

# Child Right of Education Under International Law: A Special Reference to Indian Education System

**Devika Shukla**

Student, Thakur college of Law

## ABSTRACT

Globally, the application of RTE under international human rights legislation is a deeply entrenched issue, particularly in developing and growing nations. The issue has multiple sides, ranging from discrimination to the topic of free and compulsory quality education for all, because of the nature of soft law, unclear wording, and fragmentation within provisions of international and regional legal instruments. Article 21(A) was implemented in 2002 as a component of the 86th Amendment Act, pertaining to India. It stated that children from six to fourteen would get free and compulsory education from the state, incorporating basic education into the right to freedom. Six years after the Indian Constitution was ratified, in 2008, the Union Cabinet adopted the Right to Education Bill changed. The Right of Children to free and Compulsory Education Act, also known as the Right to Education Act (RTE), was passed by the Indian parliament on August 4, 2009, and it describes the procedures for offering free and compulsory education to children between the ages of six and fourteen. It is a statute that falls under Article 21A of the Indian Constitution. One of the 135 nations to join the club was India. The current study examines India's legal framework and educational system in the context of international law using a qualitative approach and the doctrinal technique of research.

**Keywords:** human rights, education system, and the right to education

## INTRODUCTION

Children's rights are a subcategory of human rights that focus specifically on the rights of minors to special protection and care. A child is "any human being below the age of eighteen years, unless, under the law applicable to the child, the majority is attained earlier," according to the 1989 Convention on the Rights of the Child (CRC). Children's rights include the freedom to associate with both of their parents, the protection of their human identity, and the fulfilment of their basic needs for food, clothing, equal access to state-funded education and healthcare, as well as the protection of their civil rights from discrimination based on the child's race, gender, sexual orientation, gender identity, national origin, religion, disability, or colour.

Ethnicity, among other traits. The definition of "abuse" is debatable, but interpretations of children's rights range from granting them the ability to take independent action to enforcing that they be kept physically, psychologically, and emotionally safe from maltreatment. The rights to nurturing and care are included in other meanings.

A plethora of human rights legislation, including treaties and "soft law," that is both general and child-specific, acknowledges the unique position and needs of children. Children have a specific right to special treatment in general and priority in receiving assistance and protection in times of danger due to their unique vulnerability and importance as the next generation. Other phrases that are used to refer to young people, include "adolescents," "teenagers," or ethnicity, among other traits.

While the term "youth" in international law refers to "children," the children's rights movement is thought to be separate from the youth rights movement. Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally, and emotionally free from abuse. The legal, political, religious, and moral spheres are all included in the field of children's rights. Governments are required to ensure that all children have equal access to high-quality education without all forms of discrimination. Governments who fail to provide for this have an international legal obligation to do so.

Resolution on the Right to Education in Emergencies, adopted by the UN General Assembly (2010) Governments are required to ensure that education in their nation The part played by nations in fulfilling their commitments related to the Right to Education The whole community is aware that it will require time and resources to realise the full potential of the right to education. The first step towards ensuring that every child has access to free, compulsory primary education is for governments to establish plans to reach the minimal level. The creation of the right to an inclusive education is an urgent requirement as it is part of the basic standard. Article 25(2) of the United Nations Universal Declaration of Human Rights (1948) acknowledged the right of all children to "social protection" as well as the necessity for maternity and infancy to receive "special protection and assistance. "Ten principles, including the universality of rights, the right to special protection, and the right to be free from discrimination, were established by the United Nations General Assembly in 1959 when it adopted the United Nations Declaration of the Rights of the Child. The boundary between a child's life and the law is known as children's rights law. Juvenile delinquency, proper representation, effective rehabilitative services, due process for children involved in the criminal justice system, care and protection for children in state care, education for all children regardless of race, gender, sexual orientation, gender identity, national origin, religion, disability, colour, ethnicity, or other characteristics, and health care and advocacy are all included in this.

