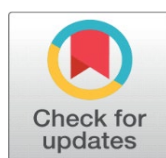
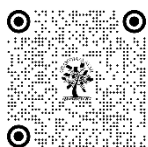


A COMPARATIVE STUDY OF RIGHT TO EDUCATION ACROSS VARIOUS JURISDICTIONS

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ABSTRACT

For a developing society there needs awareness and literacy among people about various aspects of the contemporary world. Every society wants to have civilized and law-abiding citizens for multidirectional growth. In achieving all these objectives education and upbringing of a person plays an important role. International organizations also provide Right to education (RTE) to persons. Various international statutes also provide for RTE and its enforcement. Countries have created setup of a system to provide free education up to a certain level to its citizens. Every country has its own framework for enforcement of RTE depending upon various socio-cultural conditions. There is similarity in most of the developing and developed countries which follow a system that provides basic and compulsory education to all students on governments expenses and bear expenses of education above it as per their capacity.

In this study we would cover the application and other factors related to RTE specially of United Kingdom, United States, China and India. The study also tries to find-out the challenges in enforcing the RTE. The study will also try to developments in enforcement of RTE in international law and these targeting countries.

Keywords: Edward Soja, Third Space Theory, William Shakespeare, as You Like it, Forest of Arden, Spatial Dynamics, Identity Transformation, Social Relations, Liminality, Hybridity

1. INTRODUCTION

Education can change the entire life of a person. Nelson Mandela said, "Education is the most powerful weapon which you can use to change the world." It changes the way of the persons thinking and makes to adopt new things. A good education system helps in changing the society make it civilized and vibrant.¹ Education also helps in removing the poverty and reducing economical imbalance in society. In the current the scenario where world is facing the various problems like economic disparity between countries and terrorism in countries, education is the only weapon to curve these problems. Those with more education may have a better grasp of the potential outcomes of their choices than those with less..²

Across the globe RTE is recognised in different forms, although its ambit, application and enforcement differs depending on the state and its ruling framework. Different jurisdictions follow different approaches for enforcement of RTE and it

¹ Robert B. Wirts, *On the Importance of Education*, (Createspace Independent Pub August 2018).

² Wim Groot and H. Maassenvandenbrink, "The effects of education on crime", *Applied Economics* 279 Feb.2010.

depends how a state looks its progress in future. International frameworks provide for RTE in various declaration, covenant and conventions. Everyone has the right to an education, according to “Article 26 of the 1948 Universal Declaration of Human Rights (UDHR)”. This right should extend to “free primary and secondary education as well as access to higher education” based on merit. With the goal of providing free compulsory primary education and gradually increasing access to free secondary and higher education, the right to “education is guaranteed in Article 13 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).”

“Various UNESCO treaties and programs promote for education as a universal right. The United Nations International Children’s Emergency Fund (UNICEF) also adapted a convention on Convention on the Rights of the Child³ in which Article 28 requires the state parties to recognise the right of the child to education to achieve this right progressively with equal opportunity and also advocates from make primary education compulsory and provided in free of cost.” This article also provides ways to ensure RTE. While Article 29⁴ of this convention provides directions to state parties who agree to RTE of the child.

In Europe there are convention and charter of European union which provides for RTE. Protocol 1, Article 2 European Convention on Human Rights⁵ (ECHR) guarantees the RTE and states that no one should be denied this right. Also, European Union Charter of Fundamental Rights in Article 14 provides that “Everyone has the RTE and to have access to vocational and continuing training.”⁶

In present scenario the RTE is not limited for states only up to discharging the responsibility to provide basic education but to provide the quality education so that students may synchronise with contemporary educational developments.

Major Countries in the world in some or other forms tries to ensure RTE to their citizens. Here in this article, we are only focusing on to understand the RTE of United Kingdom, United States, China and India. These countries carry significant share in worlds population, economy and cultural values.

The detailed discussion on RTE across these four jurisdictions is as follows:

2. RTE IN UNITED STATES

It is not specifically provided for RTE in federal constitution in United States, unlike in many other countries. However, it has been recognized as a fundamental right in various state constitutions and protected through federal legislations and Supreme Court decisions.

STATE CONSTITUTIONS REGARDING RTE:

Around 30 states in United States have provisions in their constitutions that explicitly guarantee a RTE. These provisions also provide mandate the provision and use of free public schools. Even some states describe the type or quality of education that must be provided.

