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FROM PROMISE TO PRACTICE: RIGHT TO EDUCATION

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ABSTRACT

The Right to Education is a fundamental right enshrined in the Constitution of India. This article examines the progress and challenges faced in the implementation of the RTE Act. The historical background of education in India, constitutional provisions, main features of the RTE Act, and the role of the Government and NGOs in ensuring the fulfilment of every child's Right to Education are discussed.

INTRODUCTION

“Education: the transmission of civilization.”

- Mr. Will Durant.²

Education is an important issue in a person's life. It is a key to their success in the future. It transforms the lives of millions of young minds and emerges as a beacon of hope for individual growth and societal progress. Education is viewed as an agent of bringing equality in the social, economic, and political arena. It is significant for the progress and development of the whole nation. It also provides the nation with significant economic advantages and helps the nation to maintain everlasting peace and prosperity. Education is a universal right and applies to all other human rights. Education is an effective tool to remove suffering.

Presently, India has the second-largest population in the world³ with a literacy rate of 74.04%.⁴ It can be said that this was achievable only due to the persistent endeavours of the Constitution

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² www.allauthor.com (Visited on December 24, 2023)

and policymakers. The inclusion of the Right to Education in Fundamental Rights and the implementation of the Right to Education Act 2009 have paved the way for this attainment.

The present paper has been divided into five parts. The first part deals with the historical perspective of education in India, the second part discusses the constitutional provisions related to education and the third part is concerned with the main features of the Right to Education Act (2009). The fourth part concentrates on the major challenges faced in India in its implementation along with the role of government and NGOs. The last part provides suggestions and a conclusion.

HISTORICAL VIEWPOINT

ANCIENT INDIA

The educational system of ancient times laid the foundation for civilization's wisdom, beliefs, and rituals. In ancient India, there was both a formal and an informal educational system. This means indigenous schooling at home and Gurukuls or ashrams were instituted. Gurukulas were not open to everyone. Persons from lower castes, in specific Shudras, were not allowed to receive schooling. It was supposed to be a privilege mainly reserved for people at the top of the caste system. Taxila and Nalanda were among the major urban centres of study.⁵ They became an attraction to several international students and transmitted understandings in the research of logic, grammar, medicine, metaphysics, arts and crafts.

MEDIEVAL INDIA

During the Medieval times, the Muslim education system was prevalent in India. In this period, the government attempted to expand Islamic education instead of popularizing the current

³ <https://www.statista.com/statistics/263766/total-population-of-india/> (Visited on December 24, 2023)

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https://www.mospi.gov.in/sites/default/files/reports_and_publication/statistical_publication/social_statistics/Chapter_3.pdf (Visited on December 24, 2023)

⁵ Ancient Education System In India, available at: <https://ncert.nic.in/textbook/pdf/heih111.pdf> (Visited on December 24, 2023)

education system. This branch of faith was considered and thus delegated to literate theologians called 'ulemas'.⁶ A new language, called Urdu, arose as a consequence of the fusion of Muslims with Hindus. In Northern India, it had become a common language of discussion. In pre-British India, both Hindu and Muslim educational institutions provided a greater focus on faith than other issues. Religion was the main purpose of education in this period.

BRITISH INDIA

Western education has a great historic importance in the Indian education system. Missionaries acted as reveals to the government in the field of education.⁷ The British tried to propagate education but it was driven by the wish to spread Christianity amongst Indians. The Charter of 1698, The Charter Act of 1813, The Committee of Public Instructions 1823, Macaulay's Minute 1835, Wood's Dispatch on Education 1834, The Government of India Resolution 1913, The Calcutta University Commission – 1917-19, The Calcutta University Commission – 1917-19, Wardha Scheme of Basic Education, and Sargeant Commission, include the various initiatives undertaken by British in the field of education.⁸

POST-INDEPENDENCE

After Independence, India required a large number of technicians, architects, physicians, scholars, and other qualified personnel who could mould various aspects of the developing country. The central and state governments encouraged various programs. They took a specific shape in the form of five-year plans to achieve all their objectives.⁹ Plans were also made to

