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**INDIA'S CONSTITUTIONAL APPROACH TO THE RIGHT TO EDUCATION**

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**ABSTRACT**

*Human rights are a person's fundamental rights, without which they are unable to function in their current society. Regardless of caste, creed, religion, gender, ethnicity, or any other factor, human rights cannot be denied anywhere or under any circumstance. Part III of the Indian Constitution, which covers fundamental rights, lists various rights. Indian citizens are entitled to six fundamental rights: the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, the right to cultural and educational freedoms, and the right to constitutional remedies. Because it determines and shapes a person's future as well as the future of the entire nation or country, education is a crucial component. Education was originally included in the State List when the Indian Constitution was first passed, but after the 42nd Amendment to the Indian Constitution was passed in 1976, it was moved to the Concurrent List. This means that both the federal government and the state governments are involved in matters of education. The 86th amendment to the Indian Constitution, ratified in 2002 by the Parliament under article 21A, declared education to be a fundamental right. The Right to Education Act of 2009 and its associated issues are the main subject of this essay.*

**Keyword:** Right to Education, Human Right, Indian Constitution

**INTRODUCTION**

Human rights are fundamental or basic rights that cannot be denied by anybody or by any authority. The term "Human Right" was originally used by American President Franklin D. Roosevelt in his renowned speech to Congress in 1941. He asserts that the world should be established on four fundamental freedoms: freedom of expression, freedom of religion, freedom from fear, and freedom from want. The UN General Assembly in Paris adopted the Universal Declaration of Human Rights, or UDHR, on December 10, 1948. It comprises 30 articles and the majority of them were written by Rene Cassin, who won the Nobel Prize in 1968. The Universal Declaration of Human Rights (UDHR) is a global agreement that establishes universal standards of success for all countries and individuals. The fundamental human rights are now universally safeguarded, and this declaration is regarded as a landmark because it has been translated into more than 500 different languages. It also includes no mention of any particular culture, political system, or religion. Eleanor Roosevelt served as chair of the UN Committee that authored the proclamation. More than 70 international and regional human rights treaties are included in the UDHR document. The charter of this document addresses four key areas: personal rights, which relate to the freedom and equality of every citizen; relationship rights, which relate to nationality; economic, social, and cultural rights, which cover social security; education; employment; and wages; and, finally, spiritual and political rights, which refer to the right to exercise one's right to free speech and the right to vote. All humans are born free and equal in dignity and rights, according to the first of the 30 articles in the UDHR treaty. So, we observe "Human Right Day" on December 10 of each year.

The right to education is included as one of the fundamental rights in the UDHR under article 26. This right is not only regarded as a right, but also as a way to advance world peace and respect for human rights. Article 26 of the UDHR states unequivocally that Everyone has the right to education. The fundamental and elementary levels of education must be free, and the first grade must be required. The general availability of technical and professional education is required, and merit-based access to higher education is required for all.

Education must focus on fostering respect for fundamental freedoms and human rights as well as the complete development of the human personality. It will advance the UN's efforts to maintain peace and encourage mutual respect, tolerance, and goodwill among all nations, racial or religious groups. Chapter 26 (2).

The Supreme Court's ruling in *Mohini Jain v. State of Karnataka*, which was rendered on July 30, 1992, established the right to education as a fundamental right (Supreme Court of India). The Supreme Court was faced with three primary issues in this case:

1. Whether the Indian Constitution guarantees the right to an education.
2. If yes, consider whether it is against this right to permit private schools to levy capitation payments.
3. Whether the Article 14 of the Indian Constitution, which ensures equal protection under the law, is violated by the imposition of capitation fees in educational institutions.

In this instance, a resident of the state of Uttar Pradesh objected to a notification made by the government of Karnataka that allowed private medical colleges to charge more money to students who weren't given "government seats." According to the Supreme Court of India, private educational institutions' collection of a "capitation fee" violates both the right to equal protection under the law and the implicit right to education that derives from the right to life and human dignity. When considering whether the practise of imposing capitation fees was constitutional in this case, the Supreme Court, acting through a division bench made up of justices Kuldip Singh and R.M. Sahai, stated: The right to education springs immediately from the right to life. Without the right to education, the right to life and the dignity of an individual cannot be guaranteed.