## **RIGHTS CLASSIFICATION**

Under international human rights law, children have two categories of human rights. They are entitled to the same basic human rights as adults, however some rights, including the ability to marry, are reserved for adults. Secondly, in order to safeguard them while they are still minors, they have unique human rights. The freedom from harsh, inhuman, or degrading treatment, the right to personal security, and the right to special protection during childhood are among the general rights that apply to children. Children have certain human rights, such as the right to life, the right to a name, the freedom to voice opinions about issues pertaining to the child, the freedom of conscience, thought, and religion, and the right to education, the right to health care, and the right to be free from sexual and economic exploitation There are several ways to define children's rights, and these include a broad range of civil, political, economic, social, and cultural rights. There are two main categories of rights: those supporting the legal rights of children as independent individuals and those claiming that society should shield them from abuses inflicted upon them due to their dependence.

These have been referred to as the rights to protection and empowerment. The rights listed in the Convention on the Rights of the Child are referred to as the "3 Ps" in UN educational guidelines for children: provision, protection, and participation. They could be explained further like this:

- **Provision:** Children are entitled to play and recreation, as well as a sufficient standard of living, health care, education, and services. These consist of having access to education, a warm bed to sleep in, and a well-balanced meal.
- **Protection:** Children are entitled to be shielded from prejudice, exploitation, abuse, and neglect. This covers the rights to secure play areas for kids, positive parenting techniques, and recognition of kids' developing abilities.
- **Participation:** Kids have a right to self-serve programmes and services as well as to engage in communities. This covers youth voice initiatives, involving kids in decision-making, and getting them involved in libraries and community programs. The Child Rights International Network (CRIN) divides rights into two categories in a similar

## PHYSICAL RIGHTS

Some of the procedures that the Committee was concerned about were "female genital mutilation, the circumcision of young boys for religious reasons, early childhood medical interventions in the case of intersex children and the submission to or coercion of children into piercings, tattoos or plastic surgery," according to a report by the Committee on Social Affairs, Health, and Sustainable Development of the Parliamentary Assembly of the Council of Europe.

In 2013, the Assembly passed a non-binding resolution urging its member nations to take various steps to support children's physical integrity. Parties are required by Article 19 of the Convention on the Rights of the Child to "take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of abuse." assault against the body or mind, abuse or harm, carelessness or neglect, mistreatment, or exploitation." Article 19 is interpreted by the Committee on the Rights of the Child as forbidding corporal punishment, with a statement highlighting the "obligation of all States Party to move quickly to prohibit and eliminate all corporal punishment." Additionally, the International Covenant on Civil and Political Rights' Article 7 has been interpreted by the United Nations Human Rights Committee.

## DIFFERENCE IN THE RIGHTS OF YOUTH AND CHILDREN

"In the majority of jurisdictions, for instance, children are not allowed to vote, to marry, to buy alcohol, to have sex, or to engage in paid employment."<sup>53</sup> The main distinction between the youth rights movement and the supporters of children's rights is thought to be that the former (much smaller movement) generally supports the expansion of freedom for children and/or youths as well as rights like suffrage, while the latter generally advocates the establishment and enforcement of protection for children and youths.

### The International Law of Human Rights

Today, all international legal rules pertaining to children's rights are viewed as originating from the Universal Declaration of Human Rights. Children's rights are covered by numerous international accords and regulations. These rights are impacted by a number of historical and contemporary publications, such as the Declaration of the Rights of the Child, which was written by Eglantyne Jebb in 1923, accepted by the League of Nations in 1924, and reiterated in 1934.

The United Nations adopted a somewhat increased version in 1946, and the General Assembly adopted a significantly extended version in 1959.

Later on, the Convention on the Rights of the Child was built upon it.

### **COVENANT INTERNATIONAL FOR CIVIL AND POLITICAL RIGHTS**

The International Covenant on Civil and Political Rights (ICCPR) was ratified by the UN in 1966. Almost every country on the planet has ratified or acceded to the International Covenant on Civil and Political Rights (ICCPR). The rights outlined in the Covenant must be upheld and enforced by the countries that have ratified it.

The pact was ratified on March 23, 1976. Since the rights outlined in the ICCPR are universal, everyone is covered by them, even minors. While children are entitled to all rights, some rights—like the ability to vote and be married—only become operative when the child enters adulthood.

The following are some general rights that apply to children: the right to life; the right to personal security Article 24 codifies the child's right to special protection because of his minority, as well as his right to a name and nationality. It also guarantees the following rights: the freedom from torture; the right to be free from cruel, inhuman, or degrading treatment or punishment; the right to be separated from adults when accused of a crime; the right to a speedy adjudication; and the right to be treated appropriately for their age.

