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## Route To Right To Education: Critical Analysis of The 'Fundamental-Human' Right In India

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### **Abstract:**

Education is one of the basic human rights that provides the opportunity for a person to live life with dignity and honour. It is the cornerstone of society that can eradicate poverty, elevate the standard of living, and ensure a bright future for the individual and community. The Universal Declaration of Human Rights has described the right to education as a basic human right and several other international bodies have also recognized the importance of the right to education as a fundamental and human right. India's focus after independence was to ensure inclusive development for all the sections of the society which is reflected through the incorporation of several fundamental rights in the Constitution. The right to education was not directly inserted as a fundamental right from the initial period though the practice of this right was circuitously there through the application of other rights. Subsequently, the right to education was incorporated in the Constitution of India as a fundamental right through the 86<sup>th</sup> Constitutional Amendment Act of 2002 and the RTE Act came into effect in 2010.

RTE act came with many promises to make a better India but with time glitches started to appear. This paper will try to explore the problems and prospects associated with the implementation of the right to education In India. What policies the government have taken to make this right effective, how far realistic these policies are, what are the viewpoints of the stakeholders and how different perspectives can be brought under the umbrella called 'inclusion' – will be the areas of investigation. Through available data and records from different sources, observational methodology and inquisitive mind roads will be travelled to discover the conditions and consequences of one of the most precious rights of human life.

**Keywords:** Education, Human Rights, Fundamental Rights, Right to Education, Government Policy, Constitutional Amendment

### **I. INTRODUCTION**

#### **Defining the connectivity between Human Rights and the Right to Education**

Human rights are those rights which are inherent to all human beings, irrespective of nationality, sex, national or ethnic origin, colour, religion, language, or any other status. These rights cannot be given or taken away as these are the foundation for freedom, justice, and peace in the world. They are officially and collectively recognized by all countries in the Universal Declaration on Human Rights (1948, UDHR). International human rights law defines the obligations of states to respect, protect, and fulfil human rights for all. These compulsions enforce explicit duties upon states, irrespective of their political, economic, and cultural systems. All human rights are universal, indivisible, interdependent, and interrelated (Vienna Declaration and Programme of Action 1993, para 5). Two prime pillars of International Human Rights law are equality and non-discrimination which confirms that human rights apply to all regardless of boundaries.

In this context, the right to education as a basic human right becomes a relevant issue of discussion. Education is essential for all as it uplifts people's conditions, helps eradicate poverty and inequality and confirms sustainable development. The International Human Rights Law has guaranteed the right to education. The Universal Declaration on Human Rights, adopted in 1948, proclaims in Article 26: 'Everyone has the right to education'. Since then the right to education has been extensively accepted and established by several international normative apparatuses particularized by the United Nations, including the International Covenant on Economic, Social and Cultural Rights, (1966, CESCR), the Convention on the Rights of the Child (1989, CRC), and the UNESCO Convention against Discrimination in Education (1960, CADE). The right to education has been confirmed through many other treaties covering particular groups (Women and girls, persons with disabilities, migrants, refugees, Indigenous people) and contexts (education during armed conflicts). It has also been integrated into numerous regional treaties and treasured as a right in most national constitutions.

The above discussion affirms the necessity of the right to education in human life. The right to education is fundamental for an individual's social, economic, and overall development and cumulatively it creates an ideal society where peace persists and development flows. Through the proper exercise of this right, an individual can reach the peak of his/her potentiality and can live a dignified life. The right to education ensures individual and collective well-being.

#### A brief history of the Right to education:

Education ensures the overall development of human beings- mental, physical and spiritual. It is an enduring procedure and essential for the inclusive progress of individuals. Education not only provides a means of support but widens one's vision to fresh thoughts, potentials and openings.

Though the concept of education was prevalent for a long time it took many years for it to take the shape of fundamental rights. The reason behind such delay was probably because the right to education was not so catchy like the right to freedom of speech and expression and many other political rights. Gradually from the 20<sup>th</sup> century onwards education was extended and converted into a fundamental social right and became the State's responsibility towards its citizens. Education became a public issue and the responsibility of the state after the emergence of the modern secular state.

Over time right to education has become the state's obligation towards the betterment of its citizens and it has been incorporated into the Constitution as a fundamental right. Education has been considered a fundamental right and a responsibility. The state has the responsibility to ensure primary education for all and in most of the countries it has made mandatory. Regarding secondary education there are differences, while in some states it has been made mandatory and available for everyone, in some other countries of the world there is controversy as to make higher education is a fundamental human right or not. The right to higher education is measured in terms of individual ability and the state's economic condition in many countries. The Universal Declaration on Human Rights promises higher education based on personal merits. In the European Union, higher education is deliberated state's accountability and a public good. There are many arguments for making the right to education a fundamental right as – education provides knowledge as security to human beings. An educated person can become much more of aware all his other rights and education empowers a person to make proper decisions in various socio-political matters. It helps in the prevention of violations of human rights too. Education makes a person much more informative which in turn makes them resourceful and responsible citizens. For this reason, The Universal Declaration of Human Rights and many other international forums have recognized the right to education as a fundamental and universal human right. Therefore, it is the responsibility of every member state to ensure a compulsory and free primary education system, an open and achievable secondary education system for interested students and to make higher education accessible equally to everybody although in compliance with their abilities and achievements.

