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RIGHT TO EDUCATION

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Abstract

The Right to Education (RTE) is universally recognized as a fundamental human right that empowers individuals and promotes socio-economic mobility and equality. In the Indian context, education has been constitutionally acknowledged as a vital element for the full development of human potential. The incorporation of Article 21A into the Constitution, through the 86th Amendment Act, 2002, marked a significant step in this direction by making free and compulsory education a justiciable right for children aged 6 to 14 years.

This was further operationalized through the enactment of the Right of Children to Free and Compulsory Education Act, 2009, which laid down detailed provisions for access, equity, and quality in elementary education. Despite these progressive legal measures, the effective realization of RTE continues to face several obstacles.

Challenges include poor implementation, lack of adequate infrastructure, shortage of trained teachers, and persistent socio-economic disparities that hinder universal access, especially for marginalized communities. These issues raise critical questions about the adequacy and effectiveness of existing laws and policies in fulfilling the constitutional mandate. This paper aims to undertake a critical analysis of the legal and policy framework governing the Right to Education in India. It evaluates the progress made so far, identifies existing gaps and challenges, and proposes actionable reforms to strengthen the enforcement of this fundamental right and ensure inclusive, equitable, and quality education for all.

Keywords

Right to Education (RTE), Indian Constitution, Free and Compulsory Education, fundamental right, legal framework, education policy, implementation challenges.

Introduction

Education serves as a cornerstone for social justice, human empowerment, and the overall development of individuals and nations. It is not merely a means of acquiring knowledge, but a vital instrument for eliminating inequalities, dismantling social hierarchies, and fostering a more inclusive and participatory society. In any democratic framework, education functions as a powerful equalizer by providing individuals from all backgrounds with the opportunity to uplift themselves socially, economically, and politically. The transformative potential of education makes it essential not just for personal growth but also for national progress, innovation, and cohesion. It plays a critical role in promoting values such as tolerance, equality, and respect for diversity—attributes crucial for peaceful and sustainable development.

The global community has long recognized education as a fundamental human right. The Universal Declaration of Human Rights (1948) explicitly declares in Article 26 that everyone has the right to education, which shall be free, at least in the elementary and fundamental stages. This universal recognition laid the groundwork for other international legal frameworks, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, which obligates signatory nations to progressively realize the right to education. Additionally, the Convention on the Rights of the Child (1989) further reinforced this commitment by emphasizing the role of education in the full development of a child's personality, talents, and mental and physical abilities. Through such instruments, the global community has affirmed the inseparable link between education and the realization of human dignity and freedom¹.

In the Indian context, the journey of the Right to Education (RTE) reflects a significant evolution in constitutional thought and state responsibility. Initially, the framers of the Indian Constitution recognized the importance of education and placed it under the Directive Principles of State Policy in Article 45², which aimed to provide free and compulsory education for children up to the age of 14 within ten years of the commencement of the Constitution. However, being non-justiciable in nature, Article 45 could not be enforced by courts, thereby limiting its practical impact. Over time, the growing awareness of the central role of education in achieving social justice, especially for disadvantaged groups, led to increased advocacy for its recognition as a fundamental right. This culminated in a landmark constitutional amendment in 2002, when Article 21A was inserted into the Constitution, making the Right to Education a justiciable Fundamental Right for children between the ages of 6 and 14. This was followed by the enactment of the Right of Children to Free and Compulsory Education Act, 2009, which

¹ Universal Declaration of Human Rights art. 26, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948).

² India Const. art. 45.

operationalized Article 21A and laid down detailed provisions to ensure access, equity, and quality in elementary education.

The primary objective of this research is to critically examine the evolution, implementation, and effectiveness of the Right to Education in India within the broader framework of international human rights law. The study seeks to explore the legal, social, and administrative challenges that hinder the full realization of this right and to assess whether the RTE Act, 2009, has been successful in translating constitutional promises into ground realities. It further aims to analyze the gaps between policy formulation and execution, the role of various stakeholders, and the systemic obstacles that continue to obstruct universal access to quality education.

In terms of methodology, the research adopts a doctrinal and analytical approach. It relies on primary sources such as constitutional provisions, international conventions, statutory texts, and judicial pronouncements. Secondary sources, including academic commentaries, research papers, policy documents, and government reports, are also utilized to provide a comprehensive understanding of the subject. Comparative insights from other jurisdictions are drawn to identify best practices and innovative models that may inform policy reforms in India.

The structure of this paper is organized into several chapters to ensure a systematic and coherent exploration of the topic. The first chapter introduces the concept of education as a fundamental right and outlines its historical and global recognition. The second chapter delves into the constitutional and legal framework governing the Right to Education in India, examining the transition from Article 45 to Article 21A and the enactment of the RTE Act. The third chapter addresses the key implementation challenges, including infrastructural deficiencies, socio-economic disparities, teacher shortages, and administrative bottlenecks. The fourth chapter undertakes a comparative analysis of educational rights in select countries to highlight global best practices. The fifth and final chapter offers critical observations, discusses possible reforms, and suggests policy recommendations for strengthening the right to education in India. Through this structure, the paper aims to provide an in-depth and balanced analysis of one of the most important social rights in contemporary India.