### **THE CHILDREN'S RIGHTS CONVENTION**

All human rights—civil, cultural, economic, political, and social—are included in the first legally enforceable international agreement, the United Nations' 1989 Convention on the Rights of the Child, or CRC. The Committee on the Rights of the Child oversees its implementation. National governments who ratify it pledge to uphold and defend children's rights, and they also promise to answer to the international community for their actions.

The CRC is credited with raising awareness of children's rights around the world, along with international criminal accountability systems like the International Criminal Court, the Tribunals for Rwanda and Yugoslavia, and the Special Court for Sierra Leone.

#### **Indian viewpoints on the rights of children**

Every person under the age of eighteen is considered a kid, unless the age of majority is reached earlier in accordance with the child's applicable legal system. The development and growth of a nation's children is a critical factor in determining its future prosperity, as they are considered a "supremely important national asset." A child must be cared for by the state (or "intending to") in order to guarantee that its individuality develops fully. A state must give the kids certain rights in order to accomplish this. The Indian Constitution has either directly or indirectly guaranteed the rights of all Indian people, including children. Regarding the rights of children, the United Nations Conventions on the Rights of the Child (CRC), 1989, are significant the child to which India is a signatory.

The Convention on the Rights of the Child (CRC), which was ratified by the United Nations in 1989, is a global accord that binds its signatory states. It has included children's rights without any form of discrimination in its several articles. India ratified it on December 11, 1992.

The preamble lays out the various tenets upon which the CRC is based. It is predicated on four fundamental ideas: Article

- 2: Non-discrimination
2. The Child's Best Interest (Article 3)
3. Survival and Development of the Right to Life (Article 6)

#### 4. The Article 12 right to be heard

Section I (Points 1-41): It lays out what governments must do and the rights of children. The following categories apply to the rights: • **Survival Rights:** these include a child's right to life and access to basic needs for survival, including enough food, a place to live, a good standard of life, and health care.

**Development Rights:** the freedom of thought and conscience, the right to play and leisure, the right to education, the right to practise one's own religion and partake in cultural activities, and the right to information access

**Protection Rights:** rights that protect children from abuses that may be consequential to several kinds of circumstances, such as children subject to procedures of the criminal justice system, children in employment, children who are refugees, and children who have undergone abuse or exploitation.

**Participation Rights:** the rights of children to participate in activities of the society, especially matters that may affect their lives, to assemble peacefully, and to join associations.<sup>74</sup>

**PART II (Article 42-45):** It contains provisions regarding the implementation of the provisions of the CRC.

**PART III (Articles 46-54):** It includes provisions for signing the convention by parties and rules and procedures thereafter for ratification, enforceability, amendment, denouncement, etc. of the convention.

Three Optional Protocols to the CRC have been introduced which are:

- Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography.
- Optional Protocol to CRC on the involvement of Children in Armed Conflict.
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.

#### INDIAN CONSTITUTION AND CHILD RIGHT OF EDUCATION

The Constitution in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) guarantees under the articles mentioned below, rights to the children of India:

- **Article 14:** Citizens of India, including children, must be treated equally before the law and must be given equal protection by the law without any discrimination or arbitrariness.
- **Article 15(3):** Discrimination is prohibited by the constitution. However, it shall not hold a ground to prevent the state from making special provisions for women and children for their benefit.
- **Article 51 (c):** International laws and treaties shall be respected by the state to every possible extent, including the CRC and its optional protocols, Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography and Optional Protocol to CRC on the Involvement of Children in Armed Conflict.

#### The UN Convention on the Rights of the Child and Education

Children's education is significantly impacted by the Convention on the Rights of the Child. The Convention, which was approved by the UN in 1989, has been ratified by more countries than any other in the history of the globe, both swiftly and extensively. Just two nations, the United States and South Sudan, have not yet ratified the Convention. 88, 89, 90 Countries affirm their commitment to the idea that children have fundamental rights as human beings and that it is the duty of state authorities to uphold those rights by ratifying the Convention. 91, 92, 93 States parties shall, if not immediately, then gradually align their laws, policies, and practices with the requirements of the Convention, as per the wording of this legally binding convention.

