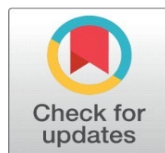
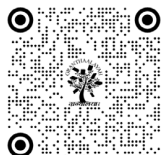


RIGHT TO EDUCATION AS A HUMAN RIGHTS - CONSTITUTIONAL AND LEGAL OUTLOOK

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ABSTRACT

Education is a strong foundational democratic value of continuous universal significance. It is the best platform for acquiring the skills, techniques, information and respect for the duties. The magnitude of the importance of education in life is multi-fold. Education is like the right to life as it is the mother of realizing other human rights. In the 21st Century worldwide activities are running on the wheels of education. To live a dignified life, education leads the way. The Universal Declaration of Human Rights declares that "Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory." "Parents have a prior right to choose the kind of education that shall be given to their children." The International Covenant on Economic, Social and Cultural Rights says "Primary education shall be compulsory and available free for all." The right to education has been recognized as a constitutionally protected fundamental right in India. In Unni Krishnan Case (1993), the Supreme Court declared that the 'right to education' is part of the right to life under Article 21 of the Constitution of India. In 2002 through the Eighty-Sixth Constitutional Amendment Act, Article 21-A was inserted. Article 21A 'requires the state to provide free and compulsory education of all children between the ages of six and fourteen in such a manner as the state may determine'. In 2009, the Indian Parliament enacted the Right of Children to Free and Compulsory Education Act [RTE Act]. The Act aims to provide "free and compulsory education to all children of the age of six to fourteen years. The International Human Rights Bill and Constitution of India tries its best to ensure availability, accessibility, acceptability, adaptability of the right to education. The Article seeks to highlight various provisions related to right to education in international law and domestic law along with judicial interpretation. The authors also try to highlight the features of the Right to education Act, 2009.

Keywords: Education, Human Right, Universal Declaration of Human Rights, Constitution of Indian, International Covenant on Economic, Social and Cultural Article 21-A, Rights



Introduction

“Education is not preparation for life; education is life itself” said by John Dewey¹ Education is a lifelong process and plays a significant role in individual, social and political levels. Though there can be differences in the meaning of ‘education’, there is universal consensus on the importance of education.

Education is needed and valued everywhere in the globe. Education is an important supporter of ‘rule law’ and ‘Constitutionalism’. Education is not only a human right but a source of realizing other rights. As an empowering right, education is the first-string through which everyone can develop his faculty. Education is one of the best financial investments where return can easily be recovered with interest.

Right to Education and Right to School: Schooling and education are two different things. School is an instrumentality of formal education through planned curriculum along with assessments through examinations.² Education is an activity of ‘learning and acquiring knowledge’. Education can be delivered in any place and environment. Schooling is a means of providing students with knowledge and skills, while education is the process of learning and acquiring knowledge. But ‘Schooling and education’ are both indispensable constituents of quality learning.

The Right to Education and Constitution of India: Education is the inexhaustible process of development of innate ability of man. The Constitution of almost every country has provisions to ensure that the state provides education to all its citizens. The entry related to ‘education’ originally was a state subject. By 42nd Constitutional Amendment 1976 ‘education’ became a concurrent list. Now both Parliament and State Legislature can make laws. In *Mohini Jain v. State of Karnataka*³ the Supreme Court after mentioning that “right to education” as such has not been guaranteed as a fundamental right under part-III of the Constitution, held ‘that reading articles 21, 38, clauses (a) and (b) of articles 39, 41 and 45 cumulatively’, it becomes clear that the framers of the Constitution made it obligatory for the state to provide education for its citizens. In *J. P. Unnikrishnan v. State of A. P.*⁴ The Apex Court held ‘right to education flows from article 21, limiting its scope to children until they complete the age of 14 years.’ The 86th Constitutional amendment making education a fundamental right was passed by Parliament in 2002.

