

**EDUCATION LAW, INCLUDING FEE STRUCTURE, SCHOOL ATTENDANCE, DISCIPLINE, SPECIAL EDUCATION, AND OTHER LEGAL ASPECTS: A CRITICAL ANALYSIS**

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## ABSTRACT

This article focuses on the Indian education legislation and its major policy, namely the Right to Education Act, and its concerns. It starts with a historical account of the privatization process of education regulation. It also examines the T.M.A. Pai Foundation<sup>1</sup> case and today's attempts at regulating tuition fees in private universities. Besides, it shows the problematic nature of agreements that let private schools be autonomous, with the ministry's recent efforts to mainstream people with disabilities. The article also looks at efforts by individual states to contain school fees and the efforts to implement such measures.

The latter section talks about students with disabilities and recent educational changes, comparing the requirements of Special Education Centres and the journey of Inclusive Education from the Kothari Commission in 1966 to NEP 2020. This IT shows the division of powers between the federal and state governments and the impact of the 42nd Amendment, which has education in the concurrent list.

To sum up, the article provides an account of the examination of the implementation of the RTE Act and the emerging issues about the quality of education, teachers' competency, and the monitoring and evaluation processes. The recommendations mentioned above indicate the changes needed to enhance the Act; guarantee the quality of schooling, improve accountability, and broaden the Act's applicability to all schools.

## INTRODUCTION

India has been touted as a knowledge paradise since ancient times, and in contemporary times, it is now on the verge of an educational revolution. With the increasing population, the fate of this country is undoubtedly in the hands of educated and enlightened youth. From Nalanda University to Takshashila, it travels through densely populated cities, and the search for knowledge never ends. Indian education is a diverse collection of eras and teaching styles. India invented the decimal system, along with the magic number 'zero' or shunya, and is now planning to reverse the so-called models in education across the globe.

Given the environment of decreasing distances and increasing possibilities with digital technology, Indian schools are gradually becoming hotbeds of creativity and logical thinking. This article explores the various aspects of corporate engagement

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<sup>1</sup> State of Karnataka v. Dr. T.M.A. Pai Foundation and Ors., (2003) 6 SCC 790

in education in the country, including policies, grassroots efforts, and the spirit of learners. Nonetheless, challenges relating to facility deficiencies and socioeconomic disparities persist. Thus, the history of education in India is a story of continual pursuit, with each studied hurdle seen as a promise of future study.

It is striking to note that though the population of India is diverse, the laws that govern it are quite startling; let us dive deep. There are three types of educational administration in India. The first one is the central government, responsible for developing coping-specific policies on education under different conditions and providing special education and financial assistance. The other one includes the state government that manages the entire educational system in a given state, while the third includes regional administrative authorities that offer only primary education.

The Forty-Second Amendment<sup>2</sup> to the Indian Constitution shifted education to the concurrent list, giving a shared authority between the Centre and the state governments. They could both pass legislation regarding it, but in case of conflict between federal and state acts, the latter would be overridden by a law made in pursuance of powers vested in the central government by the Constitution. For one thing, given that education is a matter on the concurrent list<sup>3</sup>, the federal and state governments have the power to enact laws in their respective legislatures that make provisions for laws/rules/regulations/policies that ensure access to education by the public. These measures enable the executive arm of government to execute its responsibilities as per the Constitution of this country, thereby protecting state interests, institutions, and individuals within them based on the terms or actions laid down in it.

### **Supreme Court Interpretation of RTE 2009**

Before the 86th Amendment<sup>4</sup> and the RTE Act, the Supreme Court understood the right to education<sup>5</sup> as part of the fundamental right to life under Article 21. Often, it was considered a public good and an act of charity; nevertheless, it has recognized the participation of private schools in achieving the right to education. During subsequent times, the Supreme Court, along with the High Courts of several Indian States, criticized the "commercialization of education," eliminated capitation fees, and directed the state to finance the construction of better educational facilities.

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<sup>2</sup> The Constitution (Forty Second Amendment) Act, 1976, §12

<sup>3</sup> Ministry of Law and Justice. (2009). Right of Children to Free and Compulsory Education Act (RTE Act), 2009. Government of India.