⁶ Joseph Prabhu (2006), "Educational institutions and philosophies, traditional and modern", *Encyclopedia of India* vol. 2 Available at <https://www.encyclopedia.com/international/encyclopedias-almanacs-transcripts-and-maps/educational-institutions-and-philosophies-traditional-and-modern> (Visited on December 24, 2023)

⁷ Dr. Kulwinder Pal (ed.), *Development Of Education System* p.no 32 (USI PUBLICATIONS, New Delhi) Available at https://ebooks.lpude.in/arts/ma_education/year_2/DEDU501_DEVELOPMENT_OF_EDUCATION_SYSTE_M_ENGLISH.pdf (Visited on December 24, 2023)

⁸ S N Mukerji, *History of Education in India: Modern Period*, (Archarya Book Depot, Baroda, 1966)

⁹ Education- The post-independence period in India/ Britannica, available at: <https://www.britannica.com/topic/education/The-postindependence-period-in-India> (Visited on December 24, 2023)

improve adult and non-formal systems of education. However, disagreement among the political parties, businessmen, teacher politicians, and other groups hampered the progress.

CONSTITUTIONAL PROVISIONS

PREAMBLE

“The Preamble to an Act sets out the main objectives which the legislation is intended to achieve”.¹⁰

-Subba Rao. C.J.

The Preamble is a short introductory declaration in the Indian Constitution that outlines its objectives. It helps recognize the political and legal intent. In *re Berubari*¹¹ case, the Supreme Court decided that the Preamble was not a part of the Constitution. But in *Kesavananda Bharati*'s¹² case the Supreme Court dismissed the argument and made the Preamble as a part of the Constitution.

The Preamble of Indian Constitution reads as follows:

“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a
¹³[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thoughts, expressions, belief, faith and worship;

¹⁰ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643

¹¹ *In re Berubari case*, AIR 1960 SC 845

¹² *Keshavananda Bharati v State of Kerala*, AIR 1973 SC 1461

¹³ Substituted by the Constitution (Forty-Second Amendment) Act, 1976, S. 2, for “SOVEREIGN DEMOCRATIC REPUBLIC” (w.e.f.3-1-1977).

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and ¹⁴[the unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.”

The implication of justice in education is that every citizen of India must have equal opportunity for development and progress through education. Likewise, to provide justice in the field of education, the institutions of learning should also be open to all citizens with no discrimination of any kind. Equality in education implies equalizing opportunity and enabling the underprivileged and backward classes to use education to improve their conditions. Liberty in Education emphasizes that education is to be used to guide people for the precise use of their Right to Speech and other fundamental rights. Fraternity denotes a sense of brotherhood. India is a diverse land and it is of utmost importance to achieve fraternity among its citizens. It can be accomplished only through proper education.

FUNDAMENTAL RIGHT

The Right to Education, Article 21(A)¹⁵ was at first not incorporated into the constitution as a basic right. It was included in the Directives Principles of State Policy under Article 45. This Article requires the State to grant free and compulsory education to all children of age six to fourteen years. According to Article 29(2), no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out-of-state funds based on religion, race, caste, language, or any of them. It promotes equality in the arena of education.

¹⁴ Substituted by the Constitution (Forty-Second Amendment) Act, 1976, S. 2, for “SOVEREIGN DEMOCRATIC REPUBLIC” (w.e.f.3-1-1977).

¹⁵ The Constitution of India, Article 24 (A)

In a landmark judgment in *Mohini Jain v. State of Karnataka*¹⁶, the Supreme Court held that perhaps the right to schooling is a basic human right under Article 21 of the Constitution. Education privileges run from the Right to life immediately. Unless supplemented by the Right to education, the Right to life according to Article 21 and the integrity of a person cannot be guaranteed. Educational freedom corresponds with the basic rights established in Part III of the Constitution. Unless the person is informed and aware of his collectivistic rights, the fundamental right to speech and expression cannot be truly enjoyed.

