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An Analysis of the Right to Education and Human Development – The Indian Scenario

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ABSTRACT

Human development is an approach focusing on betterment of human lives. One way of achieving this is through better education. Since developed countries, developing countries and under-developed countries have different circumstances and different needs, various international conventions have set out soft laws in the form of targets related to education for member countries to follow. India, being a developing country has amended its Constitution to adhere to these international laws. This has led to the enactment of the RTE Act, 2009. This paper discusses the benefits and drawbacks of the Act and concludes that although the Act provides for progressive measures, it lacks in providing a standard of quality for education. Additionally, the Act is silent about children below the age of 6 years. The paper also observes that the main reason for these drawbacks are due to the failure of international laws in considering issues relating to quality and pre-school education. Indian legislative measures strictly adhere to what the international law provides, failing to cater to its own specific needs. This therefore hinders fast-paced human development in the country.

I. INTRODUCTION

Human development is an approach which follows the rationale of expanding richness of human life, rather than expanding the richness of economy. This approach focuses on people and their opportunities and choices and is believed that betterment of human life will lead to betterment of wellbeing.² On the other hand, education is very important to develop human minds and to help human beings interact and engage with the society. Education is seen as an end in itself and also as a means to development.³ For both the developed as well as the developing countries, the dynamic process of education has become a very important issue in

¹ Author is an Assistant Professor at Saveetha School of Law, SIMATS, India.

² United Nations Development Programme, *Human Development Reports*, <http://hdr.undp.org/en/humandev>.

³ C. Raj Kumar, *International Human Rights Perspectives on the Fundamental Right to Education-Integration of Human Rights and Human Development in the Indian Constitution*, 12 TULANE J. INT. COMP. LAW 237–285 (2004).

order to uplift humanity.

In the recent past, various international conventions and guidelines have been framed (hereafter referred as international laws), which provides education as the main or one of the main targets. These conventions have been ratified and targets have been adopted by many countries including India, which is a developing country,⁴ the country this paper will focus on. Based on the International laws, India has been working for years to eradicate illiteracy and has passed certain laws and is still working towards achieving universal primary education in the country.⁵

The course of this paper will first discuss the connection between education and human development, followed by an insight to the existing international laws relating to education and analysing the situation in India with the help of its national laws. This paper will analyse the impacts of a recently enacted legislation relating to education in India. The results will be used to judge if there are any drawbacks in the national laws of India which prevents the country from achieving its targets of universal primary education. This analysis will be used to further look into whether the international laws need to focus on anything more, which have been overlooked till now, in order to achieve their target of a literate world.

Thus, the main aims of this paper are to find out:

- What are the impacts of the national laws relating to education in India?
- Are there shortcomings in the international laws relating to education?

II. EDUCATION AS A RIGHT AND MEANS TO HUMAN DEVELOPMENT

(A) Importance of Education for Human Development

In the developing world, mass illiteracy has left thousands of people, both adults and children, vulnerable, impoverished and disadvantaged. Lack of education in general, has also been connected with lack of autonomy and it has been argued that apart from imparting knowledge, education also empowers a human being to be independent and make his own decisions which affects his life, which in turn leads to an autonomous existence.⁶ In other words, illiteracy deprives a person of understanding and basic awareness about the impact of decisions in his life. Also, education has been considered as a training of mind which will make a person contemplate defeat, sorrow, victory or joy as a learning experience.⁷ The aim of this training is

⁴ Ashish Virk & A. Aman Cheema, *Law , Social Justice & Global Development An Assessment of Right to Elementary Education for a Girl Child in India : A Review of International and National Law*, SOC. JUSTICE GLOB. DEV. J. (2010), http://www.go.warwick.ac.uk/elj/lgd/2010_2/virk_cheema.

⁵ Dhruva Bhat, “ *Harbinger of a New Era* ” ? *Evaluating the Effect of India ’ s Right to Education Act on Learning Outcomes* Dhruva Bhat M-RCBG Associate Working Paper Series | No . 76 (2017).

⁶ Kumar, *supra* note 3.

⁷ Virk and Cheema, *supra* note 4.

to make a person's personality grow and help him lead a smooth life while living amongst many others in the society.

Focusing specifically on education of women, additional advantages have been observed. It can be said that education empowers them to participate in decision-making which could benefit them and their family's wellbeing. Educating women has also been associated with reduction in fertility levels, child mortality rate and population growth, thereby improving family's health.⁸ Women's education can be equated with educated children and it has been seen that literate women encourage their children to academically excel and send them to school.⁹ Thus, education is strongly associated with personal and human development.

