

## **HUMAN RIGHTS AND RIGHT TO EDUCATION IN INDIA**

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### **ABSTRACT**

Human rights are fundamental rights of any human being regardless of his or her nationality, residence, sex, racial or ethnic origin, colour, faith and language and all other status. Human rights are fundamental rights of each person. In the Indian Constitution rights are provided in Part III as fundamental rights. Our Constitution guarantees six fundamental rights to Indian citizens as follows: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and right to constitutional remedies. Education is the best instrument to shape the future of both an individual and the entire country. The right to education is a fundamental human right under the right to freedom. There are clauses in the Indian Constitution to ensure that all children obtain education. In its original act, the Indian Constitution specified education as a subject of the national list. In 1976, the 42nd constitutional amendment was added and education became a concurrent list subject for regulation on the central government. The 86th Constitutional amendment making education a fundamental right was passed by Parliament in 2002 under the article 21A. In 2009, Parliament enacted the Right of Children to Free and Compulsory Education Act (RTE Act), a statute allowing the protection of the Basic Right. As of 1 April 2010, both the constitutional and the current legislation come into effect. On Constitutional basis, the present paper highlights the fundamental human rights and right to education of the children in India.

**Keywords:** Human Rights, Right to Education, Indian Constitution, Children.

### **Introduction**

Human rights are rights which, regardless of nationality, residence, sex, national and ethnic origin, colour, faith, language, or any other status and which are inherent in nature. Such rights would include rights to life, equal rights before laws, freedom of speech, right to live, social welfare, right to education, collective rights, such as the rights to development and self-determination, etc. Human rights are thus, as is clear, inseparable, interconnecting and interdependent. The strengthening of one right helps others to advance. Correspondingly, the denial of one right has negating effects on the others. The universal right that is secured under the term human right is the right to a dignified life. It is also important to provide a human rights-based approach to education, as it ensures every child of a quality education that protects and

encourages its right to integrity and optimal growth. The right to education is a priority on the international community's agenda as the right to education is not just an individual human right, but also an integral element for exercising any other human right. A number of human rights treaties accepted and recognized internationally, identifies right to education as a fundamental aspect for development and social transformation (Nair, 2010).

Human rights are generally seen as basic rights, which no person or government should refuse, merely because he or she is a human being. They are fundamental rights. President Franklin Roosevelt of USA, in his famous message to the Congress in 1941, for the first time used the term 'Human rights' and stressed that the world should be founded on four essential freedoms – freedom of speech, freedom of religion, freedom of want, and freedom of fear. In 1948, the United Nations General Assembly ratified the UN's Universal Declaration of Human Rights, which includes 30 articles mainly drafted by the 1968 Nobel Prize-winning Rene Cassin. This UNHCR was the most significant and crucial milestone in the development of the definition of human rights in the world. Together, the 30 articles of the Declaration constitute a lengthy declaration of economic, social, educational, political and civil rights. The Day of Human Rights is observed every year on 10 December. The challenges of human rights cannot be addressed without coping with the right to education as a gateway to unlocking other human rights. The right to education is clearly acknowledged in the United Nations' Universal Declaration of Human Rights (UDHR), adopted in 1948, which states (United Nations General Assembly, 1949):

*"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit." - Article 26(1).*

*"Education shall be directed to the full development of the human personality and to the strengthening of respect for Human Rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace." Article 26(2).*

One of the basic rights asserted under Article 26 by the UDHR is the right to education. The Declaration not only views it as a right in itself but also as a way to foster harmony and respect for human rights and basic freedoms in general. Human Rights and the Indian Constitution Rights are statements that are essential to the existence and growth of individuals. There's a long list of rights in this context. Whilst all these are accepted by society, the State acknowledges and enshrines some of the most important rights in the Constitution. Such rights are called fundamental rights. These rights are fundamental because of two reasons: Firstly, these are

mentioned in the Constitution of India and the second, these are justifiable, i.e. enforceable through courts. It ensures that the person may approach courts for defence in the event of their infringement. When a legislature passes a statute that limits one of these privileges, the courts are considered to be invalid. All such rights are provided in the Part III of our Indian Constitution. Our Constitution guarantees six fundamental rights to Indian citizens as follows: (I) Right to equality (II) Right to freedom (III) Right against exploitation (IV) Right to freedom of religion (V) Cultural and Educational rights and (VI) Right to constitutional remedies (Alam & Halder, 2018).

### **Education and Indian Constitutional Perspectives**

In order to maintain a global and international education convention, there is a significant struggle and a fundamental amendment to the constitution of India to protect the right to education of all people in the light of the global concept. The constitution of India has provisions to ensure that the state offers education to all its people. In its original act, the Indian constitution defined education as a state subject. In 1976, the 42nd amendment to the Constitution was introduced, and education became the focus of a concurrent list, allowing the central government to legislate in the manner relevant to it. The Fundamental Rights and Directive Principles of State Policy (DPSP) & Fundamental Duties of the Indian Constitution provide the framework for rights to education.

I. *Right to Education and Human Fundamental Rights (Part III) Article 21A*: The Right of Children to Free and Compulsory Education Act' or 'Right to Education Act also known as RTE', is an Act of the Parliament of India enacted on 4th August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A (Article 21 is the Fundamental Right to Life under Right to Freedom) of the Indian Constitution. India is one of 135 countries to make education a basic right for every child when the Act came into effect on 1 April 2010. "The 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".