A five-judge bench in the case of J.P. Unni Krishna v. State of Andhra Pradesh, which was decided on February 4, 1993, further considered this court decision (Supreme Court of India). The Court disagreed in Unni Krishnan with the judgement rendered in the earlier case of Miss Mohini Jain vs. State of Karnataka and Others on July 30, 1992, which said that the Constitution guarantees the right to education at all levels.

The Court further ruled that a right need not be explicitly identified as a fundamental right in Part III of the Constitution in order to be treated as such: "The provisions of Part III and Part IV are supplemental and complimentary to each other." The Court disagreed that the moral demands and aspirations expressed in Part IV's provisions are superior to the rights reflected in Part III's provisions. "The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development," was clarified in this case for the extension of the right to education.

Avinash Mehrotra v. Union of India was another case that was decided on April 13, 2009. (Supreme Court of India). In this ruling, the Supreme Court of India expanded the definition of the right to education to include the right to a safe learning environment, and it required schools to abide by the judgment's specific fire safety requirements.

The Supreme Court ruled that a child has a basic right to an education devoid of security or safety concerns, and that this right includes the right to safe schools under Articles 21 and 21A of the Constitution. The State is required to make sure that children don't suffer any harm while exercising their fundamental right to education, regardless of where a family chooses to teach its children (including private schools). Affidavits of compliance were required to be filed by the relevant authorities. State Governments and Union Territories were instructed to ensure that schools adhere to basic safety standards and that school buildings are safe and secure in accordance with the safety norms prescribed by the National Building Code. Dalveer Bhandari, J. reasoned while interpreting the right to education: "Educating a kid involves more than a teacher and a blackboard, or a classroom and a book. A quality school must be attended by a child in order to fulfil their right to an education, and such a school must not endanger their safety.

### **Government of India (1999), Department of Education, Ministry of Human Resource Development, "Expert Group Report on Financial Requirements for Making Elementary Education a Fundamental Right." 1999**

The NDA administration formed the Tapas Majumdar Committee in 1999 to examine the financial effects of implementing the 83rd Amendment Bill, which the United Front government had passed in 1997 and sought to make the right to free and compulsory education up to the age of 14 a basic right.

The Tapas Majumdar committee advised that even children from the most underprivileged social groups should have access to education that is on par with the best. According to its financial memorandum, the Committee also estimated that it would cost roughly Rs. 1.37 lakh crores over a ten-year period (1998–2007) to enrol all children between the ages of 6 and 14 in school by 2008. It also stated that there should never be a national programme for hiring paraprofessionals and that genuine community involvement in school operations must be actively encouraged.

### **Government of India initiatives Prior to RTE**

#### **The Five year Plan**

Following India's independence, the Planning Commission is creating a period of five-year development plan with the assistance and involvement of all states. The first five-year plan was started in 1951, but education was given importance in the eleventh five-year plan. The eleventh five-year period lasted from 2007 to 2012. The quality of education has been continuously improved, the foundation of the Indian educational system has been strengthened via numerous schemes and programmes, and research has been encouraged. The eleventh five-year plan's goal is to close all gender and geographic imbalances in school enrollment by 2011–2012. Additionally, there is a provision for one year of pre-school education (PSE) for kids starting primary school and for the

percentage of elementary school dropouts to drop from 50% to 20% by 2011–2012. NCERT quality monitoring tools must be adopted by all states and union territories. Additionally, all EGS (Education Guarantee Scheme) centres have been transformed into ordinary primary schools, and by 2008–2009, the Mid-Day Meal Program should be available to all students in elementary school. Additionally, it helps to enhance the CRCs and BRCs (Block Resource Centers) (Cluster Resource Centre). The purpose of BRCs and CRCs is to help teachers academically and to provide in-service teacher training in each block of a district. According to the eleventh five-year plan, there are five resource teachers per block and one CRC for every ten schools.

