

RIGHT TO EDUCATION ACT: A LEGISLATIVE ANALYSIS

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Right to Education

“Education is a social process. Education is growth. Education is not a preparation for life. Education is life itself.” –*John Dewey*

From philosophers, political thinkers, kings, queens, freedom fighters, colonial regimes, writers, activists, artists to a young student in Pakistan and a Nobel Laureate, Malala Yusufzai, every individual, organization and institution has, from time to time, recognized the right of education as an intrinsic human right. One of the earliest international laws to legally recognize this was the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966¹. It's a multilateral treaty, signed and ratified by India, adopted by the UNGA. Article 13 and 14² of this treaty reiterate the importance of right to education in achieving "the full development of the human personality and the sense of its dignity"³ without discrimination.⁴ It further puts a progressive obligation to ensure access to higher education⁵ a allows for the moral and religious education of children.⁶ The right to education was also recognized under Article 26 of the Universal Declaration on Human Rights (UDHR), 1948⁷. It makes elementary education mandatory for all, entails equitable access to higher education based on merit, and also necessitates the general availability of technical and professional education. Article 1(a) and 1(c) of UNESCO's 1974 Recommendations⁸ provide the meaning of education and include it under the purview of Human Rights and Fundamental Freedoms respectively as defined under UDHR.

¹ International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, United Nations General Assembly Resolution 2200A (XXI), (Dec 16, 1966)

² ICESCR, Article 13 and 14

³ ICESCR, Article 13.1

⁴ ICESCR, Article 13.2

⁵ ICESCR, Article 13.1

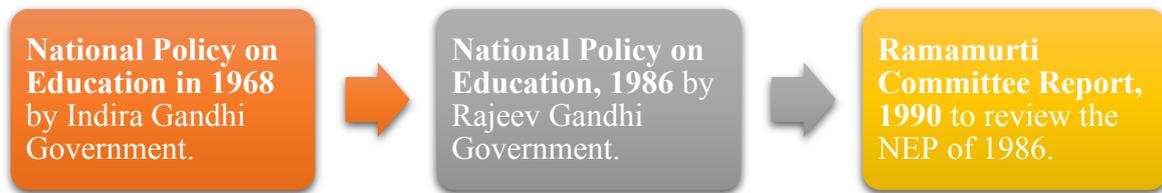
⁶ ICESCR, Article 13.3

⁷ Universal Declaration on Human Rights (UDHR), 1948, Article 26

⁸ UNESCO's 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms

History evolution in India

In India, the Right to Education has had a rich and dynamic history. It has always been a part of the Indian Constitution since its inception. However, it was a DPSP. 38, 39(a), 39(f), 41, and 45 of Part IV of the Indian Constitution provide for state-funded primary education. Let's have a look at the evolution of the Right to Education through Parliamentary Committees, judicial precedents, amendments in the constitution, creation of a central act, and formation of National Education Policies.



In the 1989 judgement of *Mohini Jain v State of Karnataka*⁹, the Supreme Court quoted the preamble saying that it provides for ‘social, economic and political justice’ to the people, along with ‘equality of status and opportunity’. It also quoted the DPSPs which necessitate state-funded education. Further, the court observed that the Right to Education emanates from the Right to Life and Personal Liberty under Article 21. It further stated that the high capitation fee charged by educational institutes is violative of Article 14. What is more interesting to note, however, is that the court also declared higher education for a professional degree like Medicine to come under the ambit of Fundamental Rights. Later, this was overruled, eliminating the Right to Education for a professional degree from Fundamental Right.

In 1993, the landmark judgment of the Supreme Court in *Unnikrishnan JP v. State of Andhra Pradesh & Others*¹⁰ stated that the Right to Education until the age of 14 is a Fundamental right under Article 21.

⁹ Mohini Jain v State of Karnataka, AIR 1992 SC 1858.

¹⁰ Unnikrishnan JP vs State of Andhra Pradesh & Others, JT 1993 (1) SC 474.

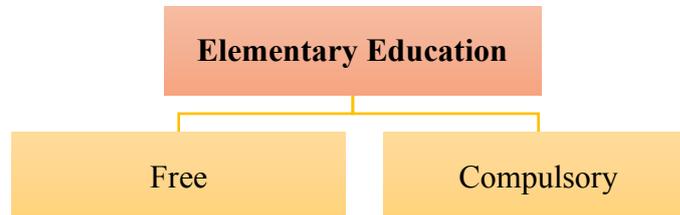


The latest policy development in the field of education is the passing of the National Education Policy 2021, which will be further discussed in this policy analysis.

Objectives

The act states its objective as follows:

“An Act to provide for free and compulsory education to all children of the age of six to fourteen years.”



Free education implies that the state and the central governments have a concurrent responsibility to provide funds for implementing the provisions of this act, which includes building educational infrastructure, providing training to teachers, bearing transportation costs of children to reach schools located far away, admission fee, cost of uniforms, books, stationery, and other relevant resources necessary for education.

Compulsory Education means that it is the duty of appropriate government authorities, as stipulated in the act, to ensure admission, attendance and completion of elementary education.