FEDERAL LEGISLATION REGARDING RTE:

“The Elementary and Secondary Education Act, enacted in 1965 and later on reauthorized” as Every Student Succeeds Act (ESSA), that provides rich federal funding for education. Federal and state governments spend millions of dollars to help disadvantaged students and some who are just in need. States receive assistance based on formulas that include factors like poverty and the number of children with disabilities.

The Individuals with Disabilities Education Act⁷ (IDEA) ensures that children with disabilities have the right to a free and public education under apposite circumstances.

DECISIONS BY U.S. SUPREME COURT

Despite the lack of a constitutionally guaranteed RTE, the Supreme Court has consistently emphasized the importance of education in its rulings. Furthermore, it should be emphasized that any educational policy derived from unfair categorization infringes upon the RTE.

³Convention on the Rights of the Child 1989, art.28. <[Convention on the Rights of the Child text | UNICEF](#)>

⁴Supra note 5, art.29.

⁵European Convention on Human Rights 1950, protocol 1 art. 2.

⁶European Union Charter of Fundamental Rights 2000, art 14.

⁷ United States, Individuals with Disabilities Education Improvement Act of 2004, 118 Stat. 2647.

"The United States Supreme Court declared in the 1954 case *Brown v. Board of Education* that racial segregation in public schools is unconstitutional under the 14th Amendment, which forbids states from denying equal protection of the laws to any person within their jurisdictions, by a unanimous majority of nine-0. The ruling ruled that it was unfair and unjustified to keep white and black students in separate schools."

It was held in **Plyler v. Doe**⁸, "public education has an important role in maintaining the fabric of our society and in sustaining our political and cultural heritage. The court also observed that deprivation of education takes an incalculable toll on the social, economic, intellectual, and psychological wellbeing of an individual, and creates an obstacle to individual achievement."

"According to the ruling in *Board of Education v. Rowley*, schools must ensure that students with disabilities have equal access to education, but they are not obligated to help students achieve their maximum potential."

Administrators at public schools in the United States are authorized to search students' personal possessions upon probable suspicion of criminal behavior, according to a Supreme Court decision in the case of *New Jersey v. TLO*. The Supreme Court reached this conclusion in light of the alarming rise in drug and smoking usage among college students.

CHALLENGES AND LIMITATIONS IN ENFORCING RTE IN US:

These protective measures notwithstanding, there exist essential challenges to ensure equal access to quality education by all Americans. Some of the challenges are as follow:

FUNDING GAPS: Funding of public schools differs across the states and district; thus, a resource gap and an opportunity gap exist.

ACHIEVEMENT OR RACIAL GAPS: Students from poor families and racial/ethnic minorities experience achievement gaps that are often much larger than their wealthier peers. School segregation Students of colour still often experience de facto segregation in many school districts even though legally prohibited.

ACCOUNTABILITY: Accountability measures under federal education laws, such as standardized testing, has been criticized to narrow the curriculum and focus on test scores rather than well-rounded education.

THE FUTURE OF THE RTE IN THE UNITED STATES

There is always a debate over the RTE in the United States. A "RTE" as envisioned by the proponents and forefathers would serve to provide adequate legal protection and ensure the equal access to quality education to everybody. It is also claimed that the present education system U.S., where the totality of state constitutional provisions, federal legislation, and the Supreme Court's decisions are clubbed, may already be sufficient to provide the protection for the RTE. The future of the RTE is going to be guided by its further legal challenges, legislative reforms, and education movements toward social sentiments towards increased educational justice, as it gives a way to deal with educational inequities and disparity.

3. RTE IN CHINA

China has achieved significant progress uplifting the educational access, notably in the last few decades. Though the Constitution of China does not explicitly provide the RTE yet this right is ensured through a number of laws and regulations. In spite of this, the actual reality of education system in China is complex which is characterized by both difficulties and advancements. In China the legal system is provides for basic principles of education and compulsory education law.

Education Law of China:

The core principles of education are outlined in these laws, which address the rights of students and instructors, "the obligation of states to provide for education, and the right to equitable access to learning."

