



## CONSTITUTIONAL RIGHT TO EDUCATION: HOW IS IT CONSTRUED BY THE LEGISLATURE AND THE JUDICIARY?

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### Introduction

"Education's root is bitter, but its fruit is delicious". I begin my "introduction" with this lovely remark, however it is tragic that "only half of India's youngsters" aged "6 to 14" attend "school". "3 million youngsters" aged "6 to 14" do not attend "school". In addition, "70 million children" around the world are barred from "attending school" on a "daily basis". In this article, we will learn about the "fundamental necessity" for "education" in terms of "human rights", the issues in India "surrounding education", the rights linked with "education", "acts", "amendment", and "distribution of funding", and many other aspects of "India's constitution".

### “Right to Education in India”

The "Right to Education" Statute is a "parliamentary act" proposed on "August 4, 2009", that "demonstrates" and "emphasises" the idea of the "importance of free and compulsory education" for "children aged 6 to 14" in India. India has become one of the "135th countries" to recognise the "right to education" as a "fundamental right" guaranteed to "every child" in our constitution under "Article 21A". This act went into effect on "April 1, 2010". Challenges and Implications

Although the right to education becomes the fundamental right but still a parliamentary process and largely expected to become a reality soon, determined to succeed for a country who has witnessed policy failure for a decade. We observe that education is never inexpensive, neither free nor compulsory. To make a move through legislative enactment is a major shift for the state-guaranteed education provisions given to disadvantaged groups who had witnessed the history of provisions that have consistently failed from protecting the interest of minority class.

One of the "major impediments" to "India's progress" and "ability" to achieve its high level of "illiteracy", especially when the gap between "discourse", "debate", and "structural framework" in all policy efforts in "education", and more specifically development, has been the "main genesis" for "India's poor performance" in securing "equitable educational opportunity" for all. Despite the "various obligations" and "rights" enshrined in the "Indian constitution" addressing "equality", it is always failing to meet the "ambitions" engendered by "birth" when it comes to "women and girls".

This data clearly demonstrates a "tremendous imbalance" and "apathy" in reading levels between "genders", amounting to a "16.68 percent deficit". The situation is "significantly worse" for "women" who live in "rural areas". Another "critical aspect" that is always a "barrier" to any policy is "Poverty", which may be blamed for "many problems" in India, including a "low female literacy rate". More than "two-thirds" of India's population lives in "poverty". Despite the "government's efforts" to make "primary education free", many families are still



unwilling to send their "children to school".

### “Constitution on Education”

"Right to education" has now been recognised as a "fundamental right" and is enshrined in "Part III" of the "Indian Constitution" under "Article 21-A". This was accomplished in the case of "Mohini Jain vs. the State of Karnataka". This case is decided by a "division bench" of the "Supreme Court". "Right to education" is the essence of the "right to life" and immediately flow and intertwined with it, and "life living with dignity" can only be secured when there is a "substantial role" of "education", "Justice Kuldip Singh and R.M Sahai ruled".

Later, the "validity of this judgement" was re-examined by a "five-judge bench" in "J.P. Unnikrishnan v. State of Andhra Pradesh"<sup>1</sup>, which held that: "Right to education" means citizens have the "right to call up the state" to provide "education facilities" to them in accordance with their "financial capacity".

The preceding instances enumerate the "right to education" as a "fundamental right in Part III". Many more cases seek to establish that the "right to education" is a "fundamental right", such as the case of "Maharashtra State Board of Secondary and Higher Education vs. K.S. Gandhi"<sup>2</sup>, in which the Supreme Court referred to the above-mentioned judgement in relation to the "case Bandhua Mukti Morcha, etc. v. Union of India".

<sup>1</sup> 1992 AIR 1858, 1992 SCR (3) 658

<sup>2</sup> 1993 AIR 2178, 1993 SCR (1) 594

### Provisions given in the Constitution promoting and strengthening the educational framework in India

- "Article 28": "Article 28" of our Constitution guarantees the "freedom to attend religious instruction or religious worship in educational institutions".
- "Article 29": This article guarantees "equitable access to educational institutions".
- "Article 30": Recognize "minorities' freedom" to "create" and "control" "educational institutions".
- "Article 45": This article requires the "state" to offer "free and compulsory education" for "all children" in the country until they reach the "age of 14" within ten years after the adoption of this Constitution.
- "Article 46": Discusses "special consideration" for the "advancement of education" and "economic interests" of "Scheduled Tribes", "Scheduled Castes", "OBCs", and the "weakest sections of society".
- "Article 337": This article governs the "particular provision for educational subsidies" for the benefit of the "Anglo-Indian population".
- "Article 350B": It provides "grants" and "opportunities" for "linguistic minorities".



- "Article 351": This article is concerned with the "growth" and "promotion" of the "Hindi language".

