforms in Education in India, Human Rights and Learning

Since the Universal Declaration of Human Rights in 1948, education has been identified as a human right and, by virtue of this recognition of its importance in human life, the right to education has gained support from legislative and administrative structures throughout the world. Right to education has been provided to the respective nationals/children in many countries' constitutions. 43 countries have not made any such provision, while the Constitutions of around 144 countries guarantee the right to education to their nationals/children worldwide.

Article 26 of the Universal Declaration of Human Rights, 1948 provides for the right to education. It states "education shall be free at least in the elementary and fundamental stages."

The Article 18(4) of the International Covenant on Civil and Political Rights, 1966 reads that "The State Parties to the present covenant undertake to have respect for the liberty of parents and moral education of their children in conformity with own convictions .

The International Covenant on Economic, Social and Cultural Rights, 1966 in Article 13 states that, "Primary education shall be compulsory and available to all". The participant countries acknowledged that education is necessary for the full development of the human personality and the dignity that it accords and thus reinforces respect for human rights and fundamental freedoms.

(Article 28 of the United Nations Convention on Rights of Child, 1985) “the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity they shall make primary education compulsory and available free to all.”

Education is a right that opens the door with dignity to other rights. An educated person is able to access other rights. This is because access to education can lead individuals to develop and acquire skills, competency and capacity. Hence enabling individuals to lead lives confidently. Article 29 of the Convention on the Rights of the Child, 1989 states the aims and objectives of education as follows: “the maximum development of the child’s personality, talents, and mental and physical capabilities; the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations; the development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; the development of respect for the natural environment.

The Indian Constitution has a number of articles that talk about the importance of education for the overall development of children. They are:

1. Article 21A – “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, 86th Amendment Act, 2002.”

Article 41. - Right to work, to education and to public assistance in certain cases. “The State shall, to the extent of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disabled, and in other cases of underserved want.”

Article 45 shall provide for free and compulsory education for children, “the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years, 86th Amendment Act, 2002;

The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years, 86th Amendment Act, 2002.”

Article 46 mentions about the provision for the promotion of educational interests of Scheduled Caste, Scheduled Tribes and Other Backward Castes, “The State shall promote with the special care the educational and economic interests of the weaker sections of the people, and in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”

Article 51A (K) mentions that, “who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years (86th Amendment Act, 2002).”

Article 29 to protect the interests of minorities mentions, “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”

Article 350 A has provision for, “facilities for instruction in mother tongue at primary classes. It shall be the endeavor of every State and of every authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.”

Article 15 (5) mentions that, “nothing in this article or article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to the clause (1) of article 30 (93rd Amendment Act, 2005).

The Right of Children to Free and Compulsory Education Act-2009

The Constitution al 86th Amendment Act, 2002 inserted Article 21A in the Constitution of India which provides free and compulsory education to all children in the age group of six to fourteen years as a Fundamental Right. The Right of Children to Free and Compulsory Education (RTE) Act, 2009 was enacted with the assent of the President on 26th August 2009 and published in the Gazette of India on 27th August 2009. The RTE Act 2009 is a very remarkable and historical legislation and this act ensured that every child was given a right to full time elementary

education. Access to education is not only for the sake of economic growth, it is also a fundamental human right and therefore a legal entitlement and should be accepted as such in all circumstances.

India is facing many problems such as economic, social, political and cultural and education can bring some solutions to lessen these problems.

The Parliamentary debate on Right of Children to Free and Compulsory Education Act 2009 is on the official website of Parliament of India. The documents pertaining to debates in parliament on the issue gives a clear understanding about the issue .

The British East India came to India to do business but gradually the British officials got interested in ruling the Indian territories and thus they started entering into battles with Indian rulers. They needed the support of the elite section of the Indian population and therefore they did not want to interfere in internal matters of Indians including education and women's issues. However, the missionaries had already started coming to India to spread Christianity and education and medicine were two measures which could give the missionaries ample opportunities to penetrate Indian society and help in spreading Christianity. Gradually the East India Company and later British Government started supporting the missionaries in many instances in carrying forward their activities. Since the British were never interested in giving education to the Indian masses and so they came up with filtration theory/ trickle down theory whereas some people get education initially and later impart to larger population but it never materialised this way. Education became the ticket for better livelihood so the upper sections of the society were hardly interested in dissemination of education to masses.

From the starting of the nineteenth century, education at primary level was well spread in most parts of India for instance we can take the examples of Bombay and Madras during the period 1835 to 1858 can be explained as follows:

Bombay:

Every village had at least one school but the concept of proper building structure had not developed by the time so premises of temples and residences of the prominent people of village were used as school. The children between the age of six and fourteen were taught. The students were taught to reads, write and solve simple practical arithmetic. Teachers were paid in terms of kinds and not in money.

Madras:

In every Madras village there was a primary school. In the past, many families chose to teach their children at home instead of sending them to village school. This was mostly true for girls as girls hardly used to go to formal school. The children were taught the basic reading and writing. The salaries of the teachers were very meagre and hardly sufficient to meet their needs.

