



## RIGHT TO EDUCATION IS A FUNDAMENTAL RIGHT: A ROADMAP

Neha Chowdhary

LL.M Scholar, School of Law and Legal Affairs, Noida International University, Gautam Budh Nagar, Uttar Pradesh, India.

**ABSTRACT**

Importance of education realised by the whole world after it declared as a fundamental human right by UDHR in 1948 which is the first international legal instrument to give such recognition and paved the way for many positive changes to attain the goals set by various international organizations like UNESCO and ILO. With the strong efforts of various social reformers and various initiatives of government India has tried to reform its education policies time to time. The 86th amendment Act 2002, which came into effect on 1st April, 2010, has made changes in the Constitution of India by inserting Article 21A, amending Article 45 and by inserting Article 51A(k) and finally the Right to Free and Compulsory Education Act of 2009. With the enactment of the Act of 2009 popularly known as RTE, a strong initiative taken by the government successfully bring hope in hearts and minds of many Indian citizens. Today education is not limited to those having stronger economic background but after the introduction of Right to Free and Compulsory Education Act, 2009 it became the right of every child. In this research article an effort has been made to cover the journey of "education in India" and to see how successfully it can make a difference in many lives to realise them its importance.

**KEYWORDS** : Education, Children, 86th Constitutional amendment, Right to education**INTRODUCTION**

"Education" is now considered as one of the important goal to be achieved by every nation state for all of its citizens. Various attempts have been laid down to improve the literacy rate along with the improvement in education policies time to time. UDHR by proclaiming the right of education as a fundamental right propagate the notion of importance of education in every nation's mind. India has gone through a journey for its enactment of Right of Children to Free and Compulsory Education Act, 2009 popularly known as RTE Act providing free and compulsory education to children between age of 6 to 14 years. *Mohini Jain vs. State of Karnataka* and *Unni Krishnan vs State of Andhra Pradesh* are Hon'ble Supreme Court's pronouncements which marched the way of Indian children towards their Right to Education. Now, the importance of education has been clearly depicted in the eyes of children, parents, society as a whole and the government. India is a land of great social reformers like Raja Ram Mohan Roy, Savitribai Phule, Jyotirao Phule, Dr. Ambedkar, Mahatma Gandhi who fought against social evils like child marriage, denial of education to girls, sati, dowry etc. A journey from *gurukul* to private schools to 86<sup>th</sup> Constitutional amendment giving right to education speaks loudly the phases which it had gone through. Various initiatives by the government like 'midday meal', '*sarva shiksha abhiyan*', '*beti bachao beti padhao*' creates a zeal among parents and children. Although India took more than sixty years after its independence to enact its Right to Education Act which does not seem very encouraging but India has been able to increase its rate of literacy in recent years which makes us believe that one day we will see every child holding a pencil and scribing her or his dreams into a reality. I believe that it can be possible with the collective efforts of us as a parent, society and government.

**Importance Of Education**

Education is the most powerful tool which can shape the destiny of not only of an individual but of the whole of the nation. It is the most vital factor leading to the progress in the developed nations. Education is a form of learning through which the knowledge, skills and habits of people are transferred from one generation to another by the different methods like teaching, training or research. However, the unequal criterion of education is still a major problem that needs to be solved.

Education keeps a person aware about his rights and duties. For e.g while exercising power of vote, education helps us to understand the make a choice of correct representative. Instead of following others an individual develops his own scientific and logical reasoning and using his own thought process he makes his own independent decision. It is a tool that assists in the critical analysis of the situation.

An educated person can get a good job and may fulfil his and his family's basic needs. He may secure the future of his family. They may live a stable, comfortable and happy life. Education helps us to meet the objectives of life. Right education with dedication can help to accomplish the tasks making way to excel in different businesses. It enhances the skill level and helps to attain professional expertise in

other words we may say education sometimes helps to change dreams into reality.

