



EDUCATIONS PROVISIONS IN INDIAN CONSTITUTION

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Abstract

15th August 1947 is a red letter day in Indian History when India got freedom. The Constitution of the country was adopted on Nov. 26, 1949 and came into force on Jan 26, 1950. The Preamble of the Constitution outlines the social philosophy which should govern all our institutions including educational. Right to Education is one of the fundamental rights enshrined in the Constitution of India. The Constitution of India gives a few directions and suggestions for the development of education in the countries which are also called constitutional provisions.

Introduction:

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), is an Act of the Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21a of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the Act came into force on 1 April 2010.

The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25% of seats to children (to be reimbursed by the state as part of the public-private partnership plan). Kids are admitted in to private schools based on economic status or caste based reservations. It also prohibits all unrecognised schools from practice, and makes provisions for no donation or capitation fees and no interview of the child or parent for admission. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age.

The RTE Act requires surveys that will monitor all neighbourhoods, identify children requiring education, and set up facilities for providing it. The World Bank education

specialist for India, Sam Carlson, has observed: "The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government. It is the parents' responsibility to send the children to schools in the US and other countries."

The Right to Education of persons with disabilities until 18 years of age is laid down under a separate legislation - the Persons with Disabilities Act. A number of other provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act.

Education in the Indian constitution is a concurrent issue and both centre and states can legislate on the issue. The Act lays down specific responsibilities for the centre, state and local bodies for its implementation. The states have been clamouring that they lack financial capacity to deliver education of appropriate standard in all the schools needed for universal education. Thus it was clear that the central government (which collects most of the revenue) will be required to subsidise the states.

A committee set up to study the funds requirement and funding initially estimated that INR 1710 billion or 1.71 trillion (US\$38.2 billion) across five years was required to implement the Act, and in April 2010 the central government agreed to sharing the funding for implementing the law in the ratio of 65 to 35 between the centre and the states, and a ratio of 90 to 10 for the north-eastern states. However, in mid 2010, this figure was upgraded to INR 2310 billion, and the center agreed to raise its share to 68%. There is some confusion on this, with other media reports stating that the centre's share of the implementation expenses would now be 70%. At that rate, most states may not need to increase their education budgets substantially.

A critical development in 2011 has been the decision taken in principle to extend the right to education till Class X (age 16) and into the preschool age range. The CABE committee is in the process of looking into the implications of making these changes.

The Ministry of HRD set up a high-level, 14-member National Advisory Council (NAC) for implementation of the Act. The members included Kiran Karnik, former president of NASSCOM; Krishna Kumar, former director of the NCERT; Mrinal Miri, former vice-chancellor of North-East Hill University; Yogendra Yadav – social scientist. IndiaSajit Krishnan Kutty, Secretary of The Educators Assisting Children's Hopes (TEACH) India; Annie Namala, an activist and head of Centre for Social Equity and Inclusion; and Aboobacker Ahmad, vice-president of Muslim Education Society, Kerala.

A report on the status of implementation of the Act was released by the Ministry of Human Resource Development on the one year anniversary of the Act. The report admits that 8.1 million children in the age group six-14 remain out of school and there's a shortage of 508,000 teachers country-wide. A shadow report by the RTE Forum representing the leading education networks in the country, however, challenging the findings pointing out that several key legal commitments are falling behind the schedule. The Supreme Court of India has also intervened to demand implementation of the Act in the Northeast. It has also provided the legal basis for ensuring pay parity between teachers in government and government aided schools. Haryana Government has assigned the duties and responsibilities to Block Elementary Education Officers–cum–Block Resource Coordinators (BEEOs-cum-BRCs) for effective implementation and continuous monitoring of implementation of Right to Education Act in the State.

It has been pointed out that the RTE act is not new. Universal adult franchise in the act was opposed since most of the population was illiterate. Article 45 in the Constitution of India was set up as an act: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

As that deadline was about to be passed many decades ago, the education minister at the time, MC Chagla, memorably said: "Our Constitution fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is expanding... They meant that real education should be given to our children between the ages of 6 and 14" - (MC Chagla, 1964).

In the 1990s, the World Bank funded a number of measures to set up schools within easy reach of rural communities. This effort was consolidated in the Sarva Shiksha Abhiyan model in the 1990s. RTE takes the process further, and makes the enrolment of children in schools a state prerogative.