<sup>4</sup> The Constitution (Eighty sixth Amendment) Act, 1976,

<sup>5</sup> Right to Education Act, 2009, No. 35, Acts of Parliament, 2009 (India).

Today, firm legislation is yet to be in place to curb the fees in private professional institutions. Nevertheless, this strategy of controlling tuition costs in private, professional establishments was dismissed based on the Supreme Court of India decision in *T.M.A. Pai Foundation and Others Vs State of Karnataka & Others* on 31 October 2002, where the court directed that each State Government should constitute a Committee to fix the cap on the fee chargeable by a professional college or class of professional college. This committee shall determine the fees once every two years or at a more extended period as deemed fit until the National Fee Committee establishes such guidelines.

### **Regulation of Private School Fees**

In a petition filed in 2012, unaided private schools challenged the constitutionality of the RTE Act by arguing that it violated their rights under Article 19(1)(g)<sup>6</sup> and established law laid down in *T.M.A. Pai*. In this case, one of the critical issues disputed was Article 12(1)(c), which directed all private schools to reserve at least one-quarter of seats for economically weaker and disadvantaged classes. However, the subsequent judgment held that the amount of regulation over their autonomy imposed by the RTE Act was legitimate and reasonable, even when unaided minority institutions were kept from Section 12(1)(c).

### **Implementation Challenges and Evasion Mechanisms**

Notably, only a handful of states have enacted laws to regulate private schools' funding matters and limit tuition costs. However, making these rules work and sticking to them are still significant challenges. Although numerous states have passed the Schools (Fees) Regulation Act to control and oversee how private schools that do not receive aid set their fees, the stakeholders still wonder how they will be implemented. The mechanisms differ from state to state. Schools often find clever ways to sidestep these laws by using other tricks to shift the costs to parents.

In hindsight, if we shift our focus to a village in Telangana, "Pragati", it stands for progress and consists of diverse people passionate about their lives. The tale of Pragati can be taken as the history of education law in India, as it reveals the links among children, parents, representatives, and people who teach them. In Pragati stands a holistic school named "Sankalp Vidyalaya". It is one of many such schools in India that offer people in villages a glimmer of hope. The saga begins with the foundation of the Indian Constitution's inclusion of Article 21a, which, by the 86th

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<sup>6</sup> India Const. art. 19, cl. 1

Amendment, provides free compulsory education for children aged between six and fourteen years. This constitutional mandate has become the main body of Sankalp Vidyalaya. Today, every child in Pragati is entitled to an education regardless of family background; this powerful statement shows how vital equality and chances for advancement are.

The Right to Education Act: Guaranteeing Access and Quality. The Right to Education (RTE) Act, 2009, brings the constitutional promise to life. It requires every child in Pragati, as in the rest of India, to attend school. The Act ensures Sankalp Vidyalaya meets specific standards, such as efficient infrastructure, wherein the school has well-equipped classrooms, clean water, and separate bathrooms for boys and girls. Moreover, the Act calls for a fair ratio so that each student gets enough help. Kids with disabilities, too, get the support they need to study with classmates.

### **The Role of Community**

The community in Telangana has formulated a "School Management Committee (SMC)" that plays a crucial part in Pragati. Parents, teachers, and local leaders make up the SMC, ensuring the RTE Act's provisions are implemented. The SMC monitors the mechanisms of the school functions, monitors attendance, and coordinates with the community to boost enrollment. Pragati village is a classic example of how education is transforming in India. The legal system, commencing from the Constitution and the RTE Act, creates a secure system for all students. It works more effectively when the community gets involved and lends its hands to more children.

### **Special Education**

Perhaps, if one looks closer at the Constitution, one would hear the echoes of its core principle, "Equity, Equality, inclusion", envisioning an inclusive India. According to the 2011 census report, India's demographic resources are blessed with an estimated population of nearly 26.8 million disabled citizens,<sup>7</sup> and out of this number, a large number are students; thus, specialized education is imperative. Several scholars assert that Special education classrooms in India are a vital source. The first and foremost reason is owing to the poor administration, which includes a lack of resources and infrastructural facilities for students with disabilities. Most schools require additional equipment and specially trained teachers to work with

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<sup>7</sup> The Rights of Persons with Disabilities Act, 2016, No. 49, Acts of Parliament, 2016 (India)

students diagnosed with special needs and give them appropriate attention. The social purposes of special education classrooms are to fill these voids in education delivery<sup>8</sup> and ensure that students have the tools and programs to excel in school.