Through education, it becomes easy to fight with various social evils and feels empowered to eradicate them. The biggest example in Indian context is *Savitribai Phule*, whose birth anniversary was recently celebrated by nation. She is formally recognised as India's first female teacher. "*Go, get education...*" was her appeal to women, in particular, and to people from the backward castes. She and her husband Jyotiba Phule encouraged girls to be educated so that they may get rid of socially-construed discriminatory practices. Despite of facing constant opposition from orthodox Hindus, the couple successfully ran schools for girls. She gained courage to rebut by saying, "*Your efforts inspire me to continue my work. May god bless you.*"

Education gives knowledge about values, ethics, moral responsibilities, good behaviour, self-confidence, and saves from being exploited. Thus, with all these positive sides, education is the best way to progress not only for an individual but for a nation as well. It is the most important tool to fight with poverty and paved a way for development.

**Right To Education: An International Recognition**

According to Cambridge dictionary, education is the process of teaching or learning, especially in a school or college, or the knowledge that you get from this.

**The Universal Declaration of Human Rights (UDHR)**

The Universal Declaration of Human Rights (UDHR) adopted in 1948, is the first international legal instrument to give education recognition as a human right. Article 26 of UDHR proclaims "everyone has the right to education". Since its adoption, the right to education has been affirmed in numerous human right treaties and declarations adopted by the United Nations.

**UNESCO convention against Discrimination in Education 1960**

The convention was adopted by the General conference of the United Nations, scientific and cultural organisation (UNESCO) in 1960. It is one of the pillars of UNESCO's activities for education, reflecting its mission of instituting collaborating among nations to "advance the ideal of equality of educational opportunities without regard to race, sex, or any distinctions, economic or social. The convention expresses the fundamental principles of non-discrimination and equality in the field of education.

The convention reaffirms that education is not a luxury, but a fundamental human right. It highlights states' obligations to ensure free and compulsory primary education; secondary education accessible to all and higher education equally accessible to all on the basis of individual capacity.

Education as a human right means a right which is legally guaranteed for all without any discrimination. States must protect, respect and

fulfil its duty and must be accountable for violations or deprivations of the right to education.

### Special Rapporteur On The Right Of Education

Special Rapporteur on the right of education is an independent human right expert appointed by the United Nations Human Rights Council, in 1998. The mandate was most recently renewed through "Resolution adopted by the Human Rights Council on 16 July, 2020 recognizing the impact of Covid 19 on the right of education for a further period of three years.

The Special Rapporteur address issues of 'availability', that is the education is free with adequate infrastructure and trained teachers; 'accessibility', that is the education system is non-discriminatory and accessible to all; 'acceptability', that is the content of education is relevant, non-discriminatory and culturally appropriate and of quality; and 'adaptability', that is the pattern of education changes with the changes in society so it needs to adapt local specific needs and contents.

### Right To Education In India

In ancient India, the 'gurukul' system was practiced where all students lived under the same roof with their guru, irrespective of their social standards. They followed strict routine prescribed by their teacher devoid of any pleasure or entertainment. With the passage of time and with the dominance of caste system and social hierarchy, only 'elites' were allowed to be educated and for those performing menial jobs had lost their access to education. The introduction of western education by British held a great historical importance for the current education system in India.

The first official document on the education right of children was **Ramamurti Committee** Report 1990 which reviewed the National Education policy of 1986. The committee states that "the time has come to recognize 'right of education' as a fundamental right of the citizens of India". To ensure global and international covenant on education, essential amendments brought in the Constitution of India to ensure right to education for all citizens. Various judicial pronouncements also play a vital role in the said changes.

Originally, **Article 45** had a provision for free and compulsory education. This Article directed the states to take steps for free and compulsory education for all children upto the age of 14 years. The Constitution had put a time limit, i.e, 25<sup>th</sup> January, 1960, within which the goal set forth in the article was to be achieved. Finally, in 1993, the court read this article into Article 21 and in effect converted it into a fundamental right.

The **86<sup>th</sup> amendment Act 2002**, which came into effect on 1<sup>st</sup> April, 2010, has made changes in the Constitution of India by inserting Article 21A, amending Article 45 and by inserting Article 51A(k) and finally the Right to Education Act of 2009.

**Article 21A**, is a fundamental right to education after the amendment of 2002. It provides that 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. In *State of Tamil Nadu vs. K. Shyam Sunder*, it was held by the hon'ble Supreme Court that Right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the ground of their economic, social and cultural background.