Constitutional and Legislative Framework in India

The constitutional and legislative journey of the Right to Education in India is marked by an evolutionary process that transitioned from aspirational directives to enforceable rights. The Right to Education was not originally part of the list of fundamental rights when the Indian Constitution came into force in 1950. Instead, it was embedded as a Directive Principle of State Policy under **Article 45**, which stated that "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 language of this provision indicates a non-binding obligation, suggesting that the state should aim to fulfill this goal but was

not legally compelled to do so. The classification of Article 45 under Part IV of the Constitution, which encompasses Directive Principles, meant that it was not justiciable in a court of law. However, the inclusion of this provision did reflect the framers' acknowledgment of education as a critical component for building an egalitarian society. The post-Independence period saw limited progress in realizing the goals of Article 45, primarily due to financial constraints and administrative challenges. Over time, however, increasing social awareness and judicial activism played a transformative role in elevating the status of the right to education from a directive principle to a fundamental right.

The significant shift towards making education a justiciable right came through a series of landmark Supreme Court judgments in the early 1990s, which began to interpret the right to education as implicit in the right to life and personal liberty under **Article 21** of the Constitution. In **Mohini Jain v. State of Karnataka (1992)**, the Supreme Court held that the right to education is a fundamental right flowing from the right to life under Article 21. The case arose when the petitioner challenged the exorbitant capitation fees charged by private medical colleges in Karnataka. The Court struck down the capitation fee system and opined that education cannot be treated as a commodity. It further observed that the right to education at all levels is an integral part of the right to life. Although the judgment was path-breaking in its spirit, it was also criticized for its broad interpretation that extended the right to education beyond reasonable state capacity. This expansive view was moderated in the subsequent judgment of **Unni Krishnan, J.P. v. State of Andhra Pradesh (1993)**, where the Court reconsidered and partly overruled the Mohini Jain judgment. The five-judge bench in Unni Krishnan laid down a more pragmatic formulation, holding that the right to free education is guaranteed to all children until the age of 14 years under Article 21, after which the state's obligation is subject to its economic capacity and development. The judgment also created a scheme for admission to professional colleges, balancing public interest and individual rights. Importantly, Unni Krishnan was a catalyst in shaping the discourse around the fundamental status of the right to education and directly influenced subsequent constitutional amendments.

The judicial pronouncements in Mohini Jain and Unni Krishnan cases catalyzed legislative and constitutional reform, leading to the enactment of the **86th Constitutional Amendment Act in 2002**, which marked a watershed moment in the history of the Right to Education in India. This Amendment inserted **Article 21A** into the Constitution, making it explicitly clear that "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." The use of the term "shall" signaled the binding nature of this obligation and removed the ambiguity surrounding the state's role in ensuring basic education. Simultaneously, the original **Article 45** was amended to shift focus from the age group 0–14 to the early childhood care and education of children below six years. The revised Article 45 now reads, "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years," recognizing the growing importance of foundational learning. In addition, **Article 51A(k)** was introduced under the

Fundamental Duties, imposing a duty on parents and guardians to provide opportunities for education to their children or wards between the age of six and fourteen. This dual approach—imposing both state obligation and parental responsibility—reflected a more comprehensive and participatory model for achieving universal education.

In pursuance of Article 21A, the Indian Parliament enacted the **Right of Children to Free and Compulsory Education Act, 2009** (commonly known as the RTE Act), which came into force on 1st April 2010. The RTE Act operationalized the constitutional promise by laying down detailed provisions to ensure that every child in the 6–14 age group has access to free, quality, and equitable education. The Act defines ‘free’ as the removal of any financial barriers such as fees or charges, and ‘compulsory’ as the state’s obligation to ensure enrolment, attendance, and completion of elementary education. It also mandates the provision of neighborhood schools and prescribes duties for the central, state, and local governments. One of the most significant features of the Act is its application to private unaided schools as well, which are required to reserve 25% of their entry-level seats for children from economically weaker sections and disadvantaged groups under **Section 12(1)(c)**. This provision aims at promoting social inclusion and reducing segregation in education. Furthermore, the Act lays down norms and standards for school infrastructure and teacher qualifications, such as maintaining a pupil-teacher ratio of 30:1, availability of drinking water and separate toilets for boys and girls, and the appointment of appropriately trained and qualified teachers. The Act also prohibits physical punishment, mental harassment, screening procedures for admission, capitation fees, and detention or expulsion of students up to Class 8.

Another unique and progressive feature of the RTE Act is the “**no detention policy**”, which ensures that no child shall be held back or expelled until the completion of elementary education. This is intended to reduce pressure on young learners and foster a stress-free learning environment. However, the policy has faced criticism for diluting academic standards and was partially amended later to allow states to conduct examinations in Classes 5 and 8 and retain students who fail to pass. Moreover, the RTE Act defines clear roles and responsibilities for various stakeholders. The **parents and guardians** are expected to ensure that their children attend school regularly, as reinforced by Article 51A(k). The **schools**, both public and private, are responsible for adhering to the norms set under the Act, including infrastructure, curriculum, and inclusive practices. The **local authorities**, such as municipal bodies and panchayats, are mandated to identify out-of-school children, ensure enrolment, maintain records, and address grievances. The state and central governments are responsible for funding and monitoring the implementation of the Act, often through programs like Sarva Shiksha Abhiyan and Samagra Shiksha Abhiyan. Furthermore, the Act establishes **School Management Committees (SMCs)** in government and aided schools to ensure community participation in school functioning, enhancing accountability and transparency.