The 86th Constitution Amendment Act (2002) has inserted Article 21 A under Indian Constitution for providing compulsory and free education for children aged 6-14 years(3).

Granting fundamental Right to Education itself was based on Article 45 (DPSP)- Article 41 also talks about education, general but Art. 45 is specific as it provides “The State shall endeavour to provide, with a period of ten years from commencement of this constitution, free and compulsory education for all children until they complete the age of fourteen years.”

Article 41 of the Indian Constitution directs the “state to secure the right to work, education and public assistance in certain cases such as unemployment, old age, sickness and disablement.”

¹ <https://www.pedagogy4change.org/john-dewey/>

² According to Webster Dictionary Schooling means instruction in school : education. b. : training, guidance, or discipline derived from experience. *Schooling means Schooling provides students with knowledge and skills, it does not necessarily teach them how to apply that knowledge in the real world.*

³ (1992) 3 SCC 666, 677

⁴ (1993) 1 SCC 645,765 para 22

Right-to-establish: Article 19(1) (g): To establish and run educational Institutions is protected under Article 19(1)(g) of the Constitution of India.⁵ Article 26 of the Constitution of India gives 'religious denominations' the right to manage their religious affairs, including establishing and maintaining religious and charitable institutions.

Article 30 Minority Educational Institutions (MEIs): gives freedom for administering educational institutions based on their choice.'

Right of Children to Free and Compulsory Education (RTE) Act 2009, Cultural and Educational Rights (Article 21A), Minority Educational Institute (MEIs) of Indian Constitution (Article 30): In *Ashoka Kumar Thakur Case*,⁶ Article 15(5) declared constitutional validity.⁷ In *Society for Unaided Private Schools Case*⁸ referred the case to higher bench to interpret the validity of Article 21A and Article 15(5), which were inserted in the Constitution by 86th Constitutional Amendment Act, 2002 and 93rd Constitutional Amendment Act, 2005. The Apex Court declared that the provision made for 'free and compulsory education for all children' of the age of 6 to 14 years under Article 21A would not apply to unaided minority schools.

Right to Education And International Law: India is signatory to a number of international covenants *i.e.*, 'Jomtien declaration',⁹ UNCRC, 'Millennium Development Goals', SAARC Dakar declaration¹⁰, Sustainable Development Goals,¹¹ charter for children which is binding on its commitment for making education a reality for all children.

UDHR,1948: Universal Declaration of Human Rights: "Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.

Articles 13 and 14 of the International Covenant on Economic Social and Cultural Rights (ICESCR) set out detailed formulation of the right to education. Article 13 contains a general statement that 'everyone has the right to education and that education should contribute to the full development of the human personality'.

The meaning of the right to education may best be explained in terms of Article 26 of the **Universal Declaration of Human Rights**, which reads as follows :

1. "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nation for the maintenance of peace.

⁵ *T.M.A. Pai Foundation and others v. State of Karnataka and others* (2002) 8 SCC 481, *Islamic Academy of Education and another v. State of Karnataka and others* (2003) 6 SCC 697, and *P.A. Inamdar and others v. State of Maharashtra and others* (2005) 6 SCC 537.

⁶ *Ashoka Kumar Thakur v. Union of India* (2008)

⁷ The Apex Court interpreted that special provisions made by the State to secure admissions made under Article 15(5) in State-maintained institutions and aided educational institutions were valid and did not go against the basic structure

⁸ *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012)

⁹ World Declaration on Education for All, Jomtien, Thailand (1990)

¹⁰ SAARC Declaration, January 4-6, 2002 - Kathmandu (Nepal)

¹¹ <https://www.undp.org/sustainable-development-goals>, The Sustainable Development Goals (SDGs), also known as the Global Goals, were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity.

3. Parents have a prior right to choose the kind of education that shall be given to their children.”

Article 13 of International Covenant on Economic, Social and Cultural Rights: “The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. The States Parties shall make (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities.”