**Article 45** is a Directive Principle of State Policy which was also amended by the 2002 Act. It provides that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. The Directive Principles are the ideals which the Union and state governments must keep in mind while they formulate policy or pass a law. They lay down certain social, economic and political principles, suitable to peculiar conditions prevailing in India.

**Article 51A(k)** is another amendment of 2002, which is a fundamental duty. It provides that it shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child, as the case may be, ward between the age of six and fourteen years. The fundamental duties are intended to serve as a constant reminder to every citizen that while the Constitution specifically conferred on the certain fundamental rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour.

In *Mohini Jain vs. State of Karnataka [(1992) 3 SCC 666]*, popularly known as the "capitation fee case", the Apex Court held that right to education is a fundamental right under Article 21 of the Constitution of India not to be denied by charging high capitation fees as this right directly flows from right to life and dignity under Article 21. The dignity of an individual cannot be assured unless it is accompanied by the Right to education. Further, it was held that charging capitation fee for admission is illegal and amounted to denial of citizens' right to education. The education in India had never been a commodity. However, the Court did not say up to what a age a citizen has right to education guaranteed by the Constitution.

In *M.C.Mehta (2) vs. Union of India*, [(1983)1SCC 471] the hon'ble Supreme Court held that it is the duty of the Central Government to introduce compulsory teaching of lessons at least for one hour in a week on protection and improvement of natural environment in all the educational institutions of the country. It directed the centre to get textbooks written on the subject and distribute them free of cost.

In *Unni Krishnan vs. State of A.P.*, [(1993) 1 SCC 645] the Supreme Court examined the correctness of decision of Mohini Jain case. The five judge bench by 3-2 majority partly agreed with the decision and held that the right to education is a Fundamental Right under Article 21 of the Constitution of India as it 'directly flows' from right to life but as regards its content the court partly overruled the Mohini Jain's case and held that the right to free education is available only to children until they complete the age of 14 years but after that the obligation of the State to provide education is submit to the limits of its economic capacity and development. The obligations created by Article 41, 45 and 46 can be discharged by the State either establishing its own institutions or by aiding, recognising or granting affiliation to private institutions. The majority held that admission to all recognized private institutions shall be based on merit, but 50 percent of seats be filled by candidates prepared to pay a higher fee. Further, it was held that Article 21A makes it obligatory for the government to enact a central legislation to give effect to the constitutional amendment. The Parliament to give effect to the 86<sup>th</sup> amendment Act 2002 passed the Right of Children to Compulsory Education Act, 2009.

In *TMA Pai Foundation vs. State of Karnataka*, [AIR 2003 SC 355] an 11 judge Constitution Bench of the Supreme Court has overruled the decision of Unni Krishnan partly. The court held the scheme relating to admission and the fixing of fee were not correct and, to that extent, they are overruled.

In another case the High Court of Gauhati directed the applicant to approach the appropriate authority of the government of Manipur by filing a representation for providing free and compulsory education to the children of age 6 to 14 years by establishing a government primary school.

### The Right Of Children To Free And Compulsory Education Act, 2009

Every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. This Act cast an obligation on the appropriate government to provide and ensure admission, attendance and completion of elementary education. Provisions of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is not merely the responsibility of schools run on supported by the governments, but also of schools which are not dependent on government funds. The Act provides at least 25 percent of strength of a school belonging to weaker section and disadvantaged group. The Act focuses on duties of government, norms and standards for school, qualifications for appointment of teachers, duties of teachers, pupil-teacher ratio, curriculum and evaluation procedure, redressal for grievances etc.

The Act is being criticised that it was drafted in haste without much consultation because of which its quality was compromised; children below 6 years are not covered under the Act; at the time of admission requirement of documents like birth certificate or BPL certificate may leave out orphans from being a beneficiary; parents and children may not feel comfortable due to different social-cultural background; and lastly instead of increasing the standards of public education system in India, the Act makes the private schools to share the burden.