While the RTE Act has laid a strong legislative foundation for universal elementary education, its implementation has encountered several challenges. These include inadequate infrastructure, teacher shortages, gaps in learning outcomes, limited awareness among parents, and poor monitoring mechanisms. The integration of private schools into the framework, especially with the 25% reservation clause, has also met resistance and litigation. However, the Act has undeniably contributed to increased enrolment rates, a narrowing gender gap, and better educational access for marginalized groups. The synergy between constitutional mandates and legislative measures has gradually transformed the educational landscape in India. Nevertheless, the goal of equitable, inclusive, and quality education remains a work in progress, requiring continuous policy reform, administrative efficiency, and social engagement.

The constitutional and legislative framework governing the Right to Education in India is the product of sustained efforts by the judiciary, legislature, and civil society to recognize and enforce education as a fundamental right. From its humble beginnings as a non-justiciable directive principle under Article 45 to its elevation as a fundamental right under Article 21A and subsequent enactment of the RTE Act, 2009, the evolution reflects India's deepening commitment to social justice and human development. The framework not only outlines the obligations of the state but also fosters a participatory model by involving parents, local bodies, and private institutions. As India moves forward, the right to education must be continuously protected and enhanced through dynamic legal and institutional mechanisms to ensure that every child enjoys the opportunity to learn, grow, and contribute meaningfully to the nation's future.

International Legal Framework and India's Obligations

The recognition of education as a fundamental human right has been firmly established in the international legal framework through various core international instruments, particularly the **Universal Declaration of Human Rights (UDHR)**, the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, and the **Convention on the Rights of the Child (CRC)**. These instruments have not only declared the inherent value of education in ensuring human dignity and development but have also laid binding and persuasive obligations on member states to respect, protect, and fulfil this right. As a signatory and participant in these international frameworks, **India has both moral and legal responsibilities** to align its domestic laws, policies, and implementation mechanisms with the global standards on the right to education.

The **Universal Declaration of Human Rights**, adopted in 1948, was a landmark moment in the evolution of international human rights law. Though not legally binding, it has served as a foundational document and moral compass for many binding treaties and national constitutions, including that of India. **Article 26 of the UDHR** explicitly declares that “everyone has the right to education,” emphasizing that “education shall be free, at least in the elementary and

fundamental stages.” It further states that 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. The article underscores that education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. The values encapsulated in this provision—freedom, equality, dignity, and empowerment—have significantly influenced the legal evolution and judicial interpretation of the right to education in India. The Indian Constitution, originally through **Article 45** under the Directive Principles of State Policy, had provided for free and compulsory education for children up to the age of 14, and later, the incorporation of **Article 21A** as a Fundamental Right in 2002 was inspired, in part, by India’s commitment to these international ideals³.

The **International Covenant on Economic, Social and Cultural Rights (ICESCR)**, adopted in 1966 and ratified by India in 1979, imposes **legally binding obligations** on state parties. **Article 13** of the ICESCR is one of the most comprehensive provisions on the right to education in international law. It affirms the right of everyone to education and lays down a multi-faceted mandate: education must be available, accessible, acceptable, and adaptable. These “4 A’s” framework, developed by the UN Special Rapporteur on the Right to Education, is used globally to assess the implementation of educational rights. Article 13 mandates that primary education shall be compulsory and free to all, secondary education shall be made generally available and accessible by every appropriate means (including the progressive introduction of free education), and higher education shall be equally accessible to all based on capacity. The provision also recognizes the liberty of parents to choose private or religious schools that conform to minimum educational standards.

For India, ratifying the ICESCR meant an acknowledgment that the right to education is not a mere policy goal, but a **justiciable right** under international law. Although Indian courts cannot directly enforce international treaties unless incorporated into domestic legislation, the Supreme Court and High Courts have, over the years, interpreted constitutional rights in light of India's international obligations. Notably, in **Unni Krishnan, J.P. v. State of Andhra Pradesh (1993)**, the Supreme Court of India, while elaborating on the scope of the right to life under Article 21, drew upon India's commitments under the ICESCR to affirm that the right to education up to the age of 14 years is fundamental. The landmark judgment catalyzed the constitutional amendment that introduced **Article 21A**, making the right to education a fundamental right, thereby bringing Indian law in closer consonance with international standards.

The **Convention on the Rights of the Child (CRC)**, adopted by the UN General Assembly in 1989 and ratified by India in 1992, further reinforces the international legal foundation for the right to education, particularly from the standpoint of **children’s rights**. The CRC provides a

³ UNICEF India, *The Right of Children to Free and Compulsory Education (RTE) Act, 2009 and Its Implementation* (2019), <https://www.unicef.org/india/reports/right-education>.

child-centric perspective on human rights and development, and education is prominently featured in its framework. **Articles 28 and 29 of the CRC** are especially relevant. Article 28 recognizes the right of the child to education and mandates states to make primary education compulsory and free, encourage the development of different forms of secondary education (including general and vocational), make them available and accessible to every child, and take measures to reduce drop-out rates. Article 29 focuses on the **aims of education**, highlighting that it must be directed toward the development of the child's personality, talents, mental and physical abilities to their fullest potential, and the preparation of the child for a responsible life in a free society.

