

# UNIVERSAL ELEMENTARY EDUCATION IN INDIA: THE LAW, THE IMPEDIMENTS AND THE WAY FORWARD

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## ABSTRACT

Over seven decades ago, the founders of the Constitution had envisaged the noble idea of universal elementary education (UEE) in the form of Article 45, which stipulated a Constitutional goal of bringing all children under 14 years of age into formal schooling and providing them free and compulsory education. Decades later, despite several legislations, judgments and schemes, the goal remains an elusive one. As the RTE Act, 2009 completes its twelve years on 01.04.2022, this article traces the development in the law relating to universal elementary education and highlights the impediments in the path of achievement of this goal while also showing the way forward.

The education of children is the most heartfelt aspiration of a family as well as society. From upward socio-economic mobility from a familial perspective to social change and establishment of peace and order in the society, to developing a nation as a Super-power upon the strength of an enlightened and educated citizenry, a lot is sought to be achieved through education in our times.

Indian legal framework has rightly acknowledged elementary education, defined as the education of children from the age of six to fourteen years or Classes I-VIII, as the linchpin of the education system, right from the inception of our Statehood.

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### **A Brief History of the Development of the Legal and Fundamental Right to Universal Elementary Education**

Article 45 of the Constitution of India, as originally enacted, stipulated a deadline of ten years for the State to make provision for free and compulsory education for all children up to the age of 14 years. Interestingly, when this Article had come up for consideration before the Constituent Assembly as Draft Article 36, an amendment had been put forth by the member Naziruddin Ahmed that the word education in the marginal note ought to be qualified by the word 'primary' since the Draft Article is confined to education up to the age of 14. This amendment was opposed by Dr. B R Ambedkar while clarifying that the specific commitment with regard to children up to the age of 14 years is inextricably connected to Draft Article 18, which prohibits employment of children in hazardous activities etc., and thus there is a specific onus upon the State to productively engage children up to the age of 14 years in education. While Dr. Ambedkar here appears to have overlooked the fact that the draft Article 18 which was finally incorporated as Article 24 in our Constitution, falls short of abolishing child labour altogether but merely prohibits their employment in hazardous establishments, it is nonetheless an important circumstance that our founding fathers not only already had a vision for the total abolition of child labour but also clearly visualised its relation to Elementary Education.

However aspirational and laudable this commitment with a ten year-deadline may have been, nascent India could not come any close to achieving the same. Hence, at the expiry of this period, various enactments were passed by different states like the Punjab Primary Education Act, 1960, the Delhi Primary Education Act, 1960 and the Karnataka Compulsory Primary Education Act, 1961, to respond to the crisis, education being a State-subject under List II of the Seventh Schedule at that time. Albeit with limitations, all these Acts provided for compulsory primary education to some extent. To ensample the Delhi Primary Education Act, 1960, Section 3 thereof cast a duty upon the local bodies to provide compulsory primary education in the specified areas.

Years after years passed by and the letter of the law remained but near dead. The budgetary constraints of the States, lack of political will and want of a child-centric and rights-based approach can be listed as key factors for these failures.

Meanwhile, vide the forty-second Constitutional Amendment in 1976, the Subject Education was transferred from State List to Concurrent List, thereby enabling the Union Legislature to legislate on education and the Union Executive to exercise its powers on this Subject and making the superior finances of the Union available for the cause.

The first watershed moment, however, in the direction of establishing education as a right, and one of the apex degrees, being a Fundamental Right, came in the form of the Honorable Apex Court judgment in *Mohini Jain v. State of Karnataka* in 1992, wherein a two-Judge Bench of the Supreme Court held right to education to be a facet of right to a dignified and meaningful existence under the umbrella Article 21. Soon thereafter, this dictum was fortified and streamlined by a Constitution-Bench judgment of the Honorable Apex Court in *Unnikrishnan, J.P. and others v. State of Andhra Pradesh and others*, wherein the Hon'ble Supreme Court held education up to the age of 14 to be a Fundamental Right and education beyond the age of 14 years still a Fundamental Right but subject to the economic capacity of the State. The Hon'ble Court arrived at this conclusion through a combined construction of Articles 21, 41, 45 and 46.

The Unnikrishnan judgement served as a very valuable tool in the hands of legal and educational activists. Yet, a lot more was needed to create, ensure and sustain a positive socio-economic right which required elaborate public-funded institutions, continuous expenditure, and extensive standardisation. A mere declaration, howsoever authoritative, could not have sufficed in achieving all of this.

Hence, the Eighty-Sixth Constitutional Amendment was effected in 2002, which, inter alia, inserted Article 21-A into the Constitution which expressly made elementary education of children of the age group 6-14 years a Fundamental Right and amended Article 45 to restrict its scope to early child-care and education of children upto six years of age.

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### **The RTE Act is the Cornerstone of India's educational framework.**

Finally, the Right of Children to Free and Compulsory Education Act, 2009, was enacted and implemented on April 1, 2010. This Act not only firmly established the right to free and compulsory elementary education as a statutory right but enforced concomitant obligations upon the State as well as the parents or guardians to ensure the provision of education to the children.