Numerous articles pertaining to education and children's rights to an education are included in the Convention. The education-related provisions of the Convention have been split into three categories by Eugene Verhaegen this assumes that you are aware of and comprehend your rights. According to Article 42, nations "undertake to make the principles of the Convention widely known, to adults and children alike, by appropriate and active means."

### **EDUCATION SYSTEM IN INDIA**

Article 21-A, which states that all children between the ages of six and fourteen must receive free and compulsory education as a Fundamental Right, may be implemented in any way the State deems appropriate, was added to the Indian Constitution by the Constitution (Eighty-sixth Amendment) Act, 2002. Every child has the right to full-time elementary education of a satisfactory and equitable quality in a formal school that satisfies certain essential norms and standards. This right is embodied in the Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A. time and with the commercialization of education the relationship between the teacher and student has also changed.

### **THE PRE-INDEPENDENCE EDUCATION SYSTEM**

Pre-independence history indicates that there was a more advanced informal education system in place. The fact that there was no official school system in place at the time was a noteworthy phenomenon. There was no higher education system in place at the time. The medium of instruction was Sanskrit, and the educational establishments were called Paathshaallas. Studies were biased since those from lower castes were prohibited from reading the Vedas. For Muslims, Arabic and Persian were the languages of instruction, and the educational establishments were known as madrassahs. In the period preceding independence, religious instruction was taught in schools. The school was unable to enrol a sizable number of students. Thus, a many people were able to receive an education through these non-formal channels, and many also insisted on enrolling in vocational education in order to acquire the skills necessary for future work.

### **THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION BILL, 2008**

The Right of Children to Free and Compulsory Education Bill, 2008 was proposed to provide every child of the age of six to fourteen years with the right to free and compulsory education in a neighbourhood school until completion of elementary education. Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age. The Bill was introduced in the Rajya Sabha on December 15, 2008 and was referred to the Standing Committee on Human Resource Development (Chairperson: Shri Janardan Dwivedi). The Bill was passed in the Rajya Sabha on 20th July 2009 and in the Lok Sabha on 4th August 2009. It had come into force on 1<sup>st</sup> April 2010.

### **CONCLUSION**

Today, all international legal rules pertaining to children's rights are viewed as originating from the Universal Declaration of Human Rights. Around the world, there are numerous laws and conventions that concern children's rights. All members of the school community must receive instruction on children's rights in order for children's rights education to be fully developed. This chapter views children as human

rights bearers, views them as citizens in and of themselves, views schools and other educational institutions as learning communities where kids learn about citizenship and human rights principles, and believes that teaching kids about their own fundamental rights is required by the United Nations Convention on the Rights of the Child.

Several international conventions have established the right to education as a fundamental right. There are now more opportunities to address the Right to Education for every kid in the globe because to the United Nations' foundation in 1945 and its emphasis on human rights. The United Nations has played a significant role in raising awareness of the equal right to education across the world through its numerous Declarations, Covenants, Conventions, and Resolutions. The International Covenant on Economic, Social, and Cultural Rights (ICESCR, 1966), the Convention against Discrimination in Education (1962), the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), and the Universal Declaration of Human Rights (UDHR, 1948).

And, more recently, The Convention on the Rights of the Child (CRC, 1989), which guarantees children's access to high-quality education on an equal basis, have done much to persuade member states of the critical necessity of social and economic fairness for children. Although the UN has been a leader in raising awareness of the right to education globally, it cannot ensure that this right will be upheld; that responsibility lies only with the governments of its sovereign member states.

## REFERENCES

### STATUTES

1. Right of Children to Free and Compulsory Education (RTE) Act, 2009
2. Indian Constitution, 1949
3. Constitutional Amendment Act, 1976

### Conventions

1. African Charter on Human and People's Rights (1986)
2. Convention Against Discrimination in Education (1960)
3. Convention on the Elimination of All Forms of Discrimination against Women (1979)
4. Convention on the Rights of Persons with Disabilities (2006)
5. Convention on the Rights of the Child (1989)
6. Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N.
7. Vienna Declaration and Programme of Action. Section II, para 46 & 47
8. World Declaration on Education for All: Meeting Basic Learning Needs (1990)
9. BOOKS
10. Adnan Qayyum Olaf and Zawacki-Richter Editors (2018), Open and Distance Education in Australia, Europe, and the Americas National Perspectives in a Digital Age, ISBN-13: 978- 9811302978, ISBN-10: 9811302979