In compliance with CRC, India enacted the **Right of Children to Free and Compulsory Education Act, 2009 (RTE Act)**, which operationalizes Article 21A of the Constitution. The RTE Act provides a statutory framework ensuring free and compulsory education to all children between 6 to 14 years of age, aligning with the principles articulated in the CRC and ICESCR. It mandates the establishment of neighborhood schools, lays down norms for pupil-teacher ratio, prohibits physical punishment and mental harassment, and promotes inclusive education. The CRC has thus had a direct bearing not only on legislation but also on educational policy planning and child welfare schemes in India.

India's obligations under these international instruments are not limited to aligning domestic laws; they also include **reporting and compliance mechanisms**. Under the ICESCR, India is required to submit periodic reports to the **Committee on Economic, Social and Cultural Rights (CESCR)** detailing the measures it has taken to implement the covenant rights. These reports are reviewed by the Committee, which then issues **Concluding Observations**, identifying achievements, concerns, and recommendations for improvement. Similarly, under the CRC, India must report to the **Committee on the Rights of the Child**. These reports allow international bodies to assess India's progress in ensuring children's right to education and provide external accountability mechanisms.

In recent years, India has participated actively in the Universal Periodic Review (UPR) mechanism of the **United Nations Human Rights Council**, wherein its educational policies have come under global scrutiny. For instance, in the third cycle of the UPR held in 2017, several recommendations were made to India regarding the implementation of inclusive and quality education, elimination of discrimination in schools, and increased budgetary allocation to the education sector. While the Indian government accepted many of these recommendations in principle, challenges persist in implementation due to factors such as resource constraints, socio-economic disparities, and regional inequalities.

Despite ratifying the ICESCR and the CRC without reservations on education-related provisions, India has not yet ratified the **Optional Protocols** that allow individual complaints under these treaties. This limits avenues for individuals or groups to seek international redress in cases of

right to education violations. Nonetheless, Indian courts have often filled this gap by interpreting fundamental rights progressively, influenced by international jurisprudence.

India has also been a key participant in global policy initiatives like **Education for All (EFA)**, spearheaded by UNESCO, and the **Sustainable Development Goals (SDGs)** adopted under the 2030 Agenda. Goal 4 of the SDGs aims to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.” India has endorsed this commitment and periodically publishes Voluntary National Reviews (VNRs) to demonstrate progress. Policies such as the **National Education Policy, 2020**, exhibit an aspiration to bring the education system in alignment with global best practices and reinforce India's commitment to education as a transformative tool for social justice and economic growth.

In sum, the international legal framework formed by the UDHR, ICESCR, and CRC has had a profound influence on India's approach to the right to education. From constitutional amendments to legislative enactments, judicial pronouncements, and policy formulations, India's legal and administrative apparatus reflects the normative standards set by international human rights instruments. While there have been substantial strides, especially with the enactment of the RTE Act and the expansion of school infrastructure, **the gap between normative commitments and actual realization** of educational rights remains a critical challenge. Effective compliance with reporting obligations, constructive engagement with treaty bodies, and domestic monitoring are essential to uphold the promise of education as a fundamental human right for every child in India.

Implementation and Ground-Level Challenges

The enactment of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) marked a significant milestone in India's legal and policy framework towards achieving universal elementary education. However, more than a decade since its enforcement, ground-level realities reflect a mixed picture. While enrollment rates have improved, the actual delivery of quality education remains a persistent concern, largely due to systemic, infrastructural, socio-economic, and administrative challenges. This section examines some of the critical implementation hurdles faced at the grassroots level, evaluating them through the lens of infrastructure, socio-economic impediments, issues in private school participation, and the overall quality of education post-RTE.

Gaps in Infrastructure and Resources

One of the foremost impediments to the effective implementation of the RTE Act lies in the glaring inadequacies in physical infrastructure and educational resources, especially in rural and tribal areas. Despite the Act's mandate under Section 19 for each school to comply with specific norms and standards—such as availability of classrooms, separate toilets for boys and girls,

clean drinking water, library facilities, and a playground—the reality on the ground is far from ideal.

The lack of sufficient school buildings and classrooms leads to overcrowded spaces, making it difficult for teachers to manage and teach effectively. Multi-grade teaching—where a single teacher is assigned to teach multiple classes at once—is a common phenomenon in many government schools, particularly in states like Bihar, Uttar Pradesh, and Jharkhand. Additionally, basic amenities such as drinking water and separate toilets for girls continue to be either absent or in disrepair, leading to increased absenteeism and drop-out rates, especially among adolescent girls.

Another significant issue is the shortage of trained and qualified teachers. The pupil-teacher ratio, as prescribed under the RTE norms, is often not maintained, particularly in remote regions. The Annual Status of Education Report (ASER) has consistently highlighted the problem of teacher absenteeism and the appointment of under-qualified or para-teachers in several government schools. Moreover, training programs for in-service teachers are either irregular or ineffective, leading to stagnation in pedagogical methods and classroom delivery.

Compounding these challenges is the lack of a robust and accountable monitoring mechanism. While the RTE Act envisages School Management Committees (SMCs) to oversee school functioning, many such committees are either non-functional or lack the capacity to perform their roles effectively. There is often no systematic grievance redressal mechanism for parents or students to report violations of RTE entitlements. Budgetary constraints and delayed release of funds under schemes like Sarva Shiksha Abhiyan and Samagra Shiksha Abhiyan also hinder timely execution of infrastructure projects and appointment of human resources.

