



A STUDY ON SIGNIFICANCE AND REGIONAL FRAMEWORKS ON THE RIGHT TO EDUCATION

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Abstract

Education is the most important investment for a developing and economically prospering society. With the help of education, we can establish a civilized society. In present scenario, education is also to be included in basic needs of our life, like food, shelter, cloth and education. Therefore, the Right to Education Act (RTE) is important legislation that marks a watershed in the education system in India. The RTE Act 2009, gave a great opportunity to all the children between the ages of 6 to 14 year, so that, He /She can avail the benefit of elementary education free of cost as this act aims that "Literacy is our fundamental right". The purpose of this act is that "No child will remain illiterate". So, this paper reveals the need and significance of the RTE act in education system and will be helpful to describe the regional framework of the act.

Keywords: Education, Right to Education, Opportunity, Fundamental, Society

INTRODUCTION

Education provides a platform for optimum development of a child. As realization dawned upon this aspect, and that the goal expressed in Article 45 of the Constitution of India of providing free and compulsory education was unattainable even after 50 long years of adoption of the provision; the Right to Education was articulated as fundamental right under Article 21A of the Constitution. It was the State that was given the responsibility of executing this right by enacting a law in that direction. Aftermath of adoption of Article 21A saw the implementation of RTE Act where the Right to Education was pronounced as a statutory right. The right to education is an internationally recognized human right protected by a range of global multilateral treaties. These instruments are supplemented by various regional treaties and non-binding agreements. This paper examines the American, African and European regional frameworks on the right to education and seeks to explain the basic structure of each framework.

OBJECTIVE OF THE STUDY

The objective of this study is to find out the significance and regional framework of Right to Education in India.

REVIEW OF LITERATURE

Dr. TSN Sastry (2015) in his article, “Children in India and Their Rights” has focused on the education is a important tool for development of individual as well as nation. After international and judicial quarters finally government enacted. The right to education Act 2009- It is basic compulsory elementary education. It should be free and compulsory to all without any discrimination. The world conference on human right in 1993 proclaimed that for the realization of human right education be make compulsory for promotion of dignity, liberty of individual right to education is a human right.

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this book contains 28 parts. educational laws in Maharashtra its statutory provisions are mentioned clearly in this, according to Plato direction in which education starts a man will determine his future and according to the Abraham linken ; The philosophy of school room in one generation will be the philosophy of government in the next; The advancement of knowledge is essentials dissemination of truth can be achieved by state by making a strong educational foundation. Our Bombay High Court took a protective step to set up separate division bench to deal with educational law matters. Education is playing important role to remove social inequalities. The Right to children free and compulsory education (RTE Act, 2009) which was enacted pursuant to the landmark Supreme Court ruling. It is indeed a step towards ensuring the provision of essential elementary education to children thereby laying down a firm foundation for their future academic growth. The text of the book is collation of educational laws in the form of some important bare Act made accessible to the reader with a view to facilitate referencing.

V. K. Anand (2015) in his paper, “Human right in their legal perspective” has explained that the human right in their legal perspective based on international perspective based on international conventions& declaration. And also given how these human rights are being implemented under the law India, constitutional, criminal, civil law of country as well as problems of children, women, and minorities explained properly. Here right to education is free & compulsory primary education. Development of respect for human rights & fundamental freedom.

Subhankar Ghosh, M.S. Siddiqui (2019) in their paper, “Education system after independence” presented that after independence there has been tremendous quantitative growth of education in all levels. Now there is need to attention on qualitative education for sustaining our future generation. Through the education individual can develop himself as well as the nation. Now the rapid growth of science & technology the significance of education is increasing by day to day.

Poromesh Acharya (2014) in his paper , “A key role of Elementary education” discusses the status of achieving universal elementary education. He emphasizes on the point of giving quality education to the children. The author reviews the rate of enrolment, drop-out rate and the quality of teaching in the government primary school. The author discusses the issue of infrastructure facilities, curriculum, and pupil- teacher ratio in the government schools.

NEED OF THE RIGHT TO EDUCATION ACT

Contemporary India's education statistics make dismal - indeed shocking - reading. Of the estimated 200 million children who enroll annually in the nation's 900,000 primary schools, 53 percent drop out before they make it into secondary education (class VIII). Of the remainder only 10 million enter institutions of tertiary education, of whom some 3 million graduate annually.

It is hardly surprising considering that 20 percent of government primary schools are multi grade teaching institutions; another one-fifth don't have a proper building; 58 percent can't provide safe drinking water, and 70 percent lack toilet and sanitation facilities. Moreover corporal punishment is rife in India's crowded classrooms, which boast the world's highest teacher-pupil ratio - 1:63.