Convention on the Rights of the Child, 1989: Articles 28 and 29 of the Convention of the Right of the Child (CRC) deal with the rights of the child to education. Article 29 stipulates that the education of the child shall be directed towards the development of the personality, talents and mental & physical abilities to the fullest potential¹².

Convention on the Elimination of All Forms of Discrimination against Women, 1979: ‘States Parties shall take complete appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women’.¹³

Convention on the Elimination of All Forms of Racial Discrimination, 1966: ‘The States should eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law and the right to education and training.’¹⁴ The States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention¹⁵.

Convention on the Rights of Persons with Disabilities, 2006: ‘States Parties recognise the right of persons with disabilities to education and shall ensure an inclusive education system at all levels and lifelong learning. States shall ensure that: Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on

¹² **Article 28 of CRC 1989**

Article 29: States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

¹³ Convention on the Elimination of All Forms of Discrimination against Women, 1979, Article 10

¹⁴ Convention on the Elimination of All Forms of Racial Discrimination, 1966:

Article 5

¹⁵ *Ibid*, Article 7

the basis of disability; States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community'.¹⁶

PART III: Human rights of all migrant workers and members of their families: Article 30: Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

Convention Relating to the Status of Refugees, 1951: The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education¹⁷.

International Covenant on Civil and Political Rights, 1966: Article 18: The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

UNESCO Convention against Discrimination in Education, 1960 Article 1: The UNESCO Convention stipulates that States must 'undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and treatment, and in particular to make primary education free and compulsory'.¹⁸

INTERNATIONAL HUMANITARIAN LAW

Geneva Convention III relative to the Treatment of Prisoners of War, 1949

Article 19: Prisoners of war shall be evacuated, as soon as possible after their capture, to camps situated in an area far enough from the combat zone for them to be out of danger.

Article 38: While respecting the individual preferences of every prisoner, the Detaining Power shall encourage the practice of intellectual, educational, and recreational pursuits, sports and games amongst prisoners.

Article 72: Prisoners of war shall be allowed to receive educational or recreational character which may meet their needs, including books, devotional articles, scientific equipment, examination papers, musical instruments, sports outfits and materials allowing prisoners of war to pursue their studies or their cultural activities

IV Geneva Convention (IV GV) 1949 related to the Protection of Civilian Persons in Time of War Article 24: "The Parties to the conflict shall take the necessary measures to ensure that children under 15, who are orphaned or are separated from their families, their education shall, as far as possible, be entrusted to persons of a similar cultural tradition."¹⁹ "The Occupying Power shall, facilitate the proper working of all institutions devoted to the care and education of children."²⁰ "The Detaining Power shall 'encourage intellectual, educational and recreational pursuits, sports and games amongst internees'. The education of children and young people shall be ensured; they shall be allowed to attend schools."²¹

¹⁶ Convention on the Rights of Persons with Disabilities, 2006, Art. 24

¹⁷ **Convention Relating to the Status of Refugees, 1951**, Art. 22

¹⁸ UNESCO Convention against Discrimination in Education, 1960 Art. 1 & Art.2

¹⁹ IV Geneva Convention (IV GV) 1949 related to the Protection of Civilian Persons in Time of War Article 24

²⁰ *Ibid*, Article 50

²¹ *Ibid*, Article 94

Internees shall be allowed to receive 'foodstuffs, clothing, medical supplies, as well as books and objects of a devotional, educational'²².

AP I, 1977 the GC, 1949: 'During evacuation each child's education, including his religious and moral education as per parents desire, shall be provided with the greatest possible continuity'.²³

Protocol II to GC, 1949: 'Children shall be provided with the care and receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care'.²⁴

Right of Children to Free & Compulsory Education (RTE), Act, 2009: The Constitution (Eighty-sixth) Amendment Act has inserted Article 21A in the Constitution which makes education a Fundamental Right for Children in the age group of 6-14 years by providing 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 Parliament of India took almost eight years after inserting Article 21 A. On 1st April 2010 implemented the RTE to provide free and compulsory education to all children in the age group of 6-14 years. The new law makes it obligatory on part of the state governments and local bodies to ensure that every child gets education in a school in the neighbourhood. ☐

The RTE Act provides the **practical and legal regime** (Institutional mechanism & Procedures) to enable Indian Citizens to exercise the Fundamental Right to Education as enshrined in Article 21A of the Constitution. Under RTE Act, every child of the age of 6 to 14 shall have a right to free and compulsory elementary education in a neighbourhood within 1-3 km.