The Act is a holistic one in that it streamlines elementary education while separating the grain from the chaff, as it distinguishes schools from various categories of non-schools which are non-standardised and unrecognised institutions and secures the right of children to formal and standardised institutional education. It also lays down various key standards such as teacher-pupil ratio, playground, qualifications for teachers etc., and further removes procedural and financial hurdles to enrolments such as screening procedure, the deadline for admission, elaborate documentary requirements and capitation fee, while at the same time making provisions for the accommodation of out-of-school children. The Act further goes on to abolish corporal punishment and harassment of children in a categorical and authoritative manner and all of this on a national scale.

### **The goal of Universal Elementary Education in the post-RTE Act era**

India is on the eve of completing its twelfth year since the coming into force of the RTE Act. Heralded as a remarkable and game-changing development in the arena of universal elementary education and indeed promising much in terms of legal rights to education, little of its grand promises have translated on the ground.

There is a vast plentitude of children from the age of six to fourteen, a number enough to constitute an enormous nation, who are still out of school, and there appears little movement or enthusiasm in the State machinery to bring them to school. For the year 2017-2018, the NSSO has estimated the number of out-of-school children between the age group 6-17 years at 3.22 crores. This number is expected to have at least doubled due to the effect of the pandemic, as predicted by UNESCO. However, these numbers are nowhere close to reality. Moreover, academic experts

argue that the number of out-of-school children cannot be effectively assessed merely on the basis of enrolment, but attendance has to be counted as an important indicator.

While enrolling children into mainstream school is one thing, retaining them is another challenge altogether. The repulsive infrastructure of state schools, coupled with the absence of regular and qualified teachers, belie the promise of life-changing education for first-generation learners. The allurements to the contrary, being child labour, on howsoever exploitative terms, are growing stronger. In a country where tens of crores of people have been sleeping on an empty stomach, the empty promises of public-funded education fail to fill in the anguished minds, let alone the empty bellies.

Further, the absence of most essential facilities in state-run schools, such as functional and hygienic toilets, particularly for adolescent girls, cannot be overlooked as having a direct contribution to drop-outs. It is both natural and common for girls to find it hard to handle puberty in the absence of most basic necessities.

The negligible number of appointments of regular pay-scale teachers are turning out to be the last nails in the coffin that the public education system is. While most schools across the country are running on very few teachers, a vast majority of them are underpaid substitutes for regular teachers under various names such as Shiksha-Mitras, contractual employees, guest teachers and so on. With their close-fisted HR policies akin to half-baked shrewd businessmen, the States are naturally failing to attract a competent pool of teachers even as the unemployment rates are skyrocketing and an enormously large number of trained and competent job-seekers are available. The enormity of unemployment in the country itself has a discouraging effect upon first-generation learners as it belies their hopes of upward mobility through education.

The effects of state apathy towards education and high numbers of drop-outs are plain to see. While there is a crying need to open more and more schools to accommodate the vast numbers of out-of-school children, many states are resorting to permanently closing down state schools with impunity, citing low enrollment. In blatant disregard to the letter and spirit of the Act, efforts to map out-of-school children, organise enrollment drives, and efforts to improve the state of government schools are virtually non-existent.

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### **The digital divide and impact of the pandemic**

The pandemic could have only made matters worse, and it indeed has. While the state schools remained effectively closed and ostensibly under the online mode, the near-absence of digital devices with functional internet connectivity has dealt a deadly blow to many hopes of education. The idea of digital education has been blindly pushed while completely overlooking the economic and infrastructural constraints as well as the hurdles of young first-generation learners having no technological or academic support at home. Professor Krishna Kumar in an interview with “Parag, an initiative of Tata trusts,” has aptly highlighted the fault lines of this digital education bubble, which ignores not only financial and infrastructural constraints but more fundamentally ignores complexities of the process of learning through interactions and inter-linkages.

The mid-day meal schemes were suspended in many states for the little part when the schools physically opened during the pandemic, at a time when the relevance of these schemes was at its peak.

### **The way ahead/sprinklings of hope**

The Fundamental and statutory right to free and compulsory elementary education is the result

of decades of deliberations and campaigns. But the battle is not even half won yet. While the jurisdiction of Writ Courts has been long and beneficially utilised for demanding implementation of the right to education, with the passage of over a decade since coming up of detailed legislation like the Right of Children to Free and Compulsory Education Act, 2009, it is the need of the hour that the doors of the civil courts also be knocked at under ordinary jurisdiction to seek the implementation of the Act in letter and spirit from the State. These courts are far more affordable and accessible to the masses in the hinterland.

An initiative has been taken in tehsil Jhirka, District Nuh, Haryana by instituting a suit for mandatory injunction against the State of Haryana seeking appointment of teachers for the school in terms of the RTE Act, 2009. The response from the court as well as the media has been encouraging. The initiative has also invoked enthusiastic response and curiosity among the activists and common masses in other States.

However, the only lasting solution is public consciousness towards the rights of children. Since children cannot organise themselves into pressure groups nor directly participate in the electoral process, we need a highly sensitised society to fight for securing this precious children’s right at all levels. Masses are the only hope in a democracy.

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