The combined annual outlay of central state governments for education in India has never crossed the mark of 4 percent of GDP. Compare it with the global average spending of 5 percent of GDP per annum and 6-7 percent in the developed nations of the western world.

HISTORY

The Right to Education legislation has a long history, having been subjected to numerous rounds of heated debate and philosophical and semantic alterations. It was tailored into existence in the period following the passage of the 86th Constitutional amendment in 2002, which declared Education a fundamental right of all children in the age-group of 6-14. A participatory process of inviting comments from members of the public yielded several different drafts of the bill in the subsequent years until finally, in 2008, the Union Cabinet stamped its seal of approval on it and it was placed before the Rajya Sabha which passed it in July 2009. The bill then proceeded to the Lok Sabha, where it was passed in August 2009.

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) has a long history. The right to education was discussed extensively during the drafting of the Constitution. The Constituent Sub-Committee on Fundamental Rights included the right to primary education as a fundamental right. However the Advisory Committee of the Constituent Assembly rejected this proposal and placed it in the category of non-justifiable fundamental rights (later known as Directive Principles of State Policy). The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the Acharya Ramamurti Committee. Thereafter, several political as well as policy level changes influenced the course of free and compulsory education. The country witnessed an increased international focus on its initiatives regarding free and compulsory education after its participation in the World Conference on Education for All in 1990. India also ratified the United Nations Convention on Rights of the Child in 1992.

SIGNIFICANCE OF RIGHT TO EDUCATION

The Right to Education Act is important because it offers a right to every child in our nation to gain the necessary education to develop their skills for a better future.

The right to free and compulsory education is important for these important reasons:

- Proper education brings financial security and stability in life.
- Quality education narrows the social gap by uplifting the underprivileged communities of society.
- Education for children enhances analytical skills and critical thinking leads to confidence in making the right decisions and expressing feelings in a better way.
- Quality education helps in reducing crime and this makes society a better and more peaceful place to live in.

With the passing of the Right to Education Act, India has moved to a rights-based approach towards implementing education for all. This Act casts a legal obligation on the state and central governments to execute the fundamental rights of a child (as per Article 21 A of the Constitution).

- The Act lays down specific standards for the student-teacher ratio, which is a very important concept in providing quality education.
- It also talks about providing separate toilet facilities for girls and boys, having adequate standards for classroom conditions, drinking water facilities, etc.
- The stress on avoiding the urban-rural imbalance in teachers' posting is important as there is a big gap in the quality and numbers regarding education in the villages compared to the urban areas in the country.
- The Act provides for zero tolerance against the harassment and discrimination of children. The prohibition of screening procedures for admission ensures that there would be no discrimination of children on the basis of caste, religion, gender, etc.
- **The Act also mandates that no kid is detained until class 8.** It introduced the Continuous Comprehensive Evaluation (CCE) system in 2009 to have grade-appropriate learning outcomes in schools.
- The Act also provides for the formation of a School Management Committee (SMC) in every school in order to promote participatory democracy and governance in all elementary schools. These committees have the authority to monitor the school's functioning and prepare developmental plans for it.
- The Act is justifiable and has a Grievance Redressal mechanism that permits people to take action when the provisions of the Act are not complied with.
- The RTE Act mandates for all private schools to reserve 25 per cent of their seats for children from socially disadvantaged and economically backward sections. This move is intended to boost social inclusion and pave the way for a more just and equal country.
- This provision is included in Section 12(1)(c) of the RTE Act. All schools (private, unaided, aided or special category) must reserve 25% of their seats at the entry level for students from the Economically Weaker Sections (EWS) and disadvantaged groups.
- The loss incurred by the schools as a result of this would be reimbursed by the central government.

- When the rough version of the Act was drafted in 2005, there was a lot of outcry in the country against this large percentage of seats being reserved for the underprivileged. However, the framers of the draft stood their ground and were able to justify the 25% reservation in private schools.
- This provision is a far-reaching move and perhaps the most important step in so far as inclusive education is concerned.
- This provision seeks to achieve social integration.

REGIONAL FRAMEWORKS ON THE RIGHT TO EDUCATION

The right to education is an internationally recognized human right protected by a range of global multilateral treaties. These instruments are supplemented by various regional treaties and non-binding agreements. This section examines the American, African and European regional frameworks on the right to education and seeks to explain the basic structure of each framework

➤ **The American Framework**

Americas was the first region to recognize the right to education. In 1948, prior to the announcement of the UDHR, the Ninth International Conference of American States set forth the American Declaration of the Rights and Duties of Man. Like the UDHR, the American Declaration was not originally a binding statement of rights, but it has come to be interpreted as containing enforceable obligations against the members of the Organization of American States (OAS). All 35 independent countries of the Americas (North, Central and South America) are members of OAS and are therefore bound by the provisions of the American Declaration.³ Article XII of the American Declaration declares that every person has the right to education. This includes a right to free primary education and to equality of opportunity in education.