(B) Education as a basic Right Leading to Development of a Nation

The pivotal theories of democracy, freedom and human development are built on the foundation of education.¹⁰ Education involves both personal development of character and mind as well as development of a person as a member of the society. One primary function of education is observed as preparing a person to be responsible and participate in the democratic process of the nation.¹¹ In contrast, the poor people in developing countries, who are also the victims to lack of education, are unable to participate in policy formulations and also in major decision-making processes and thereby have lost their basic right to a meaningful existence.¹² This shows that the illiterates have issues in accessing justice in developing countries because they are not even aware of the basic rights guaranteed to them by their Constitution.¹³ The Supreme Court of India had once described education as a continuous growth of personality, qualitative improvement of life and steady development of character.¹⁴ Similarities can be found with the meaning of human development which refers to continuous progress where capabilities are enhanced and choices are expanded.¹⁵ Improvement in personality, character and life can be seen as continuous progress which will lead to increased capabilities and progress. The importance of education as a human right leading to human development is being recognized in nations all around and some countries are attempting to incorporate rights-based approaches to enforce education into their system.¹⁶ The pioneers of this, being the different

⁸ Madhusudan Ghosh, *Regional Disparities in Education, Health and Human Development in India*, 5 INDIAN J. HUM. DEV. 5–28 (2017).

⁹ *Id.*

¹⁰ Virk and Cheema, *supra* note 4.

¹¹ *Id.*

¹² Kumar, *supra* note 3.

¹³ *Id.*

¹⁴ *Unni Krishnan J P And Ors Etc vs State Of Andhra Pradesh And Ors.* [1993] AIR 2178

¹⁵ HUMAN DEVELOPMENT REPORT, (2000).

¹⁶ Kumar, *supra* note 3.

international laws, have set fairly good examples for countries to follow, with the purpose of achieving human development on a large scale, which will ultimately enhance the development of nations.

III. INTERNATIONAL FRAMEWORKS

The following are some of the international legal provisions which have been adopted into national laws by many countries. Parts of these frameworks embrace the importance of education as a basic right which should be available to everyone without any form of discrimination.

(A) Universal Declaration of Human Rights, 1948 (UDHR)¹⁷

Article 26 states that everyone has the right to education – elementary education shall be free and compulsory. In addition, it states that education must be directed towards strengthening the respect for human rights and developing human personality. It also specifies that higher education should be accessible based on merits.

(B) Convention against Discrimination in Education, 1960 (CDE)¹⁸

This convention stipulates that it is the state's responsibility to formulate and apply a national policy which will promote equal opportunities and treatment and make primary education free and compulsory. It also recognizes the rights that parents have in choosing the educational institution for their children which will be in conformity with their own religion and conviction.

(C) International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)¹⁹

Article 13 is on similar lines as Article 26 of UDHR.

Article 14 gives responsibilities to states to set up a plan to provide education in places where there is no access to education.

(D) Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)²⁰

Article 10 stipulates that the state parties must take measures to eliminate gender discrimination in the field of education and also that they must take measures to reduce female drop-out rates.

(E) Convention on the Rights of the Child, 1989 (CRC)²¹

¹⁷ UNIVERSAL DECLARATION OF HUMAN RIGHTS, (1948), https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

¹⁸ CONVENTION AGAINST DISCRIMINATION IN EDUCATION, (1960).

¹⁹ THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, (1966).

²⁰ CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, (1979).

²¹ CONVENTION ON THE RIGHTS OF THE CHILD, (1989).

Article 28 is similar to Article 26 of UDHR but in addition it mentions that state parties must facilitate access to technical and scientific knowledge and also to modern teaching methods.

Article 29 focuses more on the personal development of the child and in preparing the child to lead a responsible life in the free society.

(F) Millennium Development Goals, 2000 (MDG)²²

Since its launch, human development is seen as pivotal in social and economic progress and the MDGs have been treated as yardsticks for measuring development. One of the targets was to achieve universal primary education.

These legislative measures aim at providing education to everyone without discrimination, especially elementary education for all children. It can be understood by reading the provisions that they all aim at providing education as a basic human right which will allow for personal development and progress which are ultimately in line with the concept of human development.