Article 26 of the Universal Declaration of Human Rights deals in detail with the concept of the right to education. The paragraph 2 provision foretells the purpose of education, which is 'Education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance, and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. In the Third paragraph of the same article, it has been mentioned that parents have a prior right to select the type of education which shall be given to their children. It has been further said that parents should not hamper or restrict adequate education for their children, which would comply with the children's abilities and skills.

Following the declaration many other international forums have supported the right to education through their provisions. The Declaration on Human Rights was adopted in the year 1959 at the General Assembly of the United Nations in New York.

Covenant on Economic, Social and Cultural Rights was adopted by the UN in 1966 and it also ensures the right to education. As per Article 13 of the covenant countries as contracting parties of the covenant should recognize the right to free primary education for all and the progressive introduction of free education for the secondary and higher levels.

Article 14 of the Covenant needs those parties, which are yet to establish a system of free compulsory primary education, to speedily adopt a thorough proposal of action for its introduction 'within a reasonable number of years'. Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights embrace four A's which are noted as fundamentals of the right to education known as availability, accessibility, acceptability, and adaptability.

#### What are the 4 A's?

The 4As were developed by the first UN Special Rapporteur on the right to education, Katarina Tomaševski, and adopted by the Committee on Economic, Social and Cultural Rights in its General Comment 13 on the right to education (1999, para 6).

To be an evocative right, education in all its forms and at all levels shall exhibit these consistent and indispensable features:

1. **Availability:** It means that schools should be developed at all levels to make education available for everyone. The number of schools in an area should be proportionate to the total number of students in that area to make the mission of providing education to all successful,
2. **Accessibility:** Education should be accessible to all categories of people irrespective of their age and gender. Equal convenience to educational institutions comprises two sections: the physical and the constructive part. The physical segment means institutions should create suitable conditions for the elderly and the handicapped, and the constructive part implies the evasion of typecast concepts, e.g., the role of males and females, etc.
3. **Acceptability:** It implies that education is acceptable for parents or tutors (caretakers) and the children, meaning that they have the right to select the education for their children. They are not bound to send their children to public schools but also to other schools which follow the guidelines of the education policies set by the state such as religious education or customary education (Article 13, Item 3, International Covenant on Economic, Social and Cultural Rights).
4. **Adaptability:** It means education needs to be flexible and adaptable, keeping in mind the child's best interest. At the same time, it should focus on social development at the national and international levels. A scholarship system should be there in schools to improve the economic situation of the students and teachers. (Article 13, Item 3, The International Covenant on Economic, Social and Cultural Rights).

Another essential document that speaks about education is the Convention against Discrimination in Education (1960) adopted by UNESCO. Article 4 of this document says, 'The States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular: a) To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law; b) To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent; c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity; d) To provide training for the teaching profession without discrimination'.

## The Indian Scenario:

Since Independence, the leaders of India have always tried to make education a priority for making the country better and to come out of the curse of poverty. They have realized that only education can lead to the betterment. Indian thinkers constantly tried to provide quality education to all children, irrespective of any differentiation. The 1968 National Policy of Education was the Government's first official document which echoed the government's commitment to provide elementary education and this was later included in the National Policy of Education in 1986. Eventually, when NPE 1986 was revised in 1990, it was suggested that the Right to Education should be incorporated as a Fundamental Right. This became the foundation on which the National Policy of Education of 1992 was established. At that time India became a signatory to the United Nations Convention on the Rights of the Child in 1992 and started working on legislation to introduce the Right to Education as a Fundamental Right. In *Mohini Jain vs. State of Karnataka* (1992) the Supreme Court ruled that the RTE is implicit in and flows directly from the right to life under Article 21, consequently nearly uplifting the RTE to the position of a fundamental right. It was particularized in the *Unni Krishnan vs. State of Andhra Pradesh & Others* (1993) case when the Supreme Court ruled as follows: "The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters must be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State."

To make the dream successful, the leaders, through the 86th Constitutional Amendment Act (Eighty-sixth Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to offer 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, which signifies the significant legislation envisioned under Article 21-A, means that every child has a right to elementary education of satisfactory and equitable quality in a formal school which gratifies essential rules and standards. Article 21-A and the RTE Act came into effect on 1 April 2010. The words "free and compulsory" are inserted in the title of the RTE Act. With the Right to Education Act becoming effective, India has joined the league of over 130 countries which have legal guarantees to provide free and compulsory education to children. The formal declaration of education as a right became the obligation of the state to ensure the scope of education for all. Sec 8 c of the right ensures that children who belong to the weaker or disadvantaged sections of society should not be discriminated against and prevented from pursuing complementary education on any grounds. It was a huge challenge for the providers of education as the right implies equality for all therefore any preconceived notion about the merit of the students could destroy the objective of the programme. The Teachers/ educators must be sensitive enough to understand the psychology of the students from the weaker section. Segregation of merits through entrance tests, and categorizing students as meritorious and weaker would not solve the purpose. A more rationalistic and holistic mindset is required to understand the condition of students from all the sections of the society especially of the comparatively disadvantaged sections of the society many of whom are first generation learners.