FUNDAMENTAL DUTIES

In the eighty-sixth Amendment Act of 2002, clause (k) of Article 51 A and Section 21 A were incorporated. Under Article 51-A(k) and Article 21 A the State and its citizens shall administer an obligation; the State shall comply with the free and mandatory education. Each parent or guardian has a moral duty to provide his or her child with education or, where appropriate, to be taught between the ages of six and fourteen. The State also has a role to play in providing mandatory education, irrespective of its parental responsibilities. Article 51A(k) does not, however, prosecute parents or guardians for not sending kids to the college.

RIGHT TO EDUCATION ACT (RTE), 2009

The eighty-sixth Amendment Act 2002 was followed by the legislation “The Right of Children to Free and Compulsory Education Act 2009”.¹⁷ The main features of the Act include:

- All Indian children aged six to 14 years old have free and mandatory schooling.
- At least 25% of children from poor parts and marginalized groups in the community in private schools must be accepted by random sampling systems of their colleges.

¹⁶ *Mohini Jain v. State of Karnataka*, 1992 AIR 1858

¹⁷ The Right of Children to free and compulsory Education Act, 2009

- No school can receive any contributions and capitation fees during the enrolment of a pupil.
- No school must provide any evaluation process, for example, entrance tests, assessments, etc. to a pupil or his / her parent or guardians.
- In the absence of age proof, no child is denied entrance to kindergarten.
- Do not inflict physical or mental abuse on any child.
- A diploma shall be given to a pupil finishing primary education up to class VIII.
- Neither teacher is to indulge in individual education or community instruction.
- Within five years of the law's inception, each instructor must receive an appropriate professional education degree.
- To monitor all facets of primary education, including consistency, the National Committee for Elementary Education shall be established.
- In three years, school equipment (where problems exist) is to be improved, and recognition elsewhere is cancelled.
- Schools are to be subject to penalty in case of RTE infringement.

Therefore, the government has made a promise to millions of young people to provide educational facilities through this Act. It ensures that every child has access to quality education and is equal before the law.

CHALLENGES TO EDUCATION IN INDIA

The Right to Education and the Right To Education Act (hereinafter called as RTE Act) aims at free and compulsory education at the elementary level. However, this task is not as easy as it seems to appear. This is because of the socio-cultural and economic realities that prevail in India. They pose formidable challenges for executing this Act. The following are some of the challenges

- **Financial challenges:** The availability of finance imposes a challenge in the accessibility of education. There will be a huge requirement of funds from the State to make it a reality. The funds are required to improve the infrastructure, appoint teachers, etc.

- **Requirement of trained teachers:** Vacant seats of teachers, non-availability of teachers, and slow process of recruitment are also a challenge before accessing education. Even after so many years, the posts lie vacant, and several posts are not up to the required qualifications. Several states do not meet the pupil-teacher ratio. Lack of commitment among teachers is a serious problem and the lack of professionally qualified teachers at the elementary school level acts as a barrier to the implementation of the RTE Act.
- **Out-of-School Children:** The number of out-of-school children is a challenge for the government. According to UNESCO's¹⁸ report on progress in primary education, around 7.74 crore children around the world are out of school. With one-third of the world's illiterate, the report ranks India at 105 among 128 nations.¹⁹
- **No Proper Infrastructure:** Lack of infrastructure is also a challenge in the accessibility of education. According to the RTE Act, a school must have basic facilities by April 1, 2012. These basic facilities include at best one classroom for each teacher, a room that can be used as an office, a room and store for the headmaster, distinct toilets for boys and girls, clean drinking water, a kitchen, a playground, a library and a boundary wall or fence, etc.²⁰ It is very unfortunate that due to financial constraints, many construction projects of new schools and toilets are restrained. Children are not able to get basic facilities like toilets, drinking water, etc. This is an overall situation, but if counting goes deeper into the issue of separate toilets for girls, the situation will be worse. The Central Government along with the State Government should find a way to get funds for the implementation of the RTE Act.
- **Poverty:** The sturdiest barrier to accessing education is poverty. Poverty is the reason why learners drop out of school. The inability to pay school fees, the costs of uniforms, shoes, transport, stationary, etc. are all because of poverty. The Right to Education Act provides that private schools and special category schools will have to take 25% of their

¹⁸ United Nations Educational Scientific and Cultural Organization. It contributes to peace and security by promoting international cooperation in education, sciences, culture, communication and information.