It is pertinent to note that the act provides this free and compulsory education only to children aged between 6 to 14 years of age. This means that it covers only elementary education (till class eighth) and does not include higher education or professional degrees.

Critical Appraisal

After the implementation of the RTE Act, there has been an exponential increment in literacy rate due to the increase in enrollment in schools. These numbers paint a rosy picture of the state of affairs but the reality is far from what the governments have claimed to achieve. This analysis will primarily focus on how the politicians have misused Sections 18 and 19 of the Act for personal gains.

It is no denying the fact that private schools are better than government schools in terms of infrastructure, quality of education, teacher-absentee rates and overall development of the child. However, it has been noticed that political parties have been shutting down such unaided private schools by using Sections 18 and 19 of the RTE Act. Section 18 says that "no school to be established without obtaining a certificate of recognition", requiring private schools to obtain a license from the government to operate freely, and Section 19 talks about "norms and standards for school", mandating the closure of those schools which do not follow such norms. The latent agenda of the politicians behind closing down such schools have multiple layers.

Firstly, it helps them maintain a good public image. This is because, if there are fewer private schools, children will have to forcibly join government schools, thereby increasing the number of enrollments in public schools. This will reflect in the data, showing the efficiency of government in bringing more students to government schools, which, in reality, would be just a migration from well-equipped private schools to worse off govt. schools. Further, Section 12 (mandating 25% reservation of disadvantaged children in private schools) had led to the emptying of children from govt. schools to private schools, embarrassing the governments.

Secondly, it becomes financially troublesome for the government to provide funds, pay salaries to the teachers and maintain such schools with few or almost no students.

Another crucial aspect of Section 19 is that it exempts govt. schools from fulfilling the infrastructure norms. This further adds to the woes of govt. schools including low learning levels, exponentially high teacher-absentee rates, etc.

Apart from the aforementioned issues, it is also interesting to note that Section 2(c) of the act defines 'child' as a male or female child of the age of six to fourteen years. This shows that framers of this act did not recognize the non-binary children. But this problem hasn't been

highlighted anywhere. Furthermore, even though the act mandated the prevention of harassment, its practical implementation hasn't been truly achieved.

These were some of the major loopholes in the act which are or can be misused in the future.

National Education Policy, 2020

AIMS

GDP investment in education to be increased from 1.6% to 6%.

Gross Enrollment Ratio to be increased to 50% by 2035.

SIGNIFICANT CHANGES

HRD Ministry renamed as Ministry of Education.

Pedagogical system modified and divided into (5+3+3+4) years.

Playschool children included in formal education system as per global standards

OTHER CHANGES

Students to learn coding from class 6th.

Medium of instruction to be mother tongue till 5th grade.

A comprehensive Report Card to be based on skills and capabilities.

Single regulator for higher education.

MPhil. To be discontinued.

Flexibility in choosing subjects for higher education.

Newspaper Clippings

The following headlines show us how education contributes positively towards changing social attitudes and the growth of an individual, and in turn, the society.

Higher Education Can Lead the Way Toward a More Tolerant Society

January 18, 2017

By Lorelle Espinosa

In this article¹¹, Lorelle Espinosa, while talking about education as an instrument of social change, mentions how higher education sowed the seeds of tolerance in the racist America.

Opinion

Chances of an inter-caste marriage go up if groom's mother is educated: Study

The rate of inter-caste marriages in India, as recently as 2011, was merely 5.82% and there has been no upward trend over the past four decades.



TRIDIP RAY, ARKA ROY CHAUDHURI and KOMAL SAHAI 20 October, 2020 12:44 pm IST

Dealing with a lot of statistical data on inter-caste marriages, this Article¹² highlights how there isn't much difference in the rate of inter-caste marriages in Urban and the Rural areas. Further, the rate of inter-caste marriages largely hovers around 5% only and the data doesn't show any clear upward trend in inter-caste marriages in the past decade. However, it is interesting to note that people with education levels higher than that of the average population are more pliable to exogamy and inter-caste marriages. Inter-caste marriages are important because they are another tool of social change and acceptance of the people from the lower rungs of the society who had

¹¹ Lorelle Espinosa, *Higher Education Can Lead the Way Toward a More Tolerant Society*, HIGHER EDUCATION TODAY, (Jan 18, 2017) <https://www.higheredtoday.org/2017/01/18/higher-education-can-lead-way-toward-tolerant-society/>

¹² Tridip Ray, Arka Roy Chaudhuri and Komal Sahai, *Chances of an inter-caste marriage go up if groom's mother is educated: Study*, THE PRINT, (October 20, 2020 12:44 pm IST) <https://theprint.in/opinion/inter-caste-marriage-india-groom-mother-educated-study/526481/>

been largely isolated and mistreated historically. Inter-caste marriages are a way of integrating them to the society by breaking the restrictive social norms and that's where education plays a fundamental role.