## Obstacles in the way of implementation:

After the implementation of the RTE Act, many years have passed. Therefore, it is time to review the effectiveness of the act by knowing whether the act has become successful in providing education to the downtrodden and marginalized sections of society. As per recent data worldwide approximately 244 million children and youth are unable to attend school due to various social, economic, and cultural reasons primarily because of the lack of resources, capacity, and political will. The below-mentioned factors are prime obstacles in the way of the successful implementation of RTE in our country.

1. Drop out of school children: According to the figures available from the Human Resource Development Ministry more than 80 lakh children are out of school mainly because of three reasons –
  - i. as per the data from the National Crime Records Bureau every year more than 60000 children fall victim of trafficking and only negligible cases are registered with the police.
  - ii. there persists gender discrimination in society for which many families are reluctant to send their girl child to school. Making them busy with household activities is the prime concern of their parents and many times male children are also appointed in several small jobs to earn for their families.



- iii. Even if the children are enrolled very few of them complete the elementary education. Once they learn to read and write the families prefer to make them engaged in some jobs to earn money for the family.
2. Unavailability of infrastructural facilities: As per the norm the Government must establish primary schools within one kilometer and upper primary schools within a three-kilometre distance but such norms are only codified in papers, far from the reality of implementation. Lack of proper classrooms, libraries, playgrounds, drinking water, and toilet facilities are big challenges which are the results of poor funds allotted for these purposes.
3. Lack of proper teacher-student ratio: The RTE act recommends that the pupil-teacher ratio should be 30:1 but in very few schools this ratio is followed. Lack of an adequate number of teachers is the main reason behind such a problem and top of that many teachers are reluctant to teach in remote village schools. Therefore, the schools and students suffer due to the unavailability of teachers.
4. Private schools and the reservation policy by the Government: It has been observed that as per the Government rule 25% reservation must be given in Private Schools and it has instructed that these institutions should provide free education. The Government does not compensate the whole cost of the free education which has been given to the children in private schools and that creates the biggest problem. The cost of the infrastructure the salaries to the teachers and the administration cost are borne by the Private management which results in snowballing the fees of the other students to compensate for the costs spent for providing free education to the children.
5. Poverty: Poverty is the biggest challenge in implementing RTE in India. In most rural families where the greatest problem is arranging meals for the day, it is a luxury for the parents to send their wards to schools for education. On the contrary many opt to engage children in some works so that they can help their families to live a comparatively better life.
6. Absence of proper counselling: To make the RTE successful counselling of the stakeholders at all levels is extremely necessary. Unless and until the parents become aware of the utility of education and the benefit of sending their children to the school no change can take place. Students need to be made aware of the importance of studying and what opportunities they can avail through education. The entire task is to be primarily done by the teachers who also in turn need to be trained mentally and rationally to deal with students and patients from different backgrounds with patience. Such kind of inclusive counselling programmes are grossly missing. The state and NGO's must come forward to accomplish the task.

### **Future ahead:**

Implementing the Right to Education (RTE) requires a multifaceted approach involving various stakeholders and comprehensive strategies. Here are some suggestions for effective implementation:

Firstly, the Legislative framework needs to be strengthened by endorsing clear and enforceable laws that promise the right to education for all children, irrespective of their socio-economic background. The government should enforce compliance with RTE provisions through operative legal instruments, including consequences for non-compliance and devices for addressing complaints and grievances.

Secondly, the Government and other local bodies including NGOs should organize wide-ranging public awareness campaigns to notify stakeholders like parents, guardians, and communities about the significance of education, their rights under the RTE Act, and the obtainable government initiatives.

Thirdly extensive investment in infrastructure is the need of the time that will ensure the construction of school buildings and upgrading school infrastructure, including classrooms, sanitation conveniences, libraries, and playgrounds, to create an encouraging learning atmosphere.

Fourthly, regular recruitment of teachers can solve the problem of the unavailability of teachers in the schools, At the same time these teachers need proper training from the government to become aware of their responsibilities and the required techniques to deal with students from different backgrounds. Teachers should be provided with professional development opportunities to foster their progress and bring enthusiasm to them.

Fifthly, the government should take active measures to confirm equitable access to education for sidelined and deprived groups, including girls, children with disabilities, and persons from rural or remote parts.

Finally, the allocation of sufficient funds to support the implementation of RTE provisions, including capital for school operations, teacher salaries, scholarships, and infrastructure development is the prime responsibility of the Government. Along with this vigorous monitoring and assessment apparatuses at the national, state, and local levels to trace progress, classify trials, and confirm accountability in the implementation of RTE policies are extremely required.

Proper planning and implantation of essential suggestions through rigorous Governmental efforts can make the right to education a fundamental human right in the truest sense of the term. The creation of an inclusive and equitable education system that empowers all children to grasp their full potential should be the responsibility of the authorities to make the dream of an educated India a reality.

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