The following provisions have a great bearing on the functioning of the educational system in India:

Article 28:

According to our Constitution article 28 provides freedom as to attendance at religious instruction or religious worship in educational institutions.

Article 29:

This article provides equality of opportunity in educational institutions.

Article 30:

It accepts the right of the minorities to establish and administrate educational institutions.

Article 45:

According to this article "The state shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of 14 years."

We notice that the responsibility for universal elementary education lies with the Central Government, the State Governments, the Local Bodies and voluntary organisations.

Article 46:

It provides for special care to the promotion of education and economic interests of the scheduled caste, scheduled tribes and the weaker sections of society.

Article 337:

This provides for special provision with respect to educational grants for the benefit of Anglo-Indian community.

Article 350A:

This article relates to facilities for instruction in mother tongue at primary stage.

Article 350B:

It provides for a special offer for linguistic minorities.

Article 351:

This article relates to the development and promotion of the Hindi language.

The seventh schedule of the Indian Constitution contains legislative powers under three lists viz. The Union List, the State List and the Concurrent List

The Union List:

This list contains 97 subjects where the following entries are related to education:

Entry 13:

To provide Educational and Cultural relations with foreign countries.

Entry 62:

The institutions known at the commencement of the Constitution as National Library, The Indian Museum, the Imperial War Museum, the Victoria Memorial, and Indian War Memorial. Any other such institutions financed by the Government of India wholly or in part and declared by the Parliament by law to be an institution of national importance.

Entry 63:

Institutions of national importance. The institution known at the commencement of this Constitution as the BHU, AMU and Delhi University etc. declared by Parliament by law to be an institution of national importance.

Entry 64:

The institution of scientific and technical education financed by the Government of India wholly or in part and declared by law to be institutions of national importance like IITs and IIMs.

Entry 65:

Union agencies and institutions for:

- (i) Professional, vocational or technical training, including the training of police officers.
- (ii) The promotion of special studies or research.
- (iii) Scientific or technical assistance in the investigation of detection of crime.

Entry 66:

Coordination and determination of standards in the institution of higher education or research and scientific and technical institutions.

State List:

State list consists of 66 entries, out of which the following is the entry related to education:

Entry 12:

According to this entry all libraries, museums and other similar institutions controlled or financed by the state, ancient and historical monuments and records other than those declared by or under law made by the Parliament to be of the national importance.

Concurrent List:

It comprises 47 entries, among them the following are related to education:

Entry 20:

Economic and social planning.

Entry 25:

Education, including technical education, medical education and universities subject to provision of entries 63,64,65,66 of list (Union List).

Entry 34:

Newspapers, books and printing presses.

Reservation in Education

(A) Education of minorities:

Article 28 of the Constitution has made certain provisions for the education of the minorities including

- (i) No religious instruction shall be provided in educational institutions wholly maintained out of state funds.
- (ii) If any institution has been established under any endowment trust even if administrated by state, can impart religious education.
- (iii) None person attending an educational institution recognized by the state or receiving funds from state government shall be required to take part in any religious worship or instruction that may be conducted in such institutions or in any premises attached there to unless such person or if such person in a minor and his guardian has given his consent thereto.

(B) Cultural and Educational Rights:

Under article 29 and 30 for the protection of educational interest of minorities viz.

(i)Article 29 (i):

Any section of citizen residing in the territory of India on any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(ii)Article 30 (i):

All minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice.

(iii)Article 30 (ii):

The state shall not in granting and to educational institution discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

- (iv) To make any law providing for the compulsory acquisition of any property of any educational institutions established and administrated by minorities, the state shall ensure that the amount fixed by or determined under such law for acquisition of such property is such as would not restrict on abrogate the right guaranteed to them.

(C) Admissions:

- (i) Article 29 (II) states that no citizen of India can be denied admission into any educational institution, which is either maintained by the state or receiving aid out of state funds on ground only of religion, race, caste, language or any of them.

(ii) Article 15 (III) states that to make special provisions for women. Hence, separate educational institutions for women can be established.

(D) Mother Tongue:

For promotion of teaching of mother tongue the Constitution of India has made some provisions for Hindi language.