Socio-Economic Barriers

Beyond physical and administrative issues, socio-economic factors continue to play a significant role in limiting the reach and impact of the RTE Act. A substantial proportion of children belonging to economically weaker sections, scheduled castes, scheduled tribes, and minority communities still face considerable barriers to education. Factors such as poverty, migration, child labour, and social exclusion interact in complex ways, making the goal of universal education difficult to achieve.

Child labour remains a pervasive problem, particularly in economically backward regions. Children are often compelled to forgo schooling to contribute to the family income through agricultural labour, domestic work, or participation in informal sectors like brick kilns or factories. In such circumstances, the opportunity cost of education becomes unaffordable for many families, despite the statutory guarantee of free and compulsory education.

Gender-based discrimination further compounds these challenges. In patriarchal communities, girls are often considered a burden, and their education is not prioritized. Early marriages, household responsibilities, and safety concerns contribute to higher dropout rates among female students, especially after the primary level. Similarly, children from Dalit and tribal backgrounds frequently face discrimination within the classroom, leading to alienation and disinterest in continuing education. The lack of inclusive curricula and culturally sensitive pedagogy further widens this divide.

Seasonal migration of families for employment also disrupts children's educational continuity. Despite the RTE Act's emphasis on neighborhood schools and admission at any time of the academic year, migrant children are often left out of the formal education system. While bridge courses and seasonal hostels have been introduced in some states, their reach remains limited and uneven.

Additionally, children with disabilities often remain excluded from mainstream education despite specific provisions under the RTE Act and other laws such as the Rights of Persons with Disabilities Act, 2016. Schools are often ill-equipped with accessible infrastructure, trained special educators, or inclusive teaching materials, which leads to marginalization of children with special needs.

Private Schools and the 25% Reservation Mandate

Section 12(1)(c) of the RTE Act mandates all private unaided non-minority schools to reserve 25% of their entry-level seats for children from economically weaker sections (EWS) and disadvantaged groups. While the provision seeks to foster social inclusion and equitable access to quality education, its implementation has been mired in administrative bottlenecks, lack of transparency, and legal controversies.

Many private schools have either resisted compliance or adopted exclusionary practices, such as demanding additional documentation, setting covert entry barriers, or delaying admission processes to discourage EWS applicants. Despite the reimbursement clause under the Act, private schools frequently cite delays or inadequacy in government payments as reasons for non-compliance. In several instances, the state governments have been unable to release funds on time due to fiscal constraints, leading to a breakdown in trust and cooperation between the state and private educational institutions.

The judiciary has played an active role in addressing some of these challenges. In the landmark judgment of *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012), the Supreme Court upheld the constitutionality of Section 12(1)(c), declaring that the RTE Act was applicable to all non-minority private unaided schools. The Court emphasized that private institutions cannot shirk their social responsibility under the pretext of autonomy, especially when education is recognized as a fundamental right.

Despite such judicial affirmations, compliance remains partial and inconsistent across states. Data from the Ministry of Education and civil society organizations reveal that the total number of EWS admissions under this provision falls far short of the mandated 25%. Furthermore, there is little follow-up on the retention and learning outcomes of children admitted under this provision. Social discrimination, peer exclusion, and lack of support mechanisms within private schools often lead to dropouts or underperformance among EWS students.

Quality of Education and Learning Outcomes

One of the most critical concerns post-RTE has been the declining or stagnant learning outcomes among school children. While the Act has successfully ensured near-universal enrollment at the elementary level, it has failed to guarantee actual learning. Multiple studies, including those by ASER and the National Achievement Survey (NAS), have highlighted that a significant percentage of children in Grade 5 are unable to read Grade 2-level texts or perform basic arithmetic operations.

A key reason for this is the prevailing emphasis on rote learning over conceptual understanding and skill development. Curricula and textbooks often lack relevance to the socio-cultural context of learners, particularly those from marginalized communities. Teachers are rarely trained in child-centric and activity-based pedagogies, and the classroom continues to function in a top-down, one-size-fits-all manner. This not only disengages students but also fails to cater to the diverse learning needs of children.

The implementation of the no-detention policy under the RTE Act, which prohibited the failure or expulsion of students until the completion of elementary education, also drew considerable criticism. While the intent was to prevent dropouts and reduce exam-related stress, it inadvertently led to the dilution of accountability in teaching and learning processes. Teachers and schools had little incentive to ensure academic improvement, and students often progressed through grades without mastering foundational skills.

Recognizing these concerns, the policy was revised through the RTE (Amendment) Act, 2019, which allowed states to reintroduce examinations in Classes 5 and 8 and detain students based on their performance, subject to a re-examination. However, this move has also been contested for potentially increasing pressure and undermining the inclusive vision of the original Act. Therefore, a delicate balance between assessment, remediation, and promotion is necessary to ensure quality without compromising equity.

Moreover, the lack of regular teacher training, absence of learning materials, and weak academic support structures further contribute to the poor quality of education. Continuous and Comprehensive Evaluation (CCE), which was introduced as a holistic assessment tool, was poorly understood and implemented in most schools, leading to confusion and inefficacy.

