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Right to Education as A Fundamental Right

Tanya Agrahari¹, Dr. Shova Devi²,

¹ BA LL. B, Amity Law School, Amity University, Lucknow, Uttar Pradesh

²Assistant Professor, Amity Law School, Amity University, Lucknow, Uttar Pradesh

Abstract

The exploration of education's meaning and its evolution over time reveals that education is no longer confined solely to books; it can be acquired from various sources such as society and the environment. This paper aims to shed light on the evolution of education and its significance in an individual's life. Education not only offers opportunities to learn but also constitutes a fundamental human right crucial for the realization of all other human rights upheld by different provisions and organizations. Additionally, this paper delves into the pertinent provisions and amendments of the Indian Constitution that affirm the constitutionality of the right to education as a fundamental right. Furthermore, it discusses various international conventions and organizations that advocate for education as an inherent right.

Keywords: Education, Constitution of India, Fundamental Rights, RTE, Human Rights,

Introduction

In 2009, the Right to Education Act (RTE) was enacted to ensure compulsory and free education for children, enshrining it as a fundamental right under Article 21-A of the Indian Constitution.

Education is a fundamental right for every individual, crucial for their holistic development. It is essential for upholding other fundamental rights such as the right to a fair trial and freedom from slavery or torture. Education facilitates access to all human rights and significantly improves personal opportunities in life, playing a vital role in poverty alleviation.

The Right to Education is recognized as a fundamental human right under various international conventions, declarations, and national constitutions. It embodies the principle that every individual has the right to access quality education without discrimination. This right is not only essential for personal development but also crucial for the socio-economic progress of nations.

Education serves as a potent instrument for economically and socially marginalized individuals, both adults and children, enabling them to break the cycle of poverty and actively engage as citizens. As per the 2011 census of India, the country accounts for 19.6% of the global adolescent population, totaling approximately 236.5 million. This signifies that India possesses the largest cohort of young people, presenting a significant opportunity, as "Children are the future of the nation."

Historical Background

The concept of the Right to Education has evolved over centuries, with roots in ancient civilizations' educational practices. However, its modern interpretation gained prominence after World War II with the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, which affirmed education as a fundamental human right. Subsequent international treaties and conventions further reinforced this notion, including the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).

The right to education is internationally recognized under Article 26 of the Universal Declaration of Human Rights and Articles 13 and 14 of the International Covenant on Economic, Social, and Cultural Rights. Over 135 countries have constitutional provisions mandating free and non-discriminatory education for all citizens. In India, a constitutional amendment in 1950 introduced free and compulsory education for children up to the age of 14 under Article 45 of the Directive Principles of State Policy. Subsequently, on December 12, 2002, the 86th constitutional amendment elevated the right to education to a Fundamental Right under Part III of the Constitution.

The Right of Children to Free and Compulsory Education Act, passed in 2009 and implemented on April 1, 2010, ensures free and compulsory education for all children aged six to fourteen. The government is legally obligated to provide free and compulsory education for this age group and maintain basic standards in primary schools. The Act prohibits unrecognized schools from operating and prohibits any form of contribution or capitation fees, as well as interviews of children or parents for admission. Furthermore, the Act prohibits schools from expelling or retaining any student. It also includes provisions for additional training for school dropouts to bring them up to par with their peers.

Essential Feature of Right to Education Act, 2009

- The RTE Act aims to ensure that all children aged 6 to 14 have access to a basic education.
- It enshrines education as a fundamental right (Article 21).
- The act mandates a 25% quota for disadvantaged segments of society.
- It also facilitates the admission of children not enrolled in school into an appropriate grade for their age.
- Moreover, it underscores the shared financial and other responsibilities between the Central and State Governments.

- Initially, the act included a "No Detention Policy" provision, which was later repealed by the Right of Children to Free and Compulsory Education (Amendment) Act, 2019.
- Additionally, it prohibits the deployment of teachers for non-educational purposes except for the decennial census, elections to local governments, state legislatures, parliament, and disaster relief efforts.
- Furthermore, it mandates the recruitment of teachers possessing the requisite qualifications and academic credentials.
- The act emphasizes creating a child-friendly and child-centered learning environment aimed at alleviating children's fear, trauma, and anxiety.

Worldwide Recognition of Education as Fundamental Human Right

The Right to Education serves as a gateway to accessing other fundamental human rights, as numerous rights established by various normative institutions remain inaccessible without education. Article 26 of the United Nations Universal Declaration of Human Rights (UDHR), adopted in 1948, explicitly recognizes the Right to Education. Article 26(1) states:

"Everyone has the Right to Education. Education shall be free, at least in the elementary and fundamental stages. Elementary Education shall be compulsory. Technical and professional Education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit."

It's crucial to note that when the Universal Declaration was ratified, only a minority of the world's young population had access to formal education, and nearly half of the world's adult population was illiterate. Therefore, it was imperative to ensure that elementary education, at the very least, was made compulsory and free, with the state obligated to take all necessary legal and administrative measures for its implementation.