Article 350 (A):

It shall be endeavour of every state and local authorities with the state to provide adequate faculties for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups : the President may issue directions to any state as he considers necessary for recurring the facilities.

Article 351:

It is to promote the development of Hindi language and states that it shall be the duty of the Central Government to promote the spread of Hindi language in the entire country.

(E) Right to Education:

Article 41 of the Constitution provides that "All the citizens have equal right to education ". It states. "The state shall, within the limits of its economic capacity and development, make effective provisions for the right to work, to education and to public assistance in cases of employment, old age, sickness and disablement".

(F) Weaker Section:

Our Constitution has made some special provisions for the weaker sections of our society viz.

Article 45:

The state shall endeavour to provide within a period of ten years from the commencement of the Constitution for the free and compulsory education for all children until they complete the age of 14 years.

Article 46:

The state shall promote with special care the educational and economic interests of weaker sections of the people and, in particular, of the scheduled caste and scheduled tribes, and shall protect them social injustice and all forms of exploitations".

The Supreme Court of India has given the following guidelines to promote education of the people:

- (i) The state can make regulatory measures to promote efficiency of education.
- (ii) Educational institutions of minority groups cannot claim immunity from general laws such as contract law, labour law and industrial law etc.

(iii) The state can take over the management of the institutions of minority groups in case of irregularity and inefficiency.

(iv) Teachers have the right to approach to the Arbitration Tribunal in case of any injustice to them by the institution.

Some of the major constitutional provisions on education in India are as follows:

There are some changes regarding the 42nd Amendment to the Constitution. During 1976 our constitution was amended in many of its fundamental provisions. Under the Constitution of India, the Central Government has been specifically vested with several educational responsibilities.

Below are given constitutional provisions on Education:

1. Free and Compulsory Education:

The Constitution makes the following provisions under Article 45 of the Directive Principles of State Policy that, “The state shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory Education for all children until they complete the age of fourteen years.”

The expression ‘State’ which occurs in this Article is defined in Article 12 to include “The Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.” It is clearly directed in Article 45 of the Constitution that the provision of Universal, Free and Compulsory Education becomes the joint responsibility of the Centre and the States.

In the Constitution it was laid down that within 10 years, i.e., by 1960 universal compulsory education must be provided for all children up to the age of 14, But unfortunately, this directive could not be fulfilled. Vigorous efforts are needed to achieve the target of 100 percent primary education. The Central Government needs to make adequate financial provisions for the purpose. At the present rate of progress it may, however, be expected that this directive may be fulfilled by the end of this century.

2. Education of Minorities:

Article 30 of the Indian Constitution relates to certain cultural and educational rights to establish and administer educational institutions.

It lays down:

(i) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(ii) The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

3. Language Safeguards:

Article 29(1) states “Any section of the citizen, residing in the territory of India or any part there of having a distinct language, script or culture of its own, shall have the right to conserve the same.” Article 350 B provides for the appointment of special officer for linguistic minorities to investigate into all matters relating to safeguards provided for linguistic minorities under the Constitution.

4. Education for Weaker Sections:

Article 15, 17, 46 safeguard the educational interests of the weaker sections of the Indian Community, that is, socially and educationally backward classes of citizens and scheduled castes and scheduled tribes. Article 15 states, “Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.”

Under Article 46 of the Constitution, the federal government is responsible for the economic and educational development of the Scheduled Castes and Scheduled Tribes

It states. “The state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.” It is one of the Directive Principles of State Policy.

5. Secular Education:

India is a secular country. It is a nation where spirituality based on religion, had always been given a high esteem. Under the Constitution, minorities, whether based on religion or language, are given full rights to establish educational institutions of their choice. Referring to the constitutional provisions that religious instructions given in institutions under any endowment or Trust, should not be interfered with even if such institutions are helped the State.

Article 25 (1) of the Constitution guarantees all the citizens the right to have freedom of conscience and the right to profess, practice and propagate religion.

Article 28 (1) states, “No religious instruction shall be provided in any educational institution if wholly maintained out of state fund.”

Article 28 (2) states, “Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or Trust which requires that religious instruction shall be imparted to such institution.”

Article 28 (3) states, “No person attending any educational institution by the state or receiving aid out of state funds, shall be required to take part in any religious instruction that may be imported in such institutions or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person a minor, his guardian has given his consent thereto.”