The 1969 American Convention on Human Rights also contains some protection of the right to education. Unlike the American Declaration, the Convention is a binding instrument that requires ratification before obligations can be imposed on state parties. It has 25 state parties, meaning that several countries, including the United States and Canada, have not ratified it. Article 12 Convention builds on the ICESCR and ICCPR to protect the right of parents to choose the “religious and moral” education of their children in accordance with their own beliefs. Article 26, entitled “Progressive Realization”, requires states to undertake to adopt measures towards the full realization of educational standards set forth in the OAS Charter.

The most comprehensive protection of economic, social and cultural rights in the Inter-American system can be found in the Protocol of San Salvador to the American Convention. It protects a full range of rights including the rights to work, health, food and social security. It has been ratified by 16 states and came into force in 1999.⁵ Article 13 of the Protocol declares a general right to education and further specifies that state parties must undertake to provide compulsory primary education, to make secondary and higher education generally available and accessible

without discrimination, and to put in place special programs to fulfil the educational needs of the physically and mentally disabled.

The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are the primary enforcement mechanisms in this regional framework.

➤ **The African Framework**

The African Charter on Human and Peoples' Rights (1981) is the primary regional human rights instrument covering the African continent. It has been ratified by 53 States, which includes every country on the continent with the exception of South Sudan.⁷ Article 17(1) of the African Charter declares that every individual shall have the right to education. Interestingly, Articles 17(2) and 17(3) include cultural rights with respect to education, which indicates the importance of regional values in the drafting of the Charter. Article 17(2) protects the right of everyone to freely take part in the cultural life of the community, while Article 17(3) obligates the state to promote and protect the "morals and traditional values" recognized by the community.

The African Charter sets forth a dual enforcement structure, much like the Americas. Part II of the Charter establishes the African Commission on Human and Peoples' Rights to research and promote human rights issues in Africa. The Protocol to the Charter (2004) establishes the African Court on Human and People's Rights, which is empowered to issue binding judgments against member states.

The African Charter on Human and Peoples' Rights is supplemented by a range of other regional instruments. Each of these instruments protects the right to education with respect to specific groups. For instance, Article 11 of the African Charter on the Rights and Welfare of the Child (1990) recognizes the right of every child to free and compulsory education. The African Youth Charter (2006) reaffirms this right to primary education and further calls upon states to make secondary education more widely available and to progressively work towards providing it free of cost. Article 12 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003) requires parties to "take all appropriate measures to guarantee equal opportunity and access in the sphere of education and training to women and eliminate all stereotypes in textbooks, syllabuses and the media that perpetuate discrimination against women." State parties must also include gender sensitization and human rights education in the curricula at all levels of education. Finally, Article 9.2 (b) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009) requires states to provide internally displaced persons with adequate humanitarian assistance, which includes education.

➤ **The European Framework**

The principal European regional human rights instrument is the 1950 European Convention on Human Rights (ECHR). However, the ECHR only enumerates civil and political rights and contains no provision recognizing or protecting the right to education. Protocol 1 to the ECHR for the Protection of Human Rights and Fundamental Freedoms attempts to fill this gap. Article 2 of the Protocol provides that no person shall be denied the right to education and requires states to respect the right of parents to educate their children in line with their own religious and philosophical beliefs. The Protocol has been ratified by 45 out of the 47 member states in the Council of Europe; the exceptions are Monaco and Switzerland. Note that the Protocol does not impose any “positive obligations” on member states. There are no provisions, for instance, requiring free primary education or greater availability and access to higher, professional or technical education. The Protocol is enforced by the European Court of Human Rights.

The European Social Charter (adopted in 1961, revised in 1996) goes much further than Protocol 1 to the ECHR in requiring states to adopt a range of measures to fully realize the right to education. It includes states obligations to provide vocational training on the basis of merit (Article 7), enact necessary measures to ensure that disabled persons have access to education and vocational training (Article 15), and to institute free primary and secondary education for all children and young persons (Article 17).

The European Social Charter therefore provides the most robust and comprehensive protection of the right to education of any of the regional instruments discussed. It has been ratified by 43 out of 47 members of the Council of Europe. It is supplemented by the European Union (EU) Charter of Fundamental Rights, which has binding force on all 27 members of the EU. Article 14 of the EU Charter provides that everyone has the right to education as well as vocational and continuing training. This includes the right to free compulsory education. The European Committee of Social Rights enforces the European Social Charter.