Free: No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

Compulsory: The obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. It also imposes duty on parental to send children to school.

Sarv Sikhsha Avihyan, Scheme for universal elementary education launched in 2000-01, shall be the primary scheme for implementation of RTE. Decisions in *Mohini Jain Case*²⁵ the *Unni Krishnan Case* led to the enactment of the 86th Constitutional Amendment Act 2002 made elementary education a fundamental right in India. When the RTE Act came into force on 1 April 2010.

Evolution of Right to Education in India: In 1947 the Constituent Assembly kept Right to Education under fundamental Right. The proposed Article was 23. In 1949 due to cost consideration, the constituent assembly transferred RTE from FR to DPSP. Article 41 of the Indian Constitution says "the state to secure the right to work, education and public assistance in certain cases such as unemployment, old age, sickness and disablement"

Article 45: Provision for free and compulsory education for children.

National Policy of Education(NPE): In 1986 National Policy of Education (NPE) stated in principle free and compulsory education for all children up to 14 years of age

²² *Ibid*, Article 108

²³ Additional Protocol I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977. Article 52 deals with General protection of civilian objects and Article 78 Evacuation of children

²⁴ Additional Protocol I to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1977

²⁵ *Mohini Jain v. State of Karnataka* 1992 AIR 1858

In 1993 *Unni Krishnan Case*²⁶ accorded free and compulsory education for all children up to 14 years of age as fundamental right

In 1995: **Mid Day Meal scheme launched**- aimed to increase enrolment, reduce drop out

2001: **Sarva Shiksha Abhiyan (SSA)**- SSA aimed to universalize elementary education launched

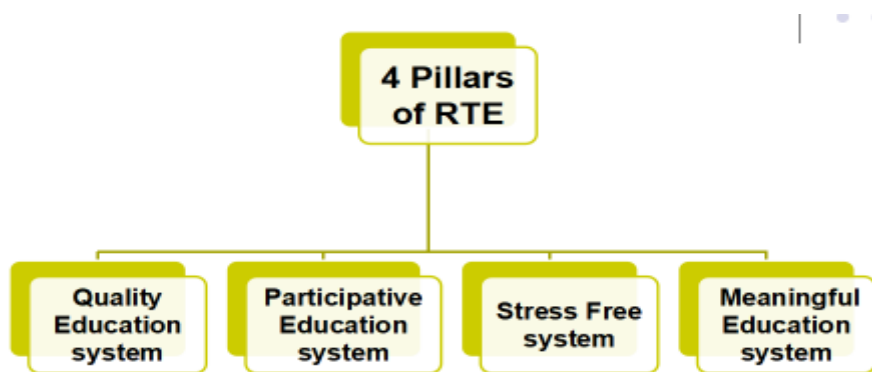
2002: **Constitution (86th Amendment) Act, 2002** inserted Article 21-A to provide free and compulsory education of all children in the age group of 6 to 14 years as a Fundamental Right.

2003-06: **The Free and Compulsory Education for Children Bill** introduced in Parliament in 2003,2004, 2005, 2006 but couldn't be enacted.

2008-09: the modified Right of Children to Free and Compulsory education Bill was introduced in 2008, enacted in August 2009 and RTE was operationalized on 15 April. 2010.