Judicial Interpretation and Role of Judiciary

The Indian judiciary has played a significant and transformative role in shaping and expanding the scope of the Right to Education (RTE) in India. Though the 86th Constitutional Amendment in 2002 formally inserted Article 21A into the Constitution, making education a fundamental right for children between 6 to 14 years, the judiciary had already been instrumental in interpreting and expanding the contours of the right to education under Article 21 (Right to Life) even before its explicit constitutional recognition. Judicial activism, through a series of landmark judgments and public interest litigations (PILs), has not only deepened the interpretation of the right but also mandated affirmative obligations on the state to ensure meaningful access to quality education.

One of the earliest indications of judicial recognition of education as a fundamental right can be traced to the Supreme Court's decision in *Mohini Jain v. State of Karnataka* (1992)⁴. In this case, the Court held that the right to education is an integral part of the right to life under Article 21. It emphasized that education is essential for the full development of a person and cannot be denied merely because of economic incapacity. Though this judgment was later refined in *Unni Krishnan, J.P. v. State of Andhra Pradesh* (1993), where the Court held that the right to education up to the age of 14 is a fundamental right, these judgments laid the foundation for the 86th Amendment and Article 21A.

The landmark case of *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012)⁵ marked a crucial moment in the judicial interpretation of the RTE Act, 2009. This case challenged the constitutional validity of Section 12(1)(c) of the RTE Act, which mandated unaided private schools to reserve 25% of seats for children belonging to weaker sections and disadvantaged groups. The petitioners argued that this provision violated their right to run educational institutions under Article 19(1)(g) and infringed upon the autonomy of private unaided schools.

The Supreme Court, in a 2:1 majority, upheld the constitutional validity of the provision. Chief Justice S.H. Kapadia and Justice Swatanter Kumar held that the RTE Act did not violate the rights of unaided private schools. The Court emphasized that the right to education under Article 21A includes the right to quality and equitable education, and imposing an obligation on private institutions to share the burden of social justice does not infringe their autonomy. The judgment reaffirmed the principle that education is not a market commodity but a means of social transformation and empowerment. It also clarified that the obligation of unaided private schools

⁴ *Mohini Jain v. State of Karnataka*, (1992) 3 S.C.C. 666 (India).

⁵ *Soc'y for Unaided Private Schs. of Rajasthan v. Union of India*, (2012) 6 S.C.C. 1 (India).

to admit 25% students from weaker sections is a reasonable restriction to ensure the larger public interest.

Another significant case is *Avinash Mehrotra v. Union of India* (2009), which brought attention to the infrastructural and safety standards of schools. This case arose out of the tragic death of school children in a fire incident due to inadequate safety measures in a school building. The petitioner sought the intervention of the Court to lay down mandatory safety standards for schools. The Supreme Court, invoking Article 21, observed that the right to life includes the right to receive education in a safe and secure environment. The Court directed all state governments to ensure that all schools, whether private or public, meet minimum safety norms including proper exits, fire extinguishers, and safe infrastructure. This judgment demonstrated the judiciary's evolving stance that the right to education is not merely about access but also encompasses quality, safety, and dignity.

Beyond the Supreme Court, High Courts across the country have been active in interpreting and implementing the RTE Act and ensuring compliance with its provisions. For instance, the Delhi High Court in *Delhi State Legal Services Authority v. Union of India* (2012) dealt with issues concerning the admission of economically weaker section (EWS) students in private schools. The Court took a proactive stance in monitoring the implementation of the 25% reservation rule, ensuring that schools do not discriminate against EWS students and that proper guidelines are followed for admissions.

PILs have also emerged as powerful tools in the hands of civil society to hold the government accountable for lapses in education policy and infrastructure. In *Environmental & Consumer Protection Foundation v. Union of India* (2012), the Supreme Court took cognizance of the pathetic state of school infrastructure in government schools. The Court passed a series of directions mandating the provision of drinking water, clean toilets (especially for girls), boundary walls, and playgrounds in all government schools. These directions were grounded in the understanding that infrastructure is integral to ensuring that children not only attend school but remain there and learn effectively. The Court reiterated that the state cannot escape its responsibility by citing financial constraints and emphasized that education must be delivered in a dignified and enabling environment.

The judiciary has also addressed the issue of quality of education, going beyond mere access. In *Ashok Thakur v. Union of India* (2008), the Supreme Court while upholding reservations in higher education institutions, acknowledged the failure of the primary education system and called upon the state to improve the quality of primary schooling to make the benefits of higher education more equitable. Though not directly an RTE case, the judgment underlined the link between foundational education and higher learning, reinforcing the state's responsibility to improve learning outcomes.

Judicial intervention has also extended to the issue of teacher vacancies and quality teaching. In a case before the Allahabad High Court, the Court directed the state government to fill vacancies of teachers within a stipulated time to ensure that the quality of education does not suffer. Similar interventions have been seen in other states where High Courts have directed governments to ensure the appointment of qualified teachers, regular training, and timely payment of salaries. These interventions underscore the judicial recognition that teachers are the backbone of the education system and without adequate and trained teaching staff, the promise of the RTE remains hollow.

In addition, courts have recognized the psychological and emotional dimensions of education. In *Parents Forum for Meaningful Education v. Union of India* (2001), the Delhi High Court addressed the issue of corporal punishment in schools. The Court held that physical punishment and mental harassment violate the right to life and dignity of children under Article 21 and are incompatible with the aims of education. It directed schools to develop child-friendly and non-violent disciplinary practices. This interpretation has since been echoed in the RTE Act, which prohibits physical punishment and mental harassment.