Recently, the European Union adopted the EU Charter of Fundamental Rights, which has a binding effect on all member states since 2009. Courts are empowered to strike down any EU or domestic laws that violate this Charter. Article 14 of the Charter establishes a right to education, which unlike Article 2 of the Protocol, places affirmative obligations on European states to provide education to all citizens. For instance, Article 14 (1) states, “Everyone has the right to education and to have access to vocational and continuing training”, while Article 14(2) provides, “This right includes the possibility to receive free compulsory education.”

➤ **Special Protections for Minorities and Indigenous Groups**

Thus far, we have discussed the right to education as an economic and social right. While it undoubtedly has these dimensions – including the capacity for socioeconomic advancement and greater societal integration – it also contains important cultural dimensions. Education is an

important means through which to preserve minority languages, traditions and practices. There are therefore several international instruments that provide special protections to minority and indigenous groups with respect to the right to education.

The United Nations Education, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (1960) was the first significant international instrument on this issue. Article 1 of the Convention prohibits member states from depriving any person of access to education as well as limiting any person to inferior standards of education. Article 2, *inter alia*, allows for the establishment of separate institutions for “religious or linguistic” reasons but ensures that such institutions meet minimum educational standards and that those attending do so only with consent. In addition, private schools are permitted but also must not aim to exclude any group. This Convention is a binding instrument of international law and has 101 state parties.

The Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992) is a non-binding instrument adopted by the UN Commission on Human Rights and the UN General Assembly. Article 4 of the declaration requires states to take measures to encourage knowledge of the history, traditions, language and culture of their minority groups. It further provides that states should take appropriate measures to linguistic minorities to learn their mother tongue.

On a regional level, the European Charter for Regional or Minority Languages (1992) and the Framework for the Protection of National Minorities (1995) reinforce many of the provisions in the above two instruments. Article 8 of the 1992 Charter, adopted by Council of Europe, requires state parties to make all levels of education available in regions and for minority groups that do not speak the majority language. Article 12 of the 1995 Framework, also adopted by the Council of Europe, requires parties to undertake the promote equal access to educational opportunities at all levels for national minority groups. Article 13 requires parties to recognize that persons belonging to national minorities have the right to their own educational establishments.

International law also provides special protection for the educational rights of indigenous peoples. International Labor Organization (ILO) Convention No. 169, Concerning Indigenous and Tribal Peoples in Independent Countries (1989), requires member states to take special measures to ensure equal educational opportunities to indigenous peoples. Article 21 grants members of indigenous communities the right to enjoy vocational training opportunities “at least equal” to those of other citizens. Article 26 requires state parties to take measures to ensure that indigenous peoples have the opportunity to receive equal education at all levels, while Article 27 recognizes the right of these people to establish their own educational institutions.

The Declaration on the Rights of Indigenous Peoples (2007), a non-binding instrument adopted by the UN General Assembly, grants indigenous people a substantial degree of independence in their educational pursuits. Article 14 provides that indigenous people have the right to “establish

and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning...States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, to have access to an education in their own culture and language.” Article 21 further provides that indigenous peoples have the right to the improvement of their economic and social conditions, which includes education, vocational training, and retraining.

CONCLUSION

Thus,

the main objective of the Act is to ensure that the State fulfills its responsibility of providing free and compulsory education to all children in the age group 6-14 by making provisions for quality education. The Right incorporates the perspectives of the child by providing for stress, and fear free, enjoyable, and child-centered learning experiences in school. It takes into account the need for 'learning without burden' in an environment that is 'warm, welcoming, and encouraging' for children to learn.

REFERENCES

- Aikara, 2019, *Educating out of school children: A Survey of Dharavi Slums*. TISS, Bombay: Indigo Publisher.
- Charu Sethi, Alka Muddgal, 2017, *A study of Challenges of Right to Education Act, 2009 among Municipal Corporation Primary (MCP) School Teachers of Delhi*, Vol. 3, No. 1, AIJTE, (2017).
- Gogoi, G. and Behera, L., 2015, *Status of Implementation of RTE Act, 2009 in the context of Disadvantaged Children in Karbianglong district of Assam*. Prangnya, *Journal of Social Sciences*, 5(4), pp.15-21
- Janvikash., 2012, *Implementation of Right to Education Act-2009 in Gujarat: Status of 506 Government Primary Schools in 8 Districts of Gujarat*.
- NCERT, 2012, *Right of Children to Free and Compulsory Education Act-2009: Status Report on Implementation in States/UTs*. New Delhi: NCERT, New Delhi.
- Ramachandran and Subhramonian, 2015, *Awareness about Right to Education Act, 2009 among Elementary Teachers in Coimbatore District*. *Manager's Journal on Educational Psychology*, 9(2), pp.27-31.
- Sarvapalli, R., 2012, *Right to Education: Role of Private Sector*. Ernst and Young Pvt. Ltd., pp.1-57.