### “86th Constitutional Amendment Act”

This "constitutional amendment" is made to "protect citizens right to education". Given the challenges that "education faces in India", it is critical for policymakers in this country to "amend the constitution" and implement changes in "educational policy" so that more people in India have "access to education" and can "live better lives in the future".

The "86th constitutional amendment act of 2002" introduces "three additional amendments" to our constitution to "improve its operation" and to "facilitate a better understanding" of the "right to free" and "compulsory education" for "age group" between "six to fourteen. (6-14)"

They are as follows:

- "Insertion of a new Article, 21A", into "Part III of the Indian Constitution", stating that "every child" has the "right to free and compulsory education" of "equitable quality", subject to "certain norms and criteria".
- Change and modify "Article 45" such that the "State strives to provide early childhood care" and "free" and "obligatory education" for "all children" until they reach the "age of six years".

Adding the "additional phrase, (K)", under "Article 51A", the result of this new "fundamental obligation" indicates that whomever is a "parent" or "guardian" has a duty to provide "educational opportunities" to his kid or, as the case may be, ward between the "ages of six and fourteen years".

In the "Shyam Sundar case", the Court ruled that a child's "right to an education" should "not be limited" to "free and compulsory education", but should be expanded to include "quality education" without regard to "economic", "social", or "cultural background".

### Judicial Approach

The Supreme Court issues a "major decision" in the matter of "State of Madras v. Shrimati Champakam Dorairajan". This decision gives rise to the "First Amendment" to the "United States Constitution". In this case, the court determined that establishing such inconsistent reservations violated "Article 29(2) of the Indian Constitution". The Court ruled that "fundamental rights" are "sacred" and "cannot be diminished" by any "legislative" or "executive action" or "order", save as allowed in "Part III".

"State policy direction principles" must be "consistent" and run on a "subsidiary basis" in relation to a "basic right". However, there can be "no objection" to the "state" operating in accordance with the "directive principles of state policy" if there is no "infringement/violation of rights" conferred by "Part III" of the "Indian constitution".



The "right to free and compulsory education" was established in the "case of Mohini Jain in 1992", which became known as the "capitation fee case".

In this case, the questions to be asked were: "Is there a section in the Constitution guaranteeing the people of India the right to education?"

If so, is the "concept" of a "capitation charge" implied?

"Is the imposition of a capitation fee for admission to educational institutions arbitrary, discriminatory, and unfair, and thus violates the equality clause in Article 14 of the Constitution"?

According to the "Supreme Court's" split bench, the "right to life" is an integral component of all the "rights" that courts must protect since they are "crucial" to the "dignified enjoyment of life". The "right to education" is inextricably linked to the "right to life". The "right to life" guaranteed by "Article 21" and the "dignity of an individual life" cannot be "realised" unless it is combined with the "right to education".

"Education" in India cannot be "marketed" as a "product". According to the "Indian Constitution", "every citizen" has the "right to education".

The "state" is required by law to provide "educational institutions" in order for "citizens" to exercise the aforementioned right. The "State" may carry out its responsibilities through "state-owned" or "state-recognized educational institutions". When the "State Government" recognises

"private educational institutions, it delegates authority to an agency to carry out the duties contained in the Constitution. Students" must be admitted to "educational institutions", whether "owned by the state" or "recognised by the state", in accordance with their "constitutionally" guaranteed "right to education".

The Court further noted that the "Constitution mandated" that "all citizens receive an education". This interpretation would "primarily support" the people in "transforming the goals" of "political", "economic", and "social justice". And charging "huge capitation fees" by institutions of higher education is a "denial of the right to education". The "Supreme Court upheld" the "legality of the court's decision" in "Mohini Jain in the case of Unnikrishnan".

By a "3-2 vote", the "bench of five judges" agreed with the "Mohini case" ruling and found that the "right to education" is a "basic right" under "Article 21" of the Constitution since it comes directly from the "right to life". As a result, the court partially overturned the "Mohini Jain ruling", observing that the "right to free and compulsory education" is available only to "children until the age of 14", after which the "State's responsibility" to provide "education" is subject to the "limits of its economic capabilities". "Thus it is well observed by the decisions of this Court that the provisions of Part III and Part IV are complementary and supplementary in nature to each other and fundamental right means to achieve the goal inculcate in Part IV of Indian constitution, It is also observed that the fundamental rights should be established in the light of the directive principles".



## “Right To Education Act, RTE 2009”

### “Historical Background”

"1950": The "Indian Constitution" established, as one of the "guiding principles" of "state policy", "Article 45", which states: "The State should attempt to provide for a period of ten years from the beginning of the Constitution, free and compulsory education for all children till the age of fourteen".

"Dr. Kothari" appoints the first "National Commission for Education", which publishes its reports in "1968". It proposed various far-reaching changes, including a "consistent curriculum" for "both boys and girls", making "mathematics" and "science" "obligatory subjects", and establishing a "common school system".