IV. RIGHT TO EDUCATION IN INDIA

(A) Education in India

United Nations Children's Emergency Fund (UNICEF) has appreciated India for being one of the few countries in the world which has implemented national laws which are children-centric and ensures children-friendly education to bring out their fullest potential.²³ In reality, evaluations of learning outcomes among elementary school children in India have been observed to be dismally low.²⁴

In 1960, a decade after independence, 68% of children in India under the age of 14 were still out of schools.²⁵ In 1991, India had around 371 million illiterate people in total.²⁶ After many policies being implemented, in 2008, there were still 5.9% of children out of school²⁷ and around 84.4% of rural children going to school could not read even basic words.²⁸ There could be many reasons to these – high drop-out rates, gender discrimination, parents unwilling to send children to school, poverty, etc. One major reason identified is that the Indian government has failed to provide accessible schools to children in many places.²⁹ Despite improvement

²² UNITED NATIONS MILLENIUM DECLARATION, (2000).

²³ BRIAN ORD, GARY SHAW & TRACEY GREEN, *INVESTIGATIVE INTERVIEWING EXPLAINED* (2nd edn ed. 2008).

²⁴ Sharmila Ray & Sakshi Saini, *Efficacy of rights-based approach to education: A comparative study of two states of India*, 14 POLICY FUTUR. EDUC. 274–285 (2015).

²⁵ Bhat, *supra* note 5.

²⁶ Kumar, *supra* note 3.

²⁷ Bhat, *supra* note 5.

²⁸ PRATHAM, *Annual Status of Education Report (Rural) 2008* (2009).

²⁹ Bhat, *supra* note 5.

over the last decades, these statistics show that the problem of illiteracy in India still exists on a large scale despite numerous efforts by the policy makers. The magnitude of illiteracy poses a major handicap for development of India.³⁰

(B) Growth of Legal System relating to Education

India has experienced many policy changes regarding right to education. This section of the paper will only deal with the pivotal changes that have taken place. The Indian Constitution has been in force from 1950.³¹ Part 4 (Article 36 – Article 51) of the Constitution lists the Directive Principles. It must be remembered that directives are merely guiding principles for the State and are neither mandatory nor enforceable by the judiciary.³² As one of the important provisions, Article 45 expounded that the State must endeavour to provide free and compulsory education to all children till they complete 14 years of age. Meanwhile, Article 46 prompted the State to promote education and economic interests among the weaker sections and to protect them from discrimination.

Although India has these directives, the goal of providing education to all has not been achieved.³³ In this light, courts interpreted the right to education to be a fundamental right³⁴ and wanted to insert it within the ambit of Article 21 which provides for right to life and personal liberty. It was strongly felt that right to dignity could not be accomplished without the right to education.³⁵ This thought and initiative, brought in a huge change through the 86th amendment to the Constitution in 2002.³⁶ The following changes were made:

- a. Article 45 (directive) was substituted to the effect that the State shall provide childhood care and education for children till they complete 6 years of age.
- b. Article 51 (k) was added which laid a fundamental duty on parents to provide educational opportunities for children between age 6 and 14.
- c. Article 21-A was inserted in to fundamental rights and made an obligation on the State to provide free and compulsory education to all children of age 6 to 14 years.

The targets were missed yet again and India introduced the Right of Children to Free and Compulsory Education Act or Right to Education Act³⁷ (hereafter referred as RTE Act) in

³⁰ Kumar, *supra* note 3.

³¹ THE CONSTITUTION OF INDIA, (1949), <https://www.jstor.org/stable/824612?origin=crossref>.

³² Virk and Cheema, *supra* note 4.

³³ *Id.*

³⁴ AIR, *supra* note 14.

³⁵ Virk and Cheema, *supra* note 4.

³⁶ THE CONSTITUTION (EIGHTY-SIXTH AMENDMENT) ACT, (2002).

³⁷ THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, (2009),

2009, to achieve what was envisaged under Article 21-A of the Constitution.³⁸ This Act is based on the principles for elementary education underpinning the international laws such as the UDHR, ICESCR, CRC.³⁹ Transforming the right to education from a directive to a fundamental right marks significant progress. It has been opined that RTE Act has taken a rights-based approach adhering to the above mentioned international laws by striving to make education as a fundamental human right.⁴⁰

Some key features of RTE Act are:

- Free and compulsory education for children of age 6 – 14
- Mandates government and local authorities to establish schools in areas lacking one
- Private schools are required to reserve 25% seats to the weaker sections of society
- Provides for children to be admitted into classes appropriate to their age

(C) Impact of RTE Act

There are very few evaluations of the impact of RTE Act due to the size of the country, different income groups, various educational structures, many religion and caste; and different indicators which would be used to measure the impact.⁴¹ Evaluations done by a firm KPMG (Assurance and Consulting Services LLP) has indicated that the enrolment rates have increased, especially with girls⁴² also that school infrastructure has tremendously increased - electricity in schools, toilet facilities and black board for all classes.⁴³