JOURNAL ARTICLE

The Relationship between Women's Education and Marriage Outcomes

Lars Lefgren and Frank McIntyre

In this article¹³, the authors highlight interesting findings of a study that women who complete high school are more likely to get married than those who drop out of high school. However, it is also pertinent to note that higher education, in addition to college can lead to fewer or unstable marriages.

How better education has built a more secular Britain

September 13, 2017 10:30pm AEST



¹³ Lars Lefgren and Frank McIntyre, *The Relationship between Women's Education and Marriage Outcomes*, 24, No. 4 JOLE 787, pp. 794-795, (2006)

The author in this article¹⁴ shows how the education system, by emphasizing on logical and critical thinking, enables people to think rationally and question the ecclesiastical authority, making them more secular in nature.

Therefore, we understand that education is not only an intrinsic human right but also one of the most important tools of social change and hence must be available to all.

Amendments

There have been two major amendments to this Act:

1. Regular Examination in the fifth class and the eighth class at the end of every academic year and a child failing such exams would continue to be offered further education, however, he would have to retake the examination within the next two months from the time of declaration of result. This amendment was made to elevate the standard of education in the country.
2. Scrapping of the 'No-Detention Policy': Initially, the RTE Act had a provision that made it mandatory for the schools not to detain any children for failing examinations until they reach class 8th. While such a provision did decrease the dropout rate in schools, it led to notably falling standards of education.¹⁵

Judicial Response

State of UP v Pawan Kumar Dwivedi:¹⁶ In this case, the Supreme Court, while recognizing that free and compulsory education should also be granted to children above the age of 14, held that unless the state has the appropriate economic capacity and level of development, such right can only be restricted to children up to the age of 14. However, the court recommended that State must endeavor to increase the budgetary allocation and percentage of funds from the GNP to Education.

¹⁴ James Williams, *How better education has built a more secular Britain*, THE CONVERSATION, (Sept 13, 2017 10.30pm AEST), <https://theconversation.com/how-better-education-has-built-a-more-secular-britain-83656>

¹⁵ Data from Central Advisory Board on Education (2014).

¹⁶ *State of UP v Pawan Kumar Dwivedi*, (2014) 9 SCC 692

Election Commr. of India v St. Mary's School:¹⁷ This was a curious case of conflict between two important aspects of the constitution: the right to education as a fundamental right and the conduct of elections. The primary work of a teacher is teaching. However, teachers from government schools can also be called to do non-teaching work of public interest such as polio vaccination, preparation of voter list, etc., because they are government officials. So, the court held that conduct of the election is important, however, education cannot be compromised for the same, and a balance needs to be maintained between both these duties of a government teacher. The court recommended allotting of non-teaching work during non-teaching hours to the teachers.

Society for Un-aided Private Schools of Rajasthan v UOI & Anr:¹⁸ This case held that rights of children under RTE act are not applicable to unaided and non-minority schools as they don't receive any grants from the government.

State of Tamil Nadu v K. Shyam Sunder:¹⁹ This case went ahead from declaring the right to education as a mere right to free and compulsory education and protracted it to the right of children to have "Quality Education" without any discrimination on the ground of the economic, social and cultural background.

Conclusion

"The entire process of social life using which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their capabilities, attitudes, aptitudes and knowledge."²⁰

We witness that this legislation is good on paper, however, lacks proper implementation. As shown by the ASER Reports, the act merely focuses on increasing the enrolment of students whilst completely disregarding the quality of education and all-around development of children. Further, in most government schools, there is a lack of appropriate pupil-teacher ratios as mandated by the RTE. Few states have not even issued notification for 25% reservation of seats in private schools for students from disadvantaged backgrounds. Some states consider

¹⁷ Election Commr. of India v St. Mary's School, (2008) 2 SCC 390 (402)

¹⁸ Society for Un-aided Private Schools of Rajasthan v UOI & Anr. (2012) 6 SCC 1

¹⁹ State of Tamil Nadu v K. Shyam Sunder, AIR 2011 SC 3470

²⁰ UNESCO Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms, 19 November 1974

this provision as Anti-Hindu because such reservation isn't mandated for Minority Religious Institutes.

To ensure that quality education is imparted, the government should focus more on teacher training programs and also provide penalties for teachers in case of dwindling attendance. A more utopian suggestion would be that only those teachers who are truly passionate about teaching and consider it a noble profession shall be selected, rather than those who see it as merely a source of income. This can be achieved by making the selection process of teachers more rigorous, and including a component of interview as part of a free and fair screening process. This would promote quality of the staff and good teachers would also serve as an incentive for the students to attend school regularly, thereby making incentives like midday meal scheme take a backseat. This will also ensure good teacher: pupil ratio in the truest sense where both, the teacher as well as the student have the thirst of knowledge.

Various studies and surveys also indicate that literate and educated people make more informed choices, discriminate less, and contribute more positively towards the society, thereby fulfilling their personal as well as societal aspirations to the fullest and are truly an asset or human resource to the nation.

To achieve this, the political parties, irrespective of their ideological moorings and personal gains, along with cooperation of various stakeholders of the society, should come together and make the system of education truly equitable and accessible.