"1976": A "constitutional amendment" was passed that made "education a concurrent issue (the responsibility of both the federal and state governments)".

"The National Policy on Education (NPE)" was formulated in "1986" to support the "Common School System (CSS)". "CSS" was later accepted by "NPEs", although it was "never deployed".

"1991": "Myron Wiener" publishes a book titled "The Child and State in India: Child Labour and Education in Comparative Perspective", exposing "the states" failure to "abolish child labour" and "exploitation of

children" and to "impose compulsory education" in "India".

In the case of "Mohini Jain and Unnikrishnan vs. State of Andhra Pradesh", the Supreme Court declared under "1993" that the "right to education" is a "fundamental right" that arises from the "right to life" in "Article 21" of the "Indian Constitution".

In "1997", a "constitutional amendment" was introduced to make "education a fundamental right".

"2002": The "86th Constitutional Amendment" is enacted, and "Article 21A" is inserted, which provides that "the State shall be bound to provide free and compulsory education to all children of the age range of six to fourteen years in such manner as a law may determine". This "86th Amendment"<sup>3</sup> also modifies "Article 45", which states, "The state shall attempt to provide early childhood care and free education for all children until the age of six years". In addition, under "Article 51A", a "new fundamental responsibility" was introduced.

"2005": The "CABE committee report", which was formed to write the "Right to Education Bill", is submitted.

Every time a new phase or version was added, until it was finally presented to "Parliament in 2008".

<sup>3</sup> <https://indiankanoon.org/doc/48937/>



On "July 2, 2009", "cabinet members" adopted the "bill".

The bill was passed by the "Lok Sabha on August 4, 2009", and by the "Rajya Sabha on July 20, 2009".

It got "President assent" and became "law" on "September 3, 2009", as "The Children's Right to Free and Compulsory Education Act RTE, 2009".

After "several discussions", "drafting" and "redrafting", the "right to education act" was created, which is a "true instrument" for achieving the "basic need" and ensuring "social justice" for all children. This strategy is based on the "4As", which describe what "education" means to them and their current condition within the context of this "philosophy".

#### The "Right to Education Act's" main characteristics are as follows:

- "Compulsory and completely free education" for all "Indian children aged 6 to 14".
- No child shall be "delayed", "expelled", "reprimanded", or "compelled" to pass a "board examination" until he has "completed primary school".
- If a "kid" beyond the age of "six" has not been "admitted" to a "school" or may "not complete" his or her "elementary education", he or she will be placed in a "class appropriate" for "his" or "her age". However, if a "kid" is expected to be "accepted to a class" based on "his or her age", he or she has the "right", in order to

"compare with others", to receive "special instruction" and "special care" within such "time restrictions" as may be imposed. Furthermore, a "child" so admitted shall have the "right to elementary education" and must be "assured free education" until he or she completes "elementary education", even if he or she has attained the "age of 14 years".

- "Proof of age for admission": The age of a "child" for admission to "basic school" shall be "assessed" on the basis of the "birth certificate" issued in accordance with the "Provisions of Birth". "Marriage and Death Registration Act of 1856", or on the basis of any "other documents specified in the annexure".
- When a "child" completes his or her "elementary education", he or she will be granted a "certificate". "Calls" and "attendance" must be taken in order to maintain a "predetermined student-teacher ratio".
- "All private schools" will be required to make a "25% reservation" for "economically disadvantaged" and "weaker communities" in admission to "Class I".
- "Education quality" improvement should be "ongoing" and "significant".
- "School instructors" will need a "sufficient professional degree" within "five years" or "risk losing their jobs" if they do not meet the "requirement".
- If there is an "issue" with the "school infrastructure", it must be "corrected" every "three years" or the "school's recognition" would be "revoked".



- As an "educational subject" falls under the "concurrent list", the "financial cost" will be shared by the "federal and state governments".

#### “RTE Amendment Bills”

- The "Right of Children to Free and Compulsory Education (Amendment) Bill", 2018, has been approved by "Parliament". The "no-detention policy" mentioned in the "statute" is repealed by the "amended bill". Prior to this, a "child" cannot be "detained" or kept back until he has "completed his elementary schooling". However, whether or not the "non-detention policy" is maintained following the "amendment is up to the state".
- The "Children's Right to Free and Compulsory Education (Amendment) Bill, 2017". The "Bill" proposes to alter the "Right of Children to Free and Compulsory Education Act (RTE), 2009", to extend the "deadline for teachers" to obtain the "minimum qualifications required for appointment".