Despite the enforcement of RTE act, no improvement has been observed other than the enrolment rate and improved infrastructure. In fact, studies have shown that the learning outcomes have worsened – language and math skills have seen a fall and also the pupil-teacher ratio has decreased by 20%.⁴⁴ Though one research claims that drop-out rates have decreased,⁴⁵ it has to be noted that it was a general study irrespective of gender. In contrast to this, another study has showed that there is an increased drop-out rate among girls.⁴⁶ In the same study, one of the reasons identified for this has been that the parents felt that there was a lack of security for their girl children. The researcher also suggested that there was a need for more qualified female teachers.⁴⁷ KPMG has identified that 80% of the teachers are qualified but they have

³⁸ KPMG & Confederation of Indian Industry, 'Assessing the Impact of Right to Education Act' 2016 1.

³⁹ Ray and Saini, *supra* note 24.

⁴⁰ *Id.*

⁴¹ Bhat, *supra* note 5.

⁴² KPMG & CONFEDERATION OF INDIAN INDUSTRY, *supra* note 38.

⁴³ Ministry of Human Resource Development India, 'Education For All Towards Quality With Equity' 2014.

⁴⁴ PRATHAM, *Annual Status of Education Report (Rural) 2014* (2015).

⁴⁵ Ghosh, *supra* note 8.

⁴⁶ Virk and Cheema, *supra* note 4.

⁴⁷ *Id.*

also critiqued the quality of teachers. This highlights the fact that the RTE Act is silent about the quality of education.

At this juncture, it is of utmost importance to criticise and analyse the flaws of the Act. It is important to note that the Act which exclusively focuses on education has failed to address children below the age of 6 and pre-elementary education.⁴⁸ Also, as noted earlier, the Act provides for age appropriate admission. The act mentions that this move is to protect the child from humiliation by other students if he/she is of an older age studying in a younger class.⁴⁹ In reality, it would impact the learning outcomes as more emphasis is given to age and not to knowledge or intellectual growth. This will also impact the learning outcomes of other fellow students and teachers will be more pressurised to take extra efforts.⁵⁰ Another point to consider is that the Act does not allow detention and expulsion of a child from school.⁵¹ The Act justifies this by emphasising that failing a grade does not improve the quality of education and this move releases a child from the trauma of failure.⁵² However, studies consider this move to have defeated the entire purpose of the Act since it decreases the motivation of a child for learning and the child will never expand knowledge.⁵³ Yet another important observation is that private schools must allot 25% seats to weaker sections of society as per the Act,⁵⁴ but it is necessary to consider whether these children can cope up with the fast digitalisation the private schools offer, since they are not likely to have laptops, computers or internet connection at home.⁵⁵

A study was conducted comparing the impact of RTE Act in two Indian states – Kerala (State with the highest literacy rate) and Bihar (State with the lowest literacy rate).⁵⁶ It was observed that Kerala had a better pupil-teacher ratio whereas, in Bihar, the funds allocated by the State were just used on infrastructure rather than teacher appointments. Another aspect observed was that Kerala scored 100% in free mid-day meal scheme whereas; Bihar fared poorly in that criteria. It was concluded that there was better public involvement and better governance in Kerala rather than in Bihar.⁵⁷ This also proves that education promotes human development. History and political background are necessary to look at in order to understand governance in the two states but that is beyond the scope of this paper.

⁴⁸ Jha Praveen, *A Right Without Resources*, NORRAG SPEC. ISSUE 52 (2017).

⁴⁹ THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, *supra* note 37.

⁵⁰ KPMG & CONFEDERATION OF INDIAN INDUSTRY, *supra* note 38.

⁵¹ THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, *supra* note 37.

⁵² *Id.*

⁵³ KPMG & CONFEDERATION OF INDIAN INDUSTRY, *supra* note 38.

⁵⁴ THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, *supra* note 37.

⁵⁵ KPMG & CONFEDERATION OF INDIAN INDUSTRY, *supra* note 38.

⁵⁶ Ray and Saini, *supra* note 24.

⁵⁷ *Id.*

V. FINDINGS

(A) Discussion

The RTE Act is indeed a progressive leap forward for a developing country like India. India has committed to attain the targets set by MDGs but even 5 years after the implementation of the RTE Act, in 2014, it was seen that India was far behind the 100% literacy rate.⁵⁸ India has been ranked the largest contributor to illiteracy in the world with 37% people illiterate in 2014.⁵⁹ Even though the concept of free education seems appreciable because the government is liable for the tuition fees, uniform, books, mid-day meals and sometimes even transportation,⁶⁰ there are many glitches in the RTE Act as observed in the previous section which prevents the country from achieving its target of universal primary education. As observed, the Act aims at educating every child from 6-14 years of age but it does not suggest any parameters to assess the quality or effectiveness of education. From the observations, it can be concluded that children who pass out of public schools which follow the RTE Act would have a different skillset and would not be on par with the children of the same age group exiting a private school.