The judiciary has consistently emphasized that the right to education is not merely a policy directive but a binding constitutional obligation. It has interpreted the RTE expansively to include various dimensions such as safety, infrastructure, teacher availability, psychological well-being, inclusiveness, and quality. Courts have not hesitated to step in where executive and legislative actions have failed, often issuing directions, timelines, and monitoring mechanisms to ensure compliance. Through PILs and suo motu cognizance, the judiciary has democratized access to justice in education, allowing parents, civil society, and child rights organizations to bring systemic issues to the forefront.

Moreover, the judiciary has also pushed for greater accountability and transparency in the implementation of educational schemes. In *Right to Education Forum v. Union of India* (2014), various NGOs and child rights groups filed a PIL highlighting delays in the implementation of key provisions of the RTE Act. The Court sought status reports from states and directed the Ministry of Human Resource Development to create monitoring cells to oversee compliance. Such judicial interventions have brought a degree of seriousness and urgency to policy implementation and have often served as catalysts for administrative reforms.

The role of the Indian judiciary in expanding the scope and meaning of the Right to Education has been both proactive and progressive. By interpreting education as a facet of the right to life, the courts have transformed a statutory right into a dynamic and enforceable fundamental right. Landmark judgments have emphasized that the right to education includes not just access but also availability, acceptability, adaptability, and quality. The judiciary has emerged as a guardian of constitutional promises, bridging the gap between legal mandates and ground realities. Through its consistent advocacy for equity, quality, and dignity in education, the judiciary has

not only upheld constitutional morality but has also empowered millions of children to claim their right to a better future.

Comparative Perspective: RTE in Other Jurisdictions

The Right to Education (RTE) is recognized globally as a fundamental human right, with various jurisdictions incorporating it into their legal and constitutional frameworks in unique ways. A comparative analysis of South Africa, the United States, and Finland—each with distinct socio-political contexts and legal traditions—offers valuable insights into how India can improve the realization and enforcement of its own RTE framework.

South Africa presents a compelling example with Section 29 of its Constitution, which explicitly guarantees the right to basic education to everyone, including adults, without qualification. The language used in the South African Constitution is unambiguous and creates an immediate and enforceable obligation on the state to provide access to basic education. The Constitutional Court in *Governing Body of the Juma Musjid Primary School v. Essay N.O.* (2011) emphasized that the right to basic education is immediately realisable and not subject to progressive realization, unlike other socio-economic rights. This interpretation ensures that the government cannot delay implementation citing lack of resources. The South African approach stresses state accountability and judicial enforcement, which India can emulate by strengthening legal remedies and creating enforceable timelines for addressing gaps in school infrastructure, teacher deployment, and equitable access.

In contrast, the **United States** does not recognize education as a fundamental right at the federal constitutional level. However, the Equal Protection Clause of the Fourteenth Amendment has played a pivotal role in shaping education rights, especially through landmark judgments like *Brown v. Board of Education* (1954). This case declared racial segregation in public schools unconstitutional, establishing education as a crucial determinant of individual and social development. While the U.S. Supreme Court has not interpreted the Constitution to explicitly mandate universal education, many state constitutions provide strong guarantees for free public education. Moreover, the U.S. experience with judicial activism and public interest litigation in education—especially concerning discrimination, funding disparities, and school quality—highlights the importance of using legal tools to address systemic inequalities. India can draw lessons from this by enhancing the role of state-level litigation and judicial intervention in enforcing the RTE, particularly to tackle caste, gender, and economic discrimination.

Finland, often considered a model of educational excellence, enshrines the right to education through both its Constitution and comprehensive legislation. Education in Finland is free at all levels, including university, and the state ensures equal access by providing free meals, textbooks, and transportation. The Finnish model emphasizes equity, high-quality teacher training, and minimal standardised testing, focusing on student well-being and holistic

development. Importantly, Finland's decentralized approach empowers schools and municipalities, fostering local accountability and innovation. While India's socio-economic challenges differ significantly, the Finnish model offers key takeaways—especially in prioritizing teacher education, reducing bureaucratic hurdles, and integrating support services within the education system. Adopting similar support mechanisms—like midday meals and transport subsidies—on a more robust and targeted scale could improve attendance and retention in Indian schools.

From a comparative lens, India's RTE framework, codified in Article 21A of the Constitution and operationalized through the Right of Children to Free and Compulsory Education Act, 2009, can benefit from the strengths of these international approaches. South Africa's model underscores the need for unequivocal constitutional language and judicial enforceability, while the U.S. illustrates the potential of litigation in addressing inequality and ensuring accountability. Finland provides a blueprint for creating an equitable, inclusive, and quality-driven public education system.

India's journey toward fulfilling the RTE must evolve beyond legislative guarantees to include enforceable rights, effective grievance redressal, judicial oversight, and holistic support systems. Integrating lessons from other jurisdictions—tailored to the Indian context—can strengthen the education system and help fulfill the constitutional promise of a just, inclusive, and empowered society through universal education.