The principles outlined in the Universal Declaration of Human Rights are further supported by two other significant documents: the UNESCO Convention against Discrimination in Education (1960) and the International Covenant on Economic, Social and Cultural Rights (1966). These documents, alongside the UDHR, are complemented by numerous international human rights treaties that affirm, protect, and promote the Right to Education.

- Convention concerning Discrimination in Respect of Employment and Occupation (1958)- Article 3
- Convention against Discrimination in Education (1960)
- International Covenant on Economic, Social and Cultural Rights (1966)- Article 13 and 14
- Convention on Elimination of All Forms of Discrimination against Women (CEDAW) (1981)- Article 10
- The United Nations Convention on Rights of the Child (1989)- Article 28 and 29.

The other eminent organisations that are promoting Right to Education worldwide are:

1. United Nations Educational, Cultural and Scientific Organization (UNESCO)
2. United Nation Children's Fund (UNICEF)

3. International Labour Organization (ILO)
4. World Bank.

Constitutional Provision of the Right to Education

Here are the major constitutional provisions related to the right to education, presented in a revised language:

1. Article 21A was introduced to establish the right to education as a Fundamental Right for children aged 6 to 14.
2. Initially, Article 45 of the Indian Constitution and Article 39(f) of the Directive Principles of State Policy (DPSP) outlined provisions for state-funded, equitable, and accessible education.
3. The Ramamurti Committee Report, released in 1990, was the first formal document addressing the right to education.
4. In the landmark case of Unnikrishnan JP vs. the State of Andhra Pradesh & Others, the Supreme Court declared education as a fundamental right derived from Article 21.
5. The Tapas Majumdar Committee was formed in 1999 with the aim of introducing Article 21A.
6. The 86th amendment to India's constitution in 2002 designated education as a fundamental right under Part III of the Constitution.
7. Article 21A stipulates that the State must provide free and compulsory education to all children aged six to fourteen years as determined by the State.
8. As a result, this clause recognizes only primary education as a Fundamental Right, not further or professional education.
9. The 86th amendment paved the way for the Right to Education Bill 2008, which was subsequently followed by the Right to Education Act 2009.
10. The term "free" is included in the title of the article. This signifies that no child (except those attending non-government schools permitted by their parents) is required to pay any fee, charge, or expense that might hinder them from accessing and completing primary education.
11. This Act mandates that the government ensures the admission, attendance, and completion of elementary education for all children aged six to fourteen years.
12. Essentially, this Act guarantees that all children from economically disadvantaged backgrounds receive free elementary education.

Right to Education as Fundamental Right

Originally, Part IV of the Indian Constitution, consisting of Article 45 and Article 39(f) of the Directive Principles of State Policy (DPSP), outlined provisions for state-funded, equitable, and accessible education. In 2002, through the 86th Amendment, Article 21A was inserted into the constitution, establishing the Right to Education as a Fundamental Right under Part III of

the Constitution. Article 21A guaranteed the Right to Education as a Fundamental Right for children aged 6 to 14.

The 86th amendment paved the way for subsequent legislation, namely the Right to Education Bill 2008 and eventually the Right to Education Act 2009. The enactment of the Right of Children to Free and Compulsory Education Act on April 1, 2010, marked a historic milestone for India, as the Right to Education attained the same legal status as the Right to Life provided under Article 21 of the constitution.

Article 21A mandates that every child between the ages of 6 and 14 receive elementary education in a nearby classroom appropriate for their age, for a duration of 8 years. The RTE Act also necessitates that all private schools reserve 25% of total seats for children, with the expenses reimbursed by the state as part of a public-private partnership initiative. Admission to private schools is to be based on economic status or caste-based reservations. Additionally, the Act prohibits the operation of unrecognized schools, prohibits the imposition of donations or capitation fees, and eliminates interviews of children or parents during the admission process. It also ensures that no child shall be detained, expelled, or required to pass board examinations until the completion of elementary education. Furthermore, the Act provides for special training for school dropouts to bring them up to the level of other students of the same age.

Conclusion

The right to education for all, coupled with free education for specific age groups, stands as a commendable government policy deserving of applause. Literacy serves as a cornerstone for the populace of a developed nation, enabling individuals to earn their livelihood and contribute to the economy. However, like every coin, the Right to Education (RTE) has encountered both criticism and praise. Recognized as a fundamental right, education holds paramount importance, with UNESCO striving to achieve universal education by 2015. It is imperative for India, along with other nations worldwide, to earnestly work towards realizing this goal. In today's society, education is a fundamental necessity for survival. Every individual deserves access to basic education, as without it, one cannot effectively exercise their fundamental human rights. Education is not limited to a specific age group but is equally essential for all age groups to enhance their personality and contribute positively to society. Despite being enshrined as a fundamental right, the Right to Education in India is not rigorously implemented compared to other countries, and its status does not mirror that of other fundamental rights outlined in our constitution.

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