Features of RTE Act 2009

1. **Right to Education under Article 21A (86th Amendment):** RTE Describes modalities of the importance of free and compulsory education for children aged between 6-14 years in India. The RTE mandates 25% reservation for disadvantaged sections of the society where disadvantaged groups include: 'Scheduled Castes' (SCs) and 'Scheduled Tribes' (STs), Socially Backward Class, Differently abled. RTE was amended to add in Sections 1(4) and 1(5) of the Act.²⁷ Section 1(5) of the RTE Act. Nothing contained in this Act shall apply to madrasas, Vedic pathshalas and educational institutions primarily imparting religious instruction.) Section 1(4) of the RTE: "Subject to the provisions of Articles 29 and 30 of the Constitution, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education. The RTE not only provides for free and compulsory elementary education, but also Paradigm shift in elementary education system. The Four pillars of RTE: Quality, participative, stress free and meaningful Education system are four pillars of the RTE.



Following factors help in the quality and participants along with a meaningful stress system.

a) **Student Teacher Ratios:** The norms and standards relating to Student Teacher Ratios to be 1:30, buildings and infrastructure, school-working days (200-220), teacher-working hours(45 hr). A teacher must possess minimum

²⁶ *Unni Krishnan v. State of AP AIR 1993 SC*

²⁷ The Right of Children to Free and Compulsory Education Act (Amendment) (RTE Act) 2012

qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.²⁸

- b) **No admission test:** There should be no admission test, no documents, no denial to admission on any ground, no physical punishment and mental harassment. There should be no capitation fee, no private tuition by teachers and no running of schools without recognition, even all pvt schools/existing schools to obtain fresh recognition.
- c) **Twenty-five percent (25%)** seats in private schools reserved for Poor Children (EWS) from the neighbourhood within 1-3 km.
- d) **Admission to age appropriate class for non-admitted**(left out) child; in case of disabled child it is 18 years.
- e) **Duties of Authorities:** RTE specifies the duties and responsibilities of Central, State, local authority and parents.
- f) **School Management Committee (SMC)-** Teachers, Parents, educationists, Students, elected representatives of the local authority (75% parents)
- g) **National Advisory Council (NAC):** Advise Govt for effective implementation of RTE Act 2009
- h) **The area or limits of neighborhood** (Areas or limits for the purposes of Section 6): In respect of children in classes I-V, a school shall be established within a walking distance of one km of the neighbourhood. In respect of children in classes VI - VIII, a school shall be established within a walking distance of 3 km of the neighbourhood. Where no school exists within the area or limits specified, the government has to make provision for free transportation, residential facilities and other facilities. In areas with high population density, the State may establish more than one neighbourhood school. The State has to make appropriate & safe transportation arrangements for children with disabilities.
- 1. Each child is also entitled to free textbooks, writing material and uniform: It is the duty **of the State Government and Local Authority** to provide free textbooks, writing materials and uniforms. Provided that a child with disabilities shall also be provided free special learning and support material.
- i) **Maintenance of records of children by local authority for the purposes of clause (d) of section 9:** The Local Authority shall maintain a record of all children, in its jurisdiction, through a household survey, from their birth till they attain 14 years.
- j) **Responsibilities of Schools And Teachers:** Admission of children belonging to weaker sections and disadvantaged shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different from the classes held for the other children. They shall not be discriminated against from the rest of the children in any manner pertaining to entitlements and facilities such as text books, uniforms, library and ICT facilities, extra-curricular and sports.
- k) **Duty of the Parent or Guardian:** It is the duty of every parent or guardian to admit their children to school & ensure that they receive elementary education²⁹.

²⁸ The Right of Children to Free and Compulsory Education Act, 2009, Sec. 23. Qualifications for appointment and terms and conditions of service of teachers.