II. *Right to Education and the Directive Principles of State Policy (Part IV) Article 41*: Right to work, to education and to public assistance in certain cases. Within the limits of its economic potential and growth, the State shall make adequate provision for the defense of the right to work, schooling and public assistance in cases of unemployment, old age, illness and disability and in other cases of undeserved desirability.

*Article 45: Right for Early Childhood Care and Education (ECCE)* to all the children until they complete their age of six years. This article is considered as a directive principle of state policy. It states "The State shall endeavour to provide, within a period of ten years from the

commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”.

The Government of India has incorporated the ECCE as a constitutional provision by amending Article 45 (as amended by the 86th amendment of December 2002 and adopted by Parliament in July 2009) which directs “the State shall endeavour to provide Early Childhood Care and Education for all children until they complete the age of six years”.

*Article 46: Promotion of the economic and educational interests of the Scheduled Castes, Scheduled Tribes and other weaker sections:*The State shall foster with special care the educational and economic interests of the poorest sections of the population, and in particular the Scheduled Castes and the Scheduled Tribes, and shall protect them from social inequality and other forms of exploitation. Article 46 of the Directive, as a precept of Public policy, stipulates that the State shall foster with great concern the educational and economic needs of the poorest parts of the population and defend them from social inequality. Any special provision which the State may make for the educational, economic or social development of any backward class of people may not be contested on the basis that it is discriminatory. Special attempts are being made towards the education of the backward classes. Scholarships, hostel amenities, ashram boarding schools, relaxed admission standards, seat reservation are attempts to attain universal education in the event of a backward.

III. *Right to Education and Fundamental Duties (Part IVA) by the Constitution (Eighty-Sixth Amendment) Act, 2002*, (w. e. f 1.4.2010) adding a new clause (k) under Article 51A (fundamental duties), making parent or guardian responsible for providing opportunity for education to their children between six and fourteen years (Alam& Halder, 2018).

The 86th constitutional amendment to make education a fundamental right was enacted by Parliament in 2002. In 2009, Parliament passed a bill to promote the enforcement of the universal right to education by the Law on the right of children to free and compulsory education (RTE). The right to education has finally become a fundamental right by giving effect to the Act on April 1<sup>st</sup> 2010. The Act allows the Government to provide all children with education at the 8th level, free of charge, regardless of gender and class. Therefore, to put it briefly the RTE Act provides for the following (MHRD, 2003):

- Children who have dropped out of school or never attended a school would be enrolled in school without any school denying entry to the children.
- Private institutions have to reserve 25 percent of seats from children from weaker sections of society.
- Neighbourhood schools will be identified by the education mapping scheme and children aged 6 and over that are not in schools will be identified by local councils or school boards.

- All such schools are required to be recognized failing which they shall be penalized for up to Rs. 1 lakh.
- The Act also prohibits donation or capitation fees and no admission test or interview of the child or parent for admission.
- There cannot be a child retained and excluded from the board until the primary school is complete.
- It also allows for a sufficient number of trained teachers, with the goal of achieving a 1 teacher-per-30 students ratio.
- Schools shall maintain the correct amenities, including playground, library, ample number of classrooms, bathrooms, free barrier access for children with physical disabilities and water facilities within three years.
- 75 percent members of the school management committees will comprise parents of the students who will monitor the functioning of the schools and utilization of grants.
- The National Council for the Protection of Child Rights shall monitor the implementation of the act, together with Commissions to be set up by the states.
- In the ratio of 55:45 and 90:10 to the North-East States the financial responsibility shall be divided between the Central and the States.

The Act however does have the following loopholes (Nair, 2010):

(i) It is quite silent on the rights of children with disability. It does not facilitate the education for children with disability since as per the Persons with Disability Act,1995, the government should ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years and not just upto 14 years as provided under the RTE Act.

(ii) It encourages implementation of its provisions through Public Private Partnership, which therefore would lead to privatization and commercialization of education.

(iii) A number of PILs have been filed by various private unaided and minority schools against the Act, contending that the Act violates their fundamental right guaranteed under Article 19(1)(g), 29 and 30 of the Indian Constitution. The matter has been placed before a Constitution Bench of the Supreme Court comprising of five judges for final decision.

(iv) The fundamental right to free and compulsory education has been confined only to education from the age of 6 to 14 and does not provide for the fundamental right to education in

the formative years through pre schooling (for children in the age group of 2- 6) and also in the graduation level till the age of 18 years.

### **Conclusion**

There is no doubt that education has a major role to play for protection and promotion of human rights. Human right education is considered as one of the major tools to stop the violations against human rights. Education should be imparted to each and every one so that they understand the importance of human rights. Equality shall be the primary consideration in actions concerning children, respect for the views of the child are the general principals of the Convention on the Rights of a child. Education in their own mother language about human rights will make the learners more prompt about their values and ways to use them in their day-to-day life. The values of cultural diversity and social diversity should be inculcated as a basic teaching. Languages and environmental sciences are the core topics for incorporating human rights. There will be a collection of novels, poetry and songs on human rights principles. Education should impart gender equality, respect for human dignity and rights.

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