Article 30 states, “The state shall not, in granting aid to educational institution maintained by the State or receiving aid out of State funds, on grounds only of religion, race, caste, language or any of them.”

6. Equality of Opportunity in Educational Institutions:

Article 29(1) states “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds, on grounds only of religion, race, caste, language or any of them.”

The Fundamental Rights of the Indian Constitution has also adopted the fourfold ideal of justice, Liberty, Equality and Fraternity. Our Constitution laid down that in the eyes of law, everyone should have an equal status, to no one the justice be denied, everyone should have liberty of thought, expression.

The fundamental right of equality clearly signifies that in the eyes of law no distinction can be made on the basis of any position, caste, class or creed. Side by side the right of equality of opportunities to all is also provided. The equality of opportunity is meaningless, unless there are equal opportunities for one’s education.

The well-known Kothari Commission, 1964-66 recommended that Central Government should undertake the responsibility in education for the equalization of educational opportunities with special reference to the reduction of inter-state differences and the advancement of the weaker section of the community.

7. Instruction in Mother -Tongue:

There is diversity of languages in our country. After the dawn of Independence, Mother-Tongues have received special emphasis as medium of instruction and subjects of study. In the Constitution of India, it has been laid down that the study of one’s own language is a fundamental right of the citizens.

Article 26 (1) states, “Any section of the citizens, residing in the territory of India or any part there of, having a distinct language, script or culture of its own, shall have the right to converse the same.”

Article 350 A directs, “It shall be the endeavour of every state and every local authority to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups.”

Secondary Education Commission, 1952-53 recommended that the mother tongue or the regional language should generally be the medium of instruction throughout secondary school stage subject to the provision that for linguistic minorities, special facilities should be made available. Kothori Commission, 1964-66 has also said that at college and university stage, mother-tongue should be the medium. The medium of instruction at school level is already mother-tongue. This is not a new proposal.

8. Promotion of Hindi:

The Indian Constitution makes provision for the development and promotion of Hindi as national language. Article 351 enjoins the Union, the duty to promote the spread of the Hindi language.

Hindi accepted as the Official Language of India as laid down by the Constitution in following words:

“It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression of all the elements of the composite culture of India.” In practice, Hindi is already largely in use as a link language for the country. The educational system should contribute to the acceleration of this process in order to facilitate the movement of student and teacher and to strengthen national Unity.

9. Higher Education and Research:

Parliament has the exclusive rights to enact legislation in respect of institutions and Union Agencies mentioned in entries 63, 64, 65, and 66 of List. The entries which give authority to the Government of India in education are mentioned below:

Entry 63 of the Union List:

The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim and the Delhi University, and any other institution declared by Parliament by law to be an Institution of National importance.

Entry 66 of the Union List:

Co-ordination and determination of standards in institution for higher education or research and scientific and technical institutions.

10. Women's Education:

One of the unique features of Modern Indian Education is the tremendous advancement of Women's Education. Education of the girls is considered to be more important than that of the boys.

The Constitution makes the following provisions under different articles:

Article 15(1) provides that the State shall not discriminate any citizen on groups only of sex.

Article 15 (3) reads: "Nothing in this article shall prevent the State from making any special provision for women and children."

The well-known National Policy on Education was concerned about the status and education of women in the country. It envisages that education would be used as a strategy for achieving a basic change in the status of women. It opined that the national system of education must play a positive role in this direction.

The Policy states, "Education will be used as an agent of basic change in the status of women. In order to neutralize the accumulated distortions of the past, there will be a well conceived edge in favour of women."

11. Education in the Union Territories:

Article 239 of the Constitution states, "Save as otherwise provided by Parliament by Law, every Union Territory shall be administered by the president acting to such extent as he thinks fit through an administrator to be appointed by him with such designation as he may specify."

12. Educational and cultural relations with foreign countries:

Entry 13 of the Union List reads. Participation in international conferences, associations and other bodies and implementing decisions made there at.

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World Vision India is a relief development and advocacy organization dedicated to working with children, families and their communities to reach their full potential by tackling the causes of poverty and injustice.

National Coalition for education-A coalition of Teachers Unions and NGOs in India which act as a country counter part of GCE (Global Coalition for Education)which stands for the Right to Education