²⁹ The Constitution of India, Article 51A-(k)

- l) **Withdrawal of recognition to schools for the purposes of sections 18(3) and 12(3):** If any schools has violated one or more of the conditions for grant of recognition or has failed to fulfill the norms and standards prescribed in the Schedule, recognition can be withdrawal to schools after following the procedure of fair hearing.
- m) **School Management Committee (Part V Of The RTE):** A School Management Committee shall be constituted in every school, other than an unaided school, within its jurisdiction.³⁰ Teachers in the schools have to ensure their regular attendance, completion of curriculum with the specific time, assess the ability of the child and prescribe special attention if need be, conduct the parent-teacher meeting to appraise overall development of the child.
- n) It is the duty of every parent to admit their children to school & ensure that they receive elementary education.³¹

Infrastructure and Academicsrequirement under RTE, 2009

Infrastructure	Academics
<ul style="list-style-type: none"> ➤ One classroom for every Teacher ➤ Barrier-free access ➤ Separate toilets for boys and girls ➤ Drinking water facility ➤ Playground secured by boundary wall ➤ Library ➤ Play material, games,Teaching Learning Materials 	<ul style="list-style-type: none"> ➤ PTR 1:30 (Primary) ➤ PTR 1:35 (Upper. Primary) ➤ 200 working days (Pr.) ➤ 220 working days (Upper Primary) ➤ 800 Instructional hrs (Primary) ➤ 1000 Instructional hrs (Upper. Primary) ➤ 45 working hrs/week for Teachers. ➤ A full-time Head Teacher with more than 100 students.

Way Forward: Education is a multi faced reality as it embraces a vast amount of intentional actions. There is promotional intervention at internal and external aspects. Today's need is to learn to make education relevant and tune with the theme of growth of the human person. Absolute trust in someone else is the essence of education", says E.M Foster. Purpose of all human sciences is to inform us of the human person. One of the prime jobs of schooling is to open windows to the wider world. Education, on the other hand, is more comprehensive and holistic. It is about more than just memorizing facts and figures. It is about learning how to think critically, solve problems, and make informed decisions. It is also about learning how to communicate effectively and develop relationships with others. Education also involves exploring one's identity and developing a sense of purpose.

Directive Principles, the State Policy and the Right to Education: "Education is simply the soul of a society as it passes from one generation to the other" – G.K Chesterton. The RTE played a greater role in raising and improving the standard of education in India importantly, but with certain disadvantages. Articles 21 A of Part III and Articles 45, 41, and 46 of Part IV of the Constitution primarily address the right to education. According to Article 45, the State has a period of ten years to

³⁰ The RTE, Sec. 13 (1)

³¹ The Constitution of India,1950 Article 51A-(k)

begin providing children with free and mandatory education up until the age of fourteen. Part III, which deals with basic rights, and Part IV, which lays out the principles for state policy, are considered the "conscience" of the Constitution. Nowadays, the right-to-education is seen as a basic principle in India's constitution, specifically Article 21A. In the 86th Amendment to the Constitution Act (2002), Article 45 was simultaneously substituted. All children in this age range (from six to fourteen years old) will have access to quality child care in the states throughout this term. Article 41 states that states will have a substantial influence on the arrangement or serving education and employment options within the framework of monetary restriction and advancement. In addition, it detailed the duty of the states to provide assistance to those suffering from old age illness and other forms of unjust poverty. Articles 21A in Part III and Articles 45, 41, and 46 in Part IV of the constitution primarily reflect the right to education. According to Article 45, the State has a period of ten years to begin providing children with free and mandatory education up until the age of fourteen. Section III, which deals with basic rights, and Section IV, which lays out the principles for state policy, are considered the "conscience" of the Constitution. Nowadays, the right-to-education is seen as a basic principle in India's constitution, specifically Article 21A. In the 86th Amendment to the Constitution Act (2002), Article 45 was simultaneously substituted. All children in this age range (from six to fourteen years old) will have access to quality child care in the states throughout this term. Article 41 states that states will have a substantial influence on the arrangement or serving education and employment options within the framework of monetary restriction and advancement. In addition, it detailed the duty of the states to provide assistance to those suffering from old age illness and other forms of unjust poverty.