Laws for Compulsory Education:

Under these laws, all Chinese nationals must complete nine years of obligatory education, ranging from elementary school to junior high school specifically in "article 9 of Compulsory

⁸ 457 U.S. 202 (1982).

DEVELOPMENTS AND GROWTH IN OF CHINESE EDUCATION SYSTEM

- **PRIMARY AND SECONDARY EDUCATION:** China has achieved notable progress in widening primary and secondary education, most importantly in rural areas. The enrolment in primary schools is increasing consecutively in every year.⁹
- **HIGHER EDUCATION EXPANSION:** China is also focusing to tackle the student opportunity problem increasing the infrastructure of the higher education institutions. "The number of universities and colleges has increased, providing more opportunities for higher education."
- **FUNDING FOR VOCATIONAL EDUCATION:** A new law from China's National People's Congress raises the profile of vocational education and calls on businesses and institutions to increase their investment in the field. In order to meet the demands of the market, the Chinese government has also invested heavily in improving vocational education institutions and colleges.
- Since the founding of the "People's Republic of China (PRC) in late 1949, education for ethnic minority groups has been a top priority for China's education policy agenda." Language preservation and cultural heritage promotion are two of the many special policies put in place to aid ethnic minority groups' educational opportunities.

CHALLENGES AND CRITICISMS

Despite the several achievements, the Chinese education system also faces several challenges:

1. INEQUALITIES BASED ON VARIOUS FACTORS:

- **DIVIDE ON THE BASIS OF URBAN-RURAL STATUS:** "The urban-rural divide is also one of the factors to reach up to the doors of education at various levels. In China the ratio of disposable income of urban and rural residents, which increased from 2.57:1 in 1978 to 3.20:1 in 2019, indicates that China's urban-rural income gap has not fallen."¹⁰ Educational resources and opportunities are often concentrated in urban areas, leaving rural areas underserved.¹¹
- **SOCIAL AND ECONOMIC IMBALANCE:** The disparity and imbalance in socio economic status also becomes hurdle for families to provide their children required or better education. Students from rich families have better reach to the quality education and with the additional tutoring.

2. RIGOROUS TESTING OF STUDENTS:

- **UNNECESSARY PRESSURE ON STUDENTS:** Anxiety levels among students significantly correlate with their performance on the National College Entrance Examination (NCEE), according to a study. This exam is also known as Gaokao conducted for admission in under graduate course. So, such kind of emphasis on standard tests, can lead to intense excessive and unnecessary pressure on students.
- **TEST BASED TEACHINGS AND RECOGNITION:** The availability of opportunities based on the test scores can limit the creativity students and decrease the self-confidence as well because of the recognition based on the test score. Teachings are also provided based on the requirement of the test.

3. INTERFERENCE OF POLITICS:

- **IDEOLOGY:** The ideological control of a government over the education system, creates problem in shaping the necessary curriculum and which ultimately limits the academic freedom.

⁹Dongming Qian, "The Facts and Figures Report of China's Education Development in 2020", Vol. 5 Issue 3 *Sage Journals* 540 sept. 2020.

[The Facts and Figures Report of China's Education Development in 2020 - Dongming Qian \(钱冬明\). 2022](#)

¹⁰ Sujuan Zhong, Mingshu, et.al., "Urban expansion and the urban-rural income gap: Empirical evidence from China", *ELSEVIER Vol. 129* oct. 2022 available at <[Urban expansion and the urban-rural income gap: Empirical evidence from China - ScienceDirect](#)>

¹¹Teng Margaret Fu, "Unequal Primary Education Opportunities in Rural and Urban China", *OPEN EDITION JOURNALS Vol. 60, Jul.-Aug. 2005*. Available at <<https://journals.openedition.org/chinaperspectives/500>>.

- **PATRIOTISM AND NATIONALISM:** Education is often used to promote nationalistic and patriotic values. Also, as has been noted, nationalism has served as a tool for both the CCP to garner support and the Chinese people to evaluate the state's performance.

4. EDUCATION QUALITY:

- **PROPER TRAINING TO TEACHERS:** Quality educators or teachers were always in deficiency in comparison to what it should be as per teaching norms. The qualified teachers are also posted in non-uniform manner that demand proper training of teachers to put them at equal footing.