The third possible factor as to why students with learning disabilities require special education classrooms is the ignorance or inability to accept students with disabilities. There is still much prejudice and discrimination towards people with disabilities in the communities of India. It can also help peers in special education classrooms learn more about people with such learning disabilities and accept a student with such needs. Special education<sup>9</sup> classrooms are necessary for students with special needs, as the atmosphere protects them from being lonely or bullied. Inclusive learning facilitates academic achievements in the standard curriculum and improves the social understanding of the learners who belong to the normal populace. I believe that now it is everyone's responsibility to ensure that children with disabilities receive adequate education in India.

### **Evolution of Special Education**

Inclusive education in India has evolved significantly, starting with the Kothari Commission<sup>10</sup> in 1966, emphasizing the importance of educating children with disabilities in regular schools. The efforts were further strengthened when the Integrated Education for Handicapped Children (IEDC) Program in 1974 marked its first step towards inclusion, furnishing educational opportunities for children with special needs. A turning point was reached when the Sarva Shiksha Abhiyan (SSA) and Right to Education (RTE) enterprise also incorporated Inclusive Education for CWSN,<sup>11</sup> offering support similar to assistive bias, corrective surgeries, accessible literacy accoutrements, uniforms, and remedial services. Further, the Rights of Persons with Disabilities Act of 2016 created a legal status for inclusive education in India, requiring the government and original authorities to ensure all educational institutions give inclusive education to children with disabilities. The National Education Policy 2020 recently emphasizes equity and inclusivity in education, focusing on marginalized groups, including girls and children with disabilities. Despite these reforms, challenges persist in effectively enforcing inclusive education in India.

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<sup>8</sup> Sharma, S., & Desai, I. P. (2018). Barriers to Inclusive Education: A Study of Indian Primary Schools. *International Journal of Inclusive Education*, 22(6), 612-628.

<sup>9</sup> Right to Education Act, § 16, 2009, No. 35, Acts of Parliament, 2009 (India).

<sup>10</sup> Kothari Commission. (1966). Report of the Education Commission 1964-66. Government of India.

<sup>11</sup> Ministry of Education. (1974). Integrated Education for Handicapped Children (IEDC) Program. Government of India.

## CONCLUSIONS AND SUGGESTIONS

Conclusively, we must first acknowledge the legislation's efforts to rework some inherent defects in the system. However, the system must be holistically reformed, aligning the education goals as enshrined in India's Right to Education Act<sup>12</sup>(RTE), which can specifically target its focus on institution infrastructure, teacher-pupil ratio, and teacher qualifications. Besides, the Act can also augment its strategy in enhancing the quality of education and establish a stringent enforcement mechanism. Section 16 of the Act, which mandates continuous and comprehensive evaluation (CCE), must provide implementation guidance, leading to teachers being promoted without accountability. Private and government schools often need to catch up, and qualified teachers may need more time to be ready to work in rural areas. The RTE Act also makes it compulsory for private unaided schools to admit at least 25% of their entry-level class from weaker and disadvantaged groups, but this is short-sighted and inequitable.

The Act needs immediate reforms to enhance the learning capacity of students and create proper statutory bodies and grievance redressal mechanisms. All schools, including minority institutions, should be brought under the purview of the Act to improve education quality. Progressive provisions like the right to homeschooling and practicality should be added to compete with global education standards. The future of education in India is as promising as it is steep. As a result, efforts to consolidate the country's demographic dividend must be conducted concurrently with quality and long-term relevance to people's needs. A blend of Asian learning traditions and American educational values is one of the best examples of global emulation. Despite the harrowing circumstances, the Indian academic community, which includes students and policymakers, continues to evolve. Education guarantees India's millions that it also benefits humanity by advancing global knowledge and creativity. Thus, the story of Indian education is really about human capital development. The RTE Act aims to improve educational quality, and an enforcement mechanism was needed. Addressing these concerns is critical to the country's growth and future success.

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<sup>12</sup> Right to Education Act, § 16, 2009, No. 35, Acts of Parliament, 2009 (India).

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