Suggestions and Way Forward

The Right to Education (RTE) Act was envisioned as a transformative legal measure to ensure that every child in India has access to quality education. However, its effective implementation continues to face several systemic and structural hurdles. To address these issues and realise the true intent of the legislation, a multi-pronged and sustainable approach is essential. The first and foremost step is the need for enhanced public investment in the education sector. Education has consistently received a low percentage of the national GDP, far below the recommended 6% by various national commissions and international bodies. There is an urgent requirement to increase budgetary allocations for primary and secondary education, ensuring that funds are not only increased but are also equitably distributed across regions and sectors. Special attention must be given to underserved rural areas and marginalised communities where infrastructure and human resource gaps are most acute.

Strengthening government schools, which serve the vast majority of children in the country, is also essential. Many public schools continue to suffer from inadequate facilities, lack of basic amenities, untrained teachers, and overcrowded classrooms. The focus should shift from mere enrolment to retention and learning. A robust and transparent monitoring mechanism must be put in place to ensure accountability. Independent audits of infrastructure, teaching quality, and

student performance can help identify gaps and improve governance. Furthermore, decentralisation of decision-making and active participation of local bodies, school management committees, and parent associations can lead to more context-specific and responsive interventions.

Another critical aspect is reforming the curriculum and pedagogy to enhance learning outcomes. The National Education Policy (NEP) 2020 has already laid the foundation for competency-based and student-centric education. Implementation of such reforms must be accelerated through appropriate teacher training, curriculum revision, and assessment reforms. Emphasis should be placed on foundational literacy and numeracy in the early years, as learning deficits in the foundational stage have long-term consequences. Alongside, periodic learning assessments, both at state and national levels, must be institutionalised to ensure that children are not only attending school but are also learning effectively.

Public-private partnerships (PPPs) in education must be encouraged, but with strict regulatory oversight to ensure accountability. While PPPs can bring innovation, infrastructure, and additional resources, their operation must align with the principles of equity and social justice. There must be no discrimination in admissions, and minimum standards for quality and teacher qualifications must be enforced. Social audits, public disclosures, and grievance redressal mechanisms should be incorporated to monitor the functioning of private entities under PPP models.

Importantly, the scope of RTE must be expanded to include children from 0–6 years and 14–18 years of age. The early years are crucial for cognitive and emotional development, and excluding this group creates a gap that affects school readiness and future learning. Similarly, universalisation of secondary education is vital for breaking the cycle of poverty, promoting gender equality, and empowering youth with life opportunities. Legal and policy amendments should be undertaken to bring pre-primary and higher secondary education within the ambit of RTE.

Lastly, education must evolve to meet the demands of the 21st century by integrating digital and skill-based learning into the school curriculum. The digital divide that became evident during the COVID-19 pandemic must be bridged through investment in digital infrastructure, teacher capacity building, and content development in regional languages. Skill development, vocational training, and life skills education must become an integral part of schooling, particularly for older students, to enhance employability and socio-economic mobility.

The Right to Education must be seen not as a static entitlement but as a dynamic and evolving right that requires constant reinforcement and adaptation. Through comprehensive policy reforms, increased financial commitment, inclusive practices, and technological integration, the vision of equitable, quality, and universal education for all children in India can truly be achieved.

Conclusion

The Right to Education (RTE) stands as one of the most transformative rights enshrined in the Indian legal and constitutional framework. As a fundamental right under Article 21A of the Constitution and operationalized through the Right of Children to Free and Compulsory Education Act, 2009, it marks a decisive shift in the nation's commitment to universalizing education. More than a mere legal provision, the RTE embodies the principle of social justice and inclusive development, ensuring that every child, irrespective of caste, class, gender, religion, or region, is guaranteed the opportunity to receive quality education. Education is not only instrumental in enabling individual empowerment but also critical in shaping an equitable and progressive society.

However, while the legislative and constitutional backing of RTE provides a solid foundation, its effective realization remains a collective responsibility. The government plays a pivotal role in formulating policies, ensuring budgetary allocations, developing infrastructure, and monitoring implementation at all levels. The judiciary has also been a staunch guardian of this right, expanding its interpretation to include quality, safety, and equity in education. Through landmark judgments, the courts have held the State accountable for lapses in implementation and reinforced the indivisibility of the right to life and the right to education.

Civil society and non-governmental organizations have significantly contributed by creating awareness, facilitating access, and highlighting implementation gaps through grassroots activism and policy advocacy. The media too has played an important role in bringing attention to educational disparities and violations of RTE provisions. Additionally, parents and local communities must be seen not just as beneficiaries but as active stakeholders in shaping the educational experience of children. Their involvement in School Management Committees (SMCs), regular monitoring, and voicing concerns can bridge the gap between policy and practice.

Nevertheless, many challenges persist—ranging from infrastructural inadequacies, teacher shortages, and regional disparities to socio-economic barriers like poverty, gender bias, and child labour. Overcoming these requires coordinated and sustained efforts from all quarters. The RTE must be continually strengthened through policy innovation, administrative commitment, judicial activism, and civic participation.

In conclusion, education is the cornerstone of democracy, and the Right to Education must evolve from being a mere constitutional guarantee to a lived reality for every child. The vision of a literate, informed, and empowered India can only be realized when the promise of education is fulfilled not just in letter but in spirit. It is, therefore, imperative to treat education not as a privilege or charity, but as an uncompromisable right. The journey towards inclusive and quality education is not the responsibility of a single institution, but a shared national commitment—one that must be renewed every day, until no child is left behind.

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