¹⁹ <https://en.unesco.org/gem-report/taxonomy/term/229> (Visited on December 24, 2023)

²⁰ <https://cgpi.org/mel/struggle-rights/2271-2-years-after-right-educa>

class strength from the weaker section and disadvantaged groups of society through a random selection process. However, this is not sufficient because many people live below the poverty line in India. Child labour is also a hurdle in accessing education.²¹

ROLE OF GOVERNMENT AND NGOS

Many schemes are started by the Government of India at the elementary level to motivate children to go to school. They were aimed at increasing enrolment and reducing dropouts. A lot of such schemes were launched to increase girls' participation in education which would lower gender disparity and increase literacy rate. India has also started various initiatives in University Education.

Schemes for education provided by the government include Mid-day meal scheme²², Sarva Shiksha Abhiyan²³, Scheme for infrastructure development in minority institutes²⁴, CBSE merit scholarship scheme, Samagra Shiksha Abhiyan²⁵, Sukanya Samriddhi Yojna, Balika Samridhi Yojana²⁶, Beti Bachao Beti Pado Yojana²⁷, Pradhanmantri Vidhyalakshmi Yojna, and many more.

NGOs also have the most important social and political influences in the present growing world. Most of the democratic players have not been able to provide help as much as NGO does. The helping hand of NGOs clubbed with the state will prove to be a great working model for growth

²¹ <https://socialissuesindia.files.wordpress.com/2010/07/right-to-education-act-2009.pdf> (Visited on December 24, 2023)

²² Mid-day Meal Scheme (MDMS) available at: <http://www.india.gov.in> (Visited on December 24, 2023)

²³ Sarva Shiksha Abhiyan available at https://dsel.education.gov.in/sites/default/files/2019-05/Manual_Planning_and_Appraisal.pdf (Visited on December 24, 2023)

²⁴ Scheme for Infrastructure Development in Minority Institutes (IDMI), available at: <http://www.mhrd.gov.in>idmi> (Visited on December 24, 2023)

²⁵ Samagra Shiksha, available at: <http://www.samagra.mhrd.gov.in> (Visited on December 24, 2023)

²⁶ Balika Samridhi Yojna (BSY) available at: <http://www.hindioyojna.in> (Visited on December 24, 2023)

²⁷ Beti Bachao Beti Pado Yojana available at: <http://www.india.gov.in> (Visited on December 24, 2023)

in both social and political spheres. These voluntary organizations are free from the influence of political motives or business goals. They are traditionally not considered for imposing culture or any other mala fide goals. NGOs like, Make a Difference (MAD), Oxfam, Pratham, Teach of India, Akshay Patra Foundation, Child Right and You (CRY), Bhumi, Kalinga Institute, and Deepalya, have achieved a great deal in this area.

SUGGESTIONS AND CONCLUSION

Education is one of the most powerful weapons that can be used to change the world. It plays a vital role in shaping the society. The changes introduced in the Constitution are a very important step in achieving the goal of education for all. Strong political will, commitment, and coordination between the Central and State Governments are also required.

The Constitution of India has made sure that every child in India studies and becomes an asset of the country irrespective of whatever background they belong to by including provisions like the Right to Education in its fundamental right. Presently, gender discrimination is not at a much higher level but is a major hurdle along with poverty. Many schemes from the Central and State governments aid in reducing poverty and in achieving higher literacy rates. Numerous NGOs are working in this field. Without their support and hard work, it would be very difficult to implement this fundamental right. The collective efforts of all the stakeholders can fulfil this noble cause and make India a better place.

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