**SSA: Sarva Shiksha Abhiyan In 2001,**

The Sarva Shiksha Abhiyan was launched. This programme was created for initiatives in elementary and primary education. All children between the ages of 6 and 14 are required by the SSA to complete five years of elementary education by the year 2010. In a conference held in 1998, state education ministers advised the SSA to pursue a purpose dubbed Universal Elementary Education (UEE). The SSA encompasses the entirety of the nation, with the exception of Goa, and a specific emphasis was placed on the educational needs of girls, members of scheduled castes and tribes, as well as children from disadvantaged backgrounds. The SSA's objective is to ensure that all children receive a school education and attend back-to-school camp by 2005. (revised up to 2007). Additionally, it closes the gender and category gaps in primary education by 2007 and in basic education by 2010. Another objective that needs to be completed by 2010 is universal retention, with an emphasis on providing elementary school students with an education that prepares them for life after school. The SSA also offers free textbooks and pertinent reference materials to kids from rural areas.

**MDMS: Mid-Day Meal Scheme**

The Government of India introduced the Mid-day Meal Scheme in 1995 with the goal of encouraging the universalization of primary school education and raising the enrollment rate of children, particularly for those who belong to the economically poorer portion of society. Additionally, it has been noted that this programme fosters a sense of brotherhood among the kids, regardless of their race, gender, or other characteristics, while concurrently raising their nutritional status. The food that is cooked in schools must contain at least 8 to 12 grammes of protein per serving and 300 calories per day for at least 200 days. On April 20, 2004, the Supreme Court announced a new rule mandating that meals be provided throughout the summer vacation in drought-stricken districts.

**The National Policy on Education (NPE),**

NPE was first adopted in 1968, aims to make education accessible to all people. The emphasis is mostly on instilling moral ideals and social responsibility. Women, minorities, and socially disadvantaged groups all receive education. Additionally, it places a focus on adult education, research education, vocational education, and employability education. A new educational strategy known as NEP 1986, or National Policy on Education, was introduced in 1986. The goals of this strategy are to support universal literacy, lifelong learning, and the provision of education to housewives, employees in the manufacturing and agricultural sectors. Additionally, it promotes programmes for integrated child services and wholistic child development and aims to eradicate the lack of literacy among women. A programme of action with the goals of promoting equality and a common educational structure was introduced in the year 1992.

**The District Primary Education Programme (DPEP)**

DPEP was introduced in 1994. It was declared in 14 districts across several states in 2002–2003 and was being implemented in 271 districts in all 18 of the states. The fundamental goals of DPEP are to give all primary school-age children with both official and informal education, as well as to work toward a primary school dropout rate of less than 10%.

**District Information System for Education (DISE):** India has seen a higher or amazing expansion of the education sector, and this expansion calls for many levels of decision-making to meet the growing demand for data and information. It also keeps a detailed profile of the teachers (more than 7.2 million teachers). It was started by NIEPA1 (now known as NUEPA), with help from the UNICEF and the Ministry of Human Resource Development. DISE offers a range of computerised data and statistical analysis linked to school administration.

**Fundamental Duties (Part IV A), Fundamental Rights (Part III), and the Right to Education from the Perspective of the Indian Constitution**

Part III of the Indian Constitution's fundamental rights states the right to education. The Right to Education Act, often known as the Right to Free and Compulsory Education Act or RTE Act for short, was passed on August 4,

2009, and it took effect on April 1, 2010. The Right to Education Act is covered by Article 21A, which was added to the Indian Constitution on the 86th amendment. The State shall provide free and compulsory education to all children aged six to fourteen years in such manner as the State may, by legislation, designate, states article 21A. According to the "Right to Free and Compulsory Education Act," which includes the word "free," no child (aside from those who are admitted in private schools or by their guardians in a school that is not supported by the government) is required to pay any type of capitation fee, any charges, or any other expenses until they have completed their elementary education. The Act's title, "compulsory education," makes it plain what it means: It is the responsibility of the government to ensure that all children between the ages of 6 and 14 be admitted, enrolled, and finish primary school. The Act also includes provisions for non-admitted children to enrol in a class that is appropriate for their age. The Act outlines the obligations of each government, parents, and local bodies or authorities to ensure that children receive an education. It also discusses how the state and federal governments would share the cost of that education. For the Pupil Teacher Ratios, school working days, infrastructure, and sanitation facilities, there are a set of rules and norms. This Act forbids the mental and physical abuse of children, the screening of children upon entrance, private tutoring by teachers, and capitation fees. Only those instructors are appointed who are trained and adequately qualified.