Maharaja Sayajirao Gaekwad was a staunch advocate of free and compulsory primary education. Maharaja decided to establish social order in his territory on the basis of education and hence Baroda was the first in British India to introduce compulsory and free primary education. He started an experiment in Amreli region in 1893 and the experiment was successful and this success gave him confidence to introduce it to the entire state in 1906. In his speech in Ahmedabad in 1902, Maharaj showed his deep commitment to education in his state "It is the general lack of education and intelligence which hampers us at every turn and has been our ruin. When we can make education general we may expect increased dexterity, increased power of concentration, increased trustworthiness and quickness in discovering new processes. These qualities are needed in every class of Indian Society. Education in England has diffused a spirit of self-reliance and a capacity for initiative; education in Germany aims at thorough knowledge, methodical application, and exact learning; but education in India has hitherto aimed only at providing a certain amount of food for thought without ever touching the mental capacity or character."

As soon as the experiment was successful Maharaj wanted to put it in the entire state and said, "Encouraged by the success of this experiment, I have resolved to make primary education compulsory throughout the State, and absolutely free. I do not hesitate to say that we cannot do better than educate all our subjects. Education is an absolute necessity for the realisation of my ambition and my wishes for the success of my policy.

Gokhale's Bill (1910-1912)

Gopal Krishna Gokhale was inspired by Maharaja Sayajirao Gaikwad's efforts in this direction and he wanted to bring free and compulsory education in other parts of India. Hence he proposed compulsory education in Legislative Council as he was a member himself.

There should be a beginning towards making elementary education free and compulsory throughout the country and a mixed commission of officials and non-officials should be appointed at an early date to frame definite proposal.

The British Government assured Gokhale that his propositions regarding Primary Education would be contemplated. But the thought of making Primary Education free and compulsory was accepted. Other points that were accepted were the establishment of a department of Education under the Central Government and the appointment of a Secretary to look after the educational affairs. The Government also began to publish the progress report of primary education. In this regard, Gokhale introduced a Bill in Legislative Council in 1911. He said that the scheme of free and compulsory education should be implemented in a phased manner. The whole idea was borrowed from the Education Acts of England of 1870 and 1876 but the government was reluctant to accept the Bill and thus the Bill got defeated by 35 votes to 13. The Bill was defeated and was not passed, but it did leave a mark and inspired later efforts in this regard. Finally, the government passed the resolution on educational policy in India.

Patel Act, 1917

In 1917, Vithalbai Patel moved a bill in the Bombay legislative Council for the introduction of Compulsory education in the Municipal area of the State. The State government should give grants-in-aid for the implementation of compulsory education. This became a law in 1918 and is known as Patel Act. It inspired and other states started working in this direction also. By 1920 the general policy of compulsory primary education had been accepted in India.

Hartog Committee Report (1929)

The Hartog Committee examined elaborately the present system of primary education in India. The report pointed out many deficiencies of primary education and the progress attained so far to improve the existing system of education especially at elementary level was found to be unsatisfactory. The committee made several recommendations to improve the primary education in India after detailed study. The condition of rural India in this respect was more pathetic in comparison to urban India, according to the committee's findings. The committee was of the opinion that while the primary education should be made compulsory but there should be no hurry in its implementation.

The Wardha Education Plan, 1937 (The idea of NAI TALIM)

It was named after a conference on education held in Wardha under the presidentship of Mahatma Gandhi. This scheme is also called NaiTalim or Basic education. The whole concept is on the philosophy of Gandhi ji. Gandhi ji was not much convinced with the existing elementary education and hence he put forward his ideas of education of Basic Education and called it NaiTalim. The plan gained a definite direction under the committee headed by Dr. Zakir Hussain who later became the President of India. It got based on ancient Indian culture.

Sargeant Report, 1944

The Sargeant Report is of very great historical importance in the matter of the progress of education in India. It is a comprehensive roadmap on the issues of future structure of primary to university education in India. The report was written by Johan Sargeant and is also known as Sargeant Plan of Education. It is also known as Report of the Central Advisory Board of Education, 1944 and in many ways it was a post WW II plan also. The most important recommendation was that compulsory and free education should be provided to all the boys and girls within the age of 6 to 14 years and it should be based on some craft and thus thereby somehow agreeing to the basic education's ideas.

Constituent Assembly's Discussions on Right to Education during 1946 to 1950

The discussions were started by the Constituent Assembly on the form of education system in independent India. They deliberated how to write Constitution in a manner that it could fulfil the aspirations of the people of India and thus making it Constitutional obligation of the state. The deliberation of the Constituent Assembly is of historical significance for understanding the Right to Education particularly with emphasis on how to make it Fundamental Right and its enactment as Directive Principles of State Policy. After a long and hard debate amongst a host of members of the Constituent Assembly, some agreeing and some disagreeing, it took shape as part three in Fundamental Rights and ultimately it was placed in part four in the form of Directive Principles of State Policy.