THE FUTURE OF EDUCATION IN CHINA

To address the various challenges including above challenges, China requires to continue investing in education, to implement reforms to get improvement in the quality of learning and teaching, and to decrease the focus on standardized testing. In Addition to achieve such objectives, autonomy for schools and universities could also foster the creativity and innovation.

Although government of China has recognized the importance of education in the development and growth of country, and has taken measures to improve the education system. Still, to ensure equal access to the quality education for all citizens remains a significant challenge. After catering the issues like inequality, test-based education, and influence of politics, China can make a greater equitable and effective education system which may empower the Chinese citizens.

4. RTE IN UNITED KINGDOM

In United Kingdom is various statutes such as Education Act¹², Human Rights Act¹³ and Equality Act¹⁴ provides for RTE besides this Charter of Fundamental Rights of the European Union¹⁵ also provides for RTE in European countries. In "Schedule 1, First Protocol, Article 2 of the Human Rights Act 1998" of the United Kingdom, the RTE is provided which provides that:

"No person shall be denied the RTE. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching....."

The education system in United Kingdom is divided in to four "Key-Stages" and in certain parts. Key Stages are as follows:

- Key Stage (KS) One:** 5 years to 7 years old
- Key Stage Two:** 7 years to 11 years old
- Key Stage Three:** 11 years to 14 years old
- Key Stage Four:** 14 years to 16 years old

The main parts of education system in UK are as follows:

- **PRIMARY EDUCATION:**

This education starts in United Kingdom at age of 5 years and ends until the age of 11 years, it comprises of initial two stages KS one and KS two. This primary education builds the base of education for students in United Kingdom.

- **SECONDARY EDUCATION:**

In this type of education slab students from 11 years of age to 16 years of age are included and enter into secondary school. It comprises of KS three and four. In the UK, people are required to attend school from the ages of six to twelve, but they are free to choose whether or not to continue their education beyond the age of sixteen.

- **FURTHER EDUCATION:**

¹²UK "Education Act 1996."

¹³UK "The Human Rights Act 1998."

¹⁴UK "The Equality Act 2010."

¹⁵Charter of the Fundamental Rights of the European Union 2000.

After a student completes secondary education then students have the option to explore for further education to take General National Vocational Qualification's (GNVQ's), A-Levels, Business or Technology education, or other similar qualifications. United Kingdom students who plan to wish for college or university necessarily complete further education.

- **HIGHER EDUCATION:**

Students get entry in higher education after completing the further education. Further education or equivalent to it is also required for international students to get entry into the United Kingdom higher education system.

FREE EDUCATION IN UNITED STATES

"In United Kingdom (UK) free schools are provided funding by the government but are not run by the local authority. Schools have more control to carry out things in the manner they can run. These schools can fix their own pay scale and conditions for staff also change the length of school terms and the school day."

There are several types of state-funded schools that overseas children are permitted to attend. These school include academies, grammar schools, free schools, and boarding schools etc.

- **ELIGIBILITY FOR STATE FUNDED SCHOOLS:** Any child who is resident of the United Kingdom can join or attend the local school for compulsory education.
- **WHO CAN SET UP FREE SCHOOLS**
Many different types of organizations, including nonprofits, for-profit schools, community and faith organizations, businesses, and universities, can establish free schools.

All the State-funded schools in United Kingdom are receiving the funding by taxes of tax payers, so parents need not to pay the school fees, and the child will receive the various benefit.

LACUNAS AND REFORMS NEEDED

These are the following areas or issues which need to be tackled in order to secure quality education to students:

- ❖ Gap in Private and State Education should be reduced.
- ❖ Mental Health Support techniques should be used for students.
- ❖ Integration of Immigrant and Refugee Students in schools through a policy.

5. RTE IN INDIA:

Behaviour and role of responsibility of a person normally depends on the kind of education he or she has received. In Indian society education is considered as primary tool to achieve satisfaction and peace.¹⁶ An education enables a person to get familiar into any part of society, irrespective of their background. According to the Supreme Court of India, the RTE is inextricably linked to the right to life, protected by Article 21 of the Indian Constitution.¹⁷

"Thus, Supreme Court in the case of Unni Krishnan, J.P.¹⁸ observed RTE carries: (a) Free public education is guaranteed to all children and citizens of this nation up to the age of fourteen. (b) After fourteen years of age, the right to free public education is limited by the resources and progress of the state. The RTE is deemed an inherent part of the right to life and personal freedom guaranteed by Article 21 of the Constitution of India, according to a series of rulings by the Supreme Court of India."