Article 51A of the Fundamental Duties, Part IV A, received a new clause (k) in the 86th amendment to the Indian Constitution. According to this article, it is the obligation and responsibility of parents and guardians to give their children, who range in age from 6 to 14 years old, the opportunity to pursue an education.

### **Right to education and Directive Principles of State Policy (Part IV)**

**Article 41:** In some circumstances, the right to employment, education, and public aid. A State must establish provisions to guarantee the right to work, public aid in circumstances of employment, old age, disability, disease, and education, as well as in other cases of unjustified desirability, within the limits of its economic growth and capabilities.

**Article 45 A Early Childhood Care and Education (ECCE) Right:** constitutional provision, ECCE is found in Article 45's Directive Principles of State Policy. In the December 2002 and July 2009 enacted by Parliament 86th Amendment to the Indian Constitution, it is stated that "the State shall endeavour to provide Early Childhood Care and Education for all Children till they finish the age of six years."

**Article 46:** "Promotion of the economic and educational interests of the Scheduled Castes, Scheduled Tribes, and other weaker sections," with the state taking special care to advance the economic and educational interests of the socially and economically backward and weaker sections of the population and to shield them from social injustice, social inequalities, and other forms of exploitation. The scheduled castes, scheduled tribes, and economically disadvantaged members of society are the primary beneficiaries of this law. To attain universal education, further efforts are being made for these pupils, such as providing hostel facilities, scholarships, ashram residential schools, relaxing admission rules, and reserving seats.

### **The following provisions are included in the right to education:**

1. Children who drop out of school or who have never attended a school or other institution are welcome to enrol in the school without facing any admissions restrictions.
2. The economically disadvantaged segments of society must be given a 25% seat reservation in all private schools.
3. The neighbourhood school was recognised by the school mapping system, and the local authority and school management committee will identify any children above 6 who are not enrolled in schools.
4. All such schools must be accredited; else, they risk a fine of up to Rs. 1 lakh.
5. The RTE Act forbids admission tests for parents and children at the time of admission as well as capitation or gift fees.
6. Until the end of primary school, no child may be expelled, held back, or forced to pass the board test. However, the non-detention policy was dropped following the RTE Act 2019 modification.
7. There is one instructor for every 30 students, or a 1:30 student to teacher ratio. It offers a suitable number of highly qualified professors.
8. Schools must guarantee an adequate number of employees, teachers, and classrooms, as well as proper infrastructure facilities like playgrounds, libraries, restrooms, and drinking water facilities. Additionally, schools must provide barrier-free access to students with physical disabilities within three years.

9. Parents of students who supervise the use of grants and the operation of schools make up 75% of the members of school management committees.
10. The National Commission for the Protection of Child Rights (NCPCR) offers protection for children's rights, makes recommendations for and oversees the proper application of the law, and also looks into complaints about children's rights to free and compulsory schooling.
11. The ratio of financial burden between the federal government and the states is 55:45, and it is 90:10 for the states in the North-Eastern region.

**The main problems and obstacles to realising the right to education are:**

1. Inadequate infrastructure results in poorly maintained buildings or facilities.
2. The absence of drinking water infrastructure.
3. Deficient toilet facilities.
4. The student to teacher ratio is quite high, and teachers also lack the necessary education and experience.
5. Laboratories and libraries are not adequately stocked or maintained.
6. Many schools continue to employ outmoded curricula and teaching techniques that are entirely dependent on memorization of the material without any understanding of that material.
7. The lack of vocational education that would assist students in finding jobs after completing their study in the classroom.
8. Compared to boys, fewer girls enrol in school.
9. The distances between the schools in rural locations are comparatively more.