Education 1964-66 (Kothari Commission)

The government of India realised that there was a need to overhaul the prevailing education system. We found that there were attempts to improve the education system from time to time, but not much satisfactory progress was made

in this regard. In view of this the Government of India constituted the Indian Education Commission under the chairmanship of Dr. D.S. Kothari (1964-66) and it is also known as Kothari Commission. The commission gave wide-ranging recommendations to bring in major changes in the existing education system in India. After much study, the committee submitted its report in 1966, Education and National Development. The very name itself indicates the importance of education in the total development of the nation. The main recommendations were: "Free and Compulsory education for all children up to the age of 14 years; Hindi should be the medium of expression at the elementary level and also to highlight the cultural value of the nation Sanskrit should be encouraged at the same time to catch the pace of development taking place in developed countries the study of English and other international languages should be promoted, regional imbalances should be corrected and good educational facilities should be provided in rural and other backward areas also the education of girls should get proper attention; a broadly uniform educational structure of ten years general education in schools followed by two years of higher secondary stage and three years of degree course should be implemented in all parts of the country and the age of admission in Class 1 should not be less than 6 years.

Education Finding Place in Concurrent List (1976)

Education was initially kept in State List and later it was transferred to Concurrent List in 1976. The entire process is based on the principle of federalism which is incorporated in the Indian constitution. In seventh schedule there are three different entries; Union List, State List and Concurrent List. The Parliament as well as the State Legislatures have legislative power on all the three lists. Entry number 25 of the Concurrent List reads, "Education, including technical education, medical education and universities, subject to the provisions of entries 63,64,65 and 66 of List I, vocational and technical training of labour.

The National Education Policy, 1986

1986 ka National Policy on Education, India keshikshakeitihaasmeinekkhaasvikaastha. It sought to bring about the national integration by promoting education in all parts of the country and in the process leading to overall national progress. It was realised that there was a need for general reconstructing of the education system to produce improvement in all stages of education. In terms of education, it was mainly concerned with science and technology, as well as moral values as an important aspect. Implementation of National Policy on education led to substantial expansion of educational facilities in almost all parts of India.

The Unnikrishnan's Case and the 86th Constitutional Amendment, 2002

In the meantime the Supreme Court in Unnikrishnan and others Vs State of Andhra Pradesh and others in 1993 case gave the verdict that the right to education for the children of the age of six to fourteen is fundamental right. Even after verdict of Supreme Court there was no much improvement and protest and demand of people in this regard was increasing and therefore, government enacted the Constitutional Amendment of 86th Act 2002 that would make education Fundamental Right. The government added an article, 21A after article 21 of the Constitution of India thereby providing that State shall provide free and compulsory education to all children of the age of six to fourteen years. With this amendment, right to education has been added as a fundamental right.

The Right of Children to Free and Compulsory Education Act, 2009

There was a need to improve the existing education system. So the government passed the 86th Constitutional Amendment Act, 2002 to implement free and compulsory education for all children of the age six to fourteen. The government brought in the Children Bill, 2003 to implement the provision of free and compulsory education but the bill could not be passed but it did lead to further deliberation on the prevailing education scenario few more attempts were made to get the bill passed in 2004, 2005 and 2006. The years 2008 and 2009 proved to be crucial as the government took the matter more seriously and the Right of Children to Free and Compulsory Bill, 2008 was introduced and passed in the both house Rajya Sabha and Lok Sabha. It was referred to the Standing Committee on Human Resource Development. After deliberation the Standing Committee submitted its recommendations in the beginning of 2009 and finally the President gave assent on 26th August 2009. The notification was issued on 19 February 2010 in the Gazette of India and became effective from 1 April, 2011.

Therefore, formation of different committees and commissions indicate that the government was keen to bring about reform in the field of education from time to time. The constant efforts made by different government show the political will of different government to bring about positive change in education system.

Conclusions

The trajectory of Right to Education in India is a steady though firm transition from a policy goal to a constitutionally guaranteed and legally enforceable right. Education has been recognised by international human rights instruments as fundamental to human dignity, equality and the full development of the individual, and these principles have increasingly informed Indian constitutional and legislative thinking. Historical initiatives such as early colonial era debates, regional experiments with compulsory primary education, recommendations of committees and commissions and national education policies laid the intellectual and administrative foundations of universal elementary education. The turning point was the Supreme Court's declaration that education is a fundamental right of children in the age group of six to fourteen years and the 86th Constitutional Amendment and the Right of Children to Free and Compulsory Education Act, 2009. Collectively, these measures converted access to primary education from a directive goal into a justiciable right. But constitutional recognition alone does not guarantee educational justice. Persistent challenges related to access, quality, equity, infrastructure, teacher availability and social exclusion continue to impede the realisation of the right. The study thus concludes that the Right to Education is not only a legal guarantee but also a democratic commitment requiring sustained political will, public investment and inclusive implementation so that every child can participate fully and equally in national development.'

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