### CONCLUSION

Education is the most important tool for every nation through which it

can fight with poverty and under-development. It became even more necessary for a country like India where the population of youth is highest in the world. By providing them proper education many miles in economic, cultural, social and political fields may be achieved. Education should not remain restricted to reading text books only rather it should be a mechanism through which the overall personality of a person may be developed. We may have excellent representation on various international stages with bright and confident personalities. For which it is significant that education should be in reach of every child without any discrimination of gender, social or economic status. There is a need to develop a system through which opportunities for education for all must be ensured. India no doubt under the various international obligations trying hard not only to improve its educational policies but to achieve its goal of “*Sarva Shiksha Abhiyan*”, through various judgments, 86<sup>th</sup> amendment and enactment of RTE Act. Though with such a huge population and high poverty rate it will take enough time still in my opinion it is possible with the combined efforts of people, various social organizations and government. The right to education cannot be satisfied only learning texts behind the walls of schools rather it should be a mode with value based education.

RTE Act has put the reservation of 25% seats for weaker sections in private schools which it is a strong message to all sections of society that good education now cannot be restricted to some particular class of people.

Apart from child education, there is a need to develop policies on the higher education. It should not remain a mirage for those who do not have a strong economic background. Many youngsters are forced to leave their studies in between due to financial constraints they are forced to get a job and start earning as their family are not able to pull the 'burden' of fee of their higher education. Also, RTE Act does not cover children between the age of 3 to 6 years there is a need to rethink and some provisions should also be made to ensure the reach of education among these children as well. Adult education is also a left out subject in our country, hopefully it will also be given attention in coming years.

My final version to conclude this research article is that I do believe movies or documentaries are somewhere mirror of the society. In the movie “Hindi Medium”, struggle of parents to get admission for their child in one of the reputed school has been very strongly and nicely shown. The fact that only admission in a school is not the aim but admission in the “best” school is the aim for some parents for which they may go to any extent. This movie has given a very strong message that it is not necessary that reserved seats are reserved for a deserving candidate only. Thus, there is a need to keep check and balances so that the Act does not remain like a toothless tiger. Although other side of the coin is that children who get admission against reserved seats may face indifferent behaviour because of social and economic backgrounds therefore, efforts should be made to improve the quality of education, infrastructure and inclusion of smart teachers in the public or government schools so that every child will be prepared to fight equally through every stage of his or her life. Thus, education still has a long way to go requiring the attention from I, you and we.

## REFERENCES

1. Shukla V.N., Constitution of India, 11<sup>th</sup> edition, Eastern Book Company (2008).
2. Pandey, J.N., Constitutional Law of India, 55<sup>th</sup> edition, Central Law Agency (2018).
3. Right to education in India. available at <https://www.lawctopus.com/academike/right-education-india/> [accessed on January 20, 2021].
4. Importance of stuff. Available at <http://importanceofstuff.com/education> [accessed on January 20, 2021].
5. Top 10 reasons why education is extremely important. Available at <https://www.linkedin.com/pulse/top-10-reasons-why-education-extremely-important-mohamed-reda> [accessed on January 18, 2021].
6. Remembering Savitribai Phule. available at <https://indianexpress.com/article/opinion/columns/savitribai-phule-education-feminism-women-empowerment-7131478/> [accessed on January 18, 2021].
7. <https://dictionary.cambridge.org/us/dictionary/english/education> [accessed on January 18, 2021].
8. United Nations Instruments. Available at <https://www.right-to-education.org/page/united-nations-instruments> [accessed on January 20, 2021].
9. <http://humanrightscovenant.com/wp-content/uploads/2019/04/UNESCO-convention-against-Discrimination-in-Education.pdf> [accessed on January 19, 2021].
10. Special Rapporteur on the Right to Education. Available at <https://www.ohchr.org/en/issues/education/srededucation/Pages/SREducationIndex.aspx> [accessed on January 19, 2021].
11. Understanding education as a right available at <https://www.right-to-education.org/page/understanding-education-right> [accessed on January 20, 2021].
12. Development of the Education System in India after Independence. Available at <https://opinionfront.com/development-of-education-system-in-india-after-independence> [accessed on January 18, 2021].
13. Right to Freedom and Six Basic Freedoms in India available at <https://www.gktoday.in/topic/right-to-freedom-and-six-basic-freedoms-in-india/> [accessed on January 18, 2021].

14. Right to Education Act (RTE)- Indian Polity Notes. Available at <https://byjus.com/free-ias-prep/right-education-act-rte/> [accessed on January 18, 2021].