In order to provide children with a quality education, it is crucial for schools to have competent and trained instructors on staff. Every Child Needs a Teacher" was a global theme introduced by UNESCO and teachers unions worldwide in 2006. Without qualified teachers, excellent education for all students cannot be achieved, and the purpose of attending school is not to receive an education. A qualified teacher is an essential component of the educational system.

Approximately 129 million girls worldwide are not in school, and millions more are enrolled in schools but are not learning. As a result, girls enrol at much lower rates than boys. Only 49% of countries in the globe had gender parity in primary education, 42% had it in lower secondary education, and 24% had it in upper secondary education. Due to early child marriage, poverty, broken or poor families, gender-based culture, conservative or orthodox society, and parents who only choose to educate their son or sons, the number of girls enrolled in school is low. Some schools fail to adequately manage cleanliness and sanitation, failing to provide for the needs of female students in terms of safety. The gender gap in education or the low enrollment of girls in school is thus also a result of this. School dropouts are another major problem in the education system. The high school dropout rate is higher in rural locations for several reasons, including the difficulty in accessing clean drinking water and unsanitary restrooms.

As P.N Bhagwati, the former Chief Justice of India, put it, "*The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise, there cannot be a healthy growth of the nation*"

According to this remark, it can be claimed that the current generation always hopes that their offspring would build up the country more successfully than they did. The fundamental worry for every country is that education is the sole means through which we can empower our next generation. The level of education and literacy in a country has a huge impact on its ability to progress because literate people have a much higher capacity for critical thought and are always considering how to advance their country. As a result, every country needs to consider how to establish a high-quality educational system. Unquestionably, the right to education exists and may be realised through free and mandatory education at the national level. However, due to poverty and numerous prejudices or stereotypes in the community, the effort made to create the Indian educational system has not been successful.

**CONCLUSION**

Education is crucial for the advancement and defence of human rights. Another important strategy for preventing violations of human rights is education. Everyone should therefore have an education so that they can comprehend the significance and principles of human rights. Diversity in social and cultural values should be ingrained in schooling from a young age. Instilling gender equality, respect for human rights, and human dignity should be a part of teaching and learning. For the removal of problems like socioeconomic inequity, education is crucial. To ensure high-quality education for all students, significant efforts have been made. Additional efforts are required in the following areas:

- Because a child's family plays such an important role in his or her education, it would be in the best interests of the child's family involvement in the school's development plans by establishing School Management Committees.
- The idea of pre-schooling needs to be more broadly understood because if every child has access to some form of early childhood education, the chances of the child continuing on to regular school are high. To address social injustices, it is important to support the formation of such committees, which include parents, local government representatives, teachers, and the kids themselves.
- Teachers, who are the cornerstone of providing great education, must be paid market-driven pay to raise the quality of education. Such SMCs would also help in evaluating each instructor in the school's abilities as well as analysing the kids' growth. The current basic minimum pay for teachers, as determined by the Sixth Pay Commission, is Rs. 22,000 per year. It is obvious that these low earnings are inadequate when compared to those paid to teachers in other countries, especially in India. In order to encourage academics to put out their best effort in support of the realisation of a successful educational system, it would be ideal if schools were permitted to lay out the compensation packages of each of their faculty members.

Lowering the weight of school bags is a top concern since it's heartbreaking to see tiny children carrying heavy books on their backs as they travel to class. Based on the recommendations of the Professor Yashpal Committee, the HRD ministry has encouraged the National Council of Education Research and Training to reform the school curriculum to reduce the number of books students need to read. In order to lighten backpacks, the Central Board of Secondary Education has also issued directives for its affiliated schools to abide by. The implementation of the aforementioned recommendations has not yet taken place, nevertheless, because of how sensitive people are still to the plight of young children. By giving homework and assignments top priority, school bags at the basic level should be removed.

In conclusion, it is crucial to recognise that ensuring everyone has access to high-quality school education is the cornerstone of development and a prerequisite for turning India into a knowledge society.

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