Parliament by 86th Amendment in Constitution of India brought the Article 21A which mandates "The State shall provide free and compulsory education to all children of the age of six to fourteen years..."

¹⁶Bal Shastri(ed.), *Hitopadesh*, (Chaukhamba Surbharati Prakashan, Varanasi, 2012)

विद्यां ददाति विनयं, विनयाद् याति पात्रताम् । पात्रत्वात् धनमाप्नोति, धनात् धर्मं ततः सुखम्॥ means "Knowledge gives modesty, from modesty comes eligibility, from eligibility comes wealth, from wealth comes dharma, and from dharma comes happiness."

¹⁷Bandhua Mukti Morcha v. Union of India, 1984 AIR 802.

¹⁸Unni Krishnan, J.P. v. State Of Andhra Pradesh and Ors., 1993 AIR 2178.

"The education system in India was divided before insertion of NEP¹⁹ in mainly structure of pre-primary education, primary level education, secondary education, higher secondary education, graduate and postgraduate levels." The National Education Policy 2020 provide a new education structure specially till secondary education as:

- **FOUNDATION STAGE:** Students of Age 3-8 years, and covering the Anganwadi or pre-school with Grade up to 1-2. This stage may also be called as pre-schooling.
- **PREPARATORY STAGE:** Students of Age 8-11 years, and Grades from 6-8.
- **SECONDARY EDUCATION:** It includes grade from 9-12.

After this graduation and post-graduation and doctorate etc.

In 2009 the Parliament of India enacted "The Right of Children to Free and Compulsory Education Act, 2009" in fulfilling the constitutional obligation under Article 21A. This act is also known as RTE Act (RTE Act).

EFFECT OF RTE ACT, 2009 IN SECURING RTE IN INDIA:

Before this Act, there was only constitutional mandate in India to provide RTE to children through the legislation, which was creating a hurdle to parents and beneficiary children of this age group. After the enforcement of RTE Act, now children from 6 years to 14 years age group shall have the right to take elementary education free of cost in nearby schools.²⁰ "This Act also casts responsibility on all state funded and non-state funded schools to provide free elementary education to children on this age group as per the provisions of the RTE Act."²¹ There have been many cases on the basis of this legislation, courts have ensured free education to the children.

6. ISSUES WITH RTE IN INDIA

● **ISSUES IN PUBLIC SCHOOLS IN INDIA:**

In India government schools are not given priority and preference by majority of the parents until or unless they are not able to bear the expenses of the school fees and it is because of the infrastructural, poor mismanagement and other issues. This problem is in most of the schools in India. Although the teachers are recruited through competitive examinations along with their educational qualification, but as only children with poor economic and normal family background choose these government schools in India, so these recruited teachers also eventually lose interest in teaching them which ultimately turns in inefficient education.

● **FREE EDUCATION IS LIMITED ONLY AT ELEMENTARY LEVEL**

RTE should not be limited to elementary education but it should be to make the citizen to earn for livelihood, make their selves informed and be a civilized citizen. Although some scholarships and aids provided to students in higher secondary or for higher education but these are not continuous and may stop depending upon various political reasons.

7. CONCLUSION

After going through with the education framework of enforcement of RTE in these four countries that these countries have made several efforts specially enforcing it at elementary level but at higher level RTE is still untouched for marginalised and who socio-economically at lower levels. The study also suggests that after world wars or in the second half of the 20th century all these four countries have focused to enforce the RTE to its subjects in various senses. Following the similar pattern of China's education system, the insertion of skill and industry-based teaching in New Education Policy in India will also ensure the upcoming generation of India more skilled and ready to push in economic growth of the country. As the purpose of all educations is to uplift the living style and status of an individual. All four countries are trying to ensure RTE with quality as per their capabilities and vision for their country.

CONFLICT OF INTERESTS

None.

¹⁹National Education Policy 2020, Available at <<https://www.education.gov.in/nep/about-nep>>

²⁰"The Right of Children to free and Compulsory Education Act, 2009 (Act 35 of 2009), s.3."

²¹"The Right of Children to free and Compulsory Education Act, 2009 (Act 35 of 2009), s.12."

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