Right to Free Education is a Fundamental Right: In *Mohini Jain Case* (Capitation fee case') in 1992 the issue of mandatory and free education raised³². The 'Privilege to educational aspects was outlined as legitimacy founded on the perception of right to life'. After the 86th Amendment of Constitution Act, a new article Article 21A has been inserted.

Right-to-education (RTE): Everyone from the ages of six to fourteen has the right to an education, and the state is required to pay for it. For children in the age bracket of six to fourteen, this article lays out the essential fundamental right to an elementary education. The primary education infrastructure must be ensured and laws must be enforced in order for this article to be implemented. Nevertheless, Article 21A's role in the constitution is primarily intended as a guarantee in numerous respects. On April 1, 2010, the Right of Children to Free and Compulsory Education Act of 2009 took effect, having been passed by both houses of Congress. Every child between the ages of 6 and 14 has the right to a free and compulsory public education according to this law. Schooling from the I-VIII level is also defined as elementary education in this document.

RTI provides practical and legal regime and Input oriented rather than outcome. Children are still not receiving what they are due, despite the fact that the RTE has improved things on paper. A growing number of low-income students are opting out of public schools in favor of private ones, as mandated by section 12 of the Right to Education Act, 2009, which requires privately-run schools to set aside 25% of their student body for students from low-income families. This is due to the fact that all parents desire to send their children to private schools due to the poor quality of our public schools' facilities and teachers. Now the real problem is the following:

³² *Mohini Jain v. State of Karnataka* is 1992 AIR 1858, 1992 SCR (3) 658,

- To many schools who are not in profit, 25% of children are an encumbrance as of the time lag in payments by the authorities.
- The expenditure of the government on education and teacher appointment is not optimistic as it becomes a barrier in the basic cognitive process of the students.
- Many families send their wards only for food not for education. For them the learning outcome is zero.
- Many public schools are not fulfilling the infrastructure requirements.
- Again, the government wastes money on ineffective schools with empty buildings and overpaid teachers because Section 6 of the RTE Act, 2009 requires the state government to build more of these public schools in the neighborhood. When it comes to urban areas with limited space, how does the government expect better infrastructure? The impoverished children are kept out of school as a result of this.
- While the government's Right to Education program was an admirable concept, its implementation has been lacking. The government should put in a lot of effort to make this Act and education better. Simply said, education is the bedrock upon which all forms of development rest, from personal growth to national progress. You can make a difference when you have the ability to read and write.
- There are numerous gaps in the RTE, 2009, and both the government and the people need to fill them.
- The calibre of educators and the course material covered. No one is willing to put money into our nation. They look for nations with higher levels of human capital and higher profits as potential investment destinations. It's high time that we open our eye and bring the change
- Affluent and high profile, manipulating through touts and administration to usurp the quota fixed for EWS children.³³

Impact of RTE are as the following: When it comes to ensuring that all children in India have access to free and mandatory education, the role of the Indian judiciary is crucial. However, the judiciary cannot, on its own, give substance to this right. In order to achieve this goal, we must ensure that children are raised to be responsible and productive members of society. Increase in Enrolment Rate: RTE increased the enrolment rate of the students 'Net Enrolment Rate' (NER) in primary education increased and the dropout rates reduced,

There are no separate toilets for girls .

Not much improvement in Learning Outcome: The learning outcomes in reading, writing and arithmetic in state-run schools is poor.³⁴ The 'child' is the central and fundamental right bearing unit and at the same time the teacher is the custodian and protector. The focus should be given immediate and not remote approach on realization of the child-centred approach. It is required to arouse curiosity in all individuals to get an education.

³³ <https://www.indiatoday.in/mail-today/story/delhi-rich-parents-exploit-ews-quota-school-admissions-259284-2015-06-23>

³⁴ See The Annual Status of Education Report (ASER) 2014 by education non-profit 'Pratham