#### Challenges for the implementation of the RTE Act.

##### “The issue to share the burden”

This "statute"<sup>4</sup> held "state and municipal governments" accountable for its "execution". The state claims that "local governments" lack the "financial resources" to fund all of the "schools" purchased under "universal education". In that instance, a "centre" that receives the majority of the "revenue tax" must support the "state". The "HRD ministry" established the "Anil Bordia Committee" to coordinate the "Sarva Shiksha Abhiyan" and the "RTE Act". In addition, the committee requested that funds be "investigated". It was initially predicted that "1,71,000 crore" would be needed to "execute" the Act over the "next five years". The "committee" argued that because "central" has a "greater financial burden", the "share ratio should be 50:45" for the current year and "50:50 for the following year (2011-12)". This appears to be "quite impossible for the state", as the "state's allocations should be doubled.

##### “RTE challenged by private schools”

The "right to an education" is defined as a "school" that is assisted by "government funding" or by "local entities" that are not aided by the "government and school authorities".

<sup>4</sup> <https://indiankanoon.org/doc/48937/>



This implies that "private schools" are also covered by this "statute", which requires all schools to "reserve 25%" of their places for "economically disadvantaged pupils" and on the "basis of merit". By imposing this requirement, the "private school's operation" is "jeopardised" and a "basic right" guaranteed by "Article 19" 1 is violated. However, "Article 19 (6)" mandates the above article and states that nothing in "sub-clause (g)" of the said clause shall affect the course of any "operational law" in so far as it "imposes", or "restricts" the "State" from making, reasonable restrictions on the exercise of the "right" conferred in the contrary "interests of the general public". The Supreme Court ruled that "RTE" constituted an "unconstitutional encroachment" on the "rights of private and minority schools".

#### “Suggestions” for making “RTE effective”

- The scope of the "Right to Education Act" should not be confined to "children under the age of 14"; it should be extended to "include high school students" as well.
- "CSS (Common School System)" was an important step and goes hand in hand for achieving "equality" decades ago, but it must now be changed into "MSS (Model School System)" based on the "dynamic nature" and "demands" of the society where "education" should be provided "free of charge" and on "joint

venture patterns" with "private institute patterns".

- "Parents" must be ruthless in order for "RTE policy" to be a "success in India", and the government must make this a "fundamental duty" of "guardians and parents". Furthermore, it can only be accomplished by "inspiring people" through "counselling" and "advice", and they must be made aware of the "RTE Act" by "media", "leaflet campaigns", "hoardings", "rallies", and so on.
- "Schemes" such as "mid-day meal", "SSA", and "RMSA", followed by "global organisations" like as "UNICEF", are playing a "significant role" in expanding the enormous "enrolment percentage". By providing "Indian children" with "early childhood" and "basic education".
- Most significantly, "local governments" and "governing bodies" should become involved to ensure that "new-born babies" are "enrolled" and their records are "forwarded" to a "nearby school".

#### “RTE” Available only form class “1st to 8<sup>th</sup>”

The most "significant disadvantage"<sup>5</sup> of the "RTE Act" is that it only applies to children

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<https://www.lawctopus.com/academike/ri-ght-education-india>



up to the age of "fourteen". What about youngsters who are "over the age of fourteen"? What about the kid who want to pursue "higher education"? Forget about higher education; what should a child do after the "eighth grade" if he or she is "unable to pay education"? However, the government fared well in this aspect, implementing a system of "baseline tests" every "2 or 3 months" to assess "students' knowledge". This approach is based on the "No Child" Left Behind initiative in the "United States". Once a child's "basic schooling" is "completed", it is possible to determine what he or she is "interested" in doing.

### Conclusion

In general, "education" accounts for "5%" of a country's GDP in order to enable "social transformation". " Education" is a way to become finer or one step ahead of those who are "not educated". "Education" is a "strong instrument" for allowing a person to develop to their "maximum potential". Many other treaties mention the "right to education" for the "advancement" and "promotion" of the "right to education", including the "UN Human Declaration". "UNICEF", "UNESCO", and the "international organisation". "AMNESTY" have made significant efforts to promote the "right to education" around the world. After enacting the "right to education", India became the "135th country" to do so.

The "right to education" was made a "fundamental right" under "21-A" by the "Parliament of India" in its "86th constitutional amendment", and an act that is "right to education was also established for better structuring of the educational system. Which offers "free and compulsory education

to children aged 6 to 14". And include provisions that require "state and local governments" to provide a "right to education" to every "child" in the country, and hold them all accountable if they do not. Literacy rates" are still being built, so new acts and ordinances pertaining to the "right to education" should be enacted in order to increase this rate.

### References

1. 1992 AIR 1858, 1992 SCR (3) 658
2. 1993 AIR 2178, 1993 SCR (1) 594
3. 1991 SCALE (1)187
4. (1997) 10 SCC 549
5. <https://indiankanoon.org/doc/48937/>
6. AIR 1951 SC 226
7. <https://www.lawctopus.com/academike/right-education-india>

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