It should be remembered that most countries, especially developing countries like India, look up to the international laws for guidance in framing their national laws.⁶¹ The implications of the RTE Act and its target are similar to the education provision in UDHR, ICESCR and the MDG. In this context, it could be said that if the international law adds more focus on the quality of education in terms of syllabus or knowledge gained, the developing countries would be benefited from it.

(B) Recommendations

The RTE Act needs to be modified for a more positive effect. The modifications must involve certain specific issues. Infrastructure could be further developed by incorporating separate toilets for girls and boys in schools.⁶² There is a need for more trained teachers to improve the quality of education and there is a need as well for girl students to feel more secure. This could be achieved by making the teaching profession more attractive by allowing negotiations for

⁵⁸ Ghosh, *supra* note 8.

⁵⁹ KPMG & CONFEDERATION OF INDIAN INDUSTRY, *supra* note 38.

⁶⁰ Ray and Saini, *supra* note 24.

⁶¹ Bhat, *supra* note 5.

⁶² KPMG & CONFEDERATION OF INDIAN INDUSTRY, *supra* note 38.

salaries, and reducing taxes.⁶³ The admission criteria in schools should be modified as a child of certain age would not be able to cope up with the pressure if he/she is admitted solely based on age and not knowledge. A suggestion is to incorporate entrance exam to determine the academic level of a child.⁶⁴ Some educational focus must also be shed on children under the age of 6 which would provide them a strong foundation for learning before beginning the elementary education.⁶⁵ Benchmarks must be set for evaluation of progress⁶⁶ which should not just focus on adhering to the RTE Act but also on the quality of education.

VI. CONCLUSION

This paper has dealt with various aspects ranging from how education matters to human rights and human development, international laws, national laws of India to their impact. To answer the aims put forth –

(A) What are the impacts of the national laws relating to education in India?

RTE Act was implemented to achieve the human right goal set under Article 21A of the Indian Constitution.⁶⁷ The enforcement of the Act has indeed improved the enrolment rate but as observed, studies show that the learning outcomes have in fact, worsened⁶⁸ and India had not gone very far with human development in all these years.⁶⁹ This is due to various shortfalls in the Act. The Act aims at 100% literacy rate, but there are no parameters to check the learning outcomes to see whether a child has learnt what he/she should be learning for that age. Moreover, the admission based on age has made this even more difficult for both students who cannot cope up with the rest of the class and also pressurises the teachers to shower extra attention and efforts. The protection from detention has also lowered the motivation of students.⁷⁰ This shows that although the Act was established with big dreams and in good faith, it does not solve its purpose and has not achieved its target.

(B) Are there shortcomings in the international laws relating to education?

The international legal provisions mentioned in this paper are soft laws and are considered as guidelines to help frame national laws or to incorporate the goals into their laws. The provisions relating to education have been drafted with the notion to make education a human right and

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Kumar, *supra* note 3.

⁶⁷ KPMG & CONFEDERATION OF INDIAN INDUSTRY, *supra* note 38.

⁶⁸ PRATHAM, *supra* note 44.

⁶⁹ M. R. Narayana, *Education, human development and quality of life: Measurement issues and implications for India*, 90 SOC. INDIC. RES. 279–293 (2009).

⁷⁰ KPMG & CONFEDERATION OF INDIAN INDUSTRY, *supra* note 38.

to make States responsible for providing its citizens with these rights. They focus on elementary education and India has adopted exactly the same into the RTE Act and turned a blind eye to children under the age of 6, about which there is no say in the international laws. Similarly, India has also failed to focus on the learning outcomes which have nearly made the Act ineffective.⁷¹ International laws set an example for addressing the most important issues in developing countries. Having this in mind, the framers must address the shortcomings of international laws and must lay down not just targets but also quality for those targets.

Thus, international laws must focus not just on providing education to all children but must also focus on the quality of education being provided by setting learning outcomes which can be adopted by developing countries. Recognising education as a right is essential for a country's development.⁷² If targets in providing education are necessary for attaining human rights, targets for achieving learning outcomes are necessary for advancement in human development.

⁷¹ PRATHAM, *supra* note 44.

⁷² Orla Kelly, Jacqueline Bhabha & Aditi Krishna, *Champions: The Realities of Realizing the Right to Education in India*, 37 HUM. RIGHTS Q. 1046–1070 (2015).