

# Analyzing the Right to Education for Marginalized and Vulnerable Populations: Legal Strategies for Access and Quality

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## ABSTRACT

The right to education, recognized and protected globally, serves as a vital catalyst for marginalized individuals—both adults and children—to escape poverty and actively engage in their communities. It empowers women, shields children from exploitation, upholds human rights, fosters democracy, and contributes to environmental preservation. Education, a fundamental human right, intertwines with other rights, shaping the full development of individuals and promoting global understanding. Despite its critical role, challenges persist in ensuring universal access to basic education, emphasizing the urgency of addressing this issue for a more equitable society. Despite the right to education being a cornerstone of human rights, marginalized and vulnerable groups struggle to obtain quality education. This paper dissects legal frameworks guaranteeing this right, particularly how they can be utilized to ensure access and quality for these populations. The paper explores international and national legal instruments recognizing the right to education. It then delves into the challenges faced by marginalized groups, including geographic isolation, poverty, discrimination, and disabilities. The core analysis focuses on legal strategies to overcome these barriers, such as litigation, policy reform advocacy, and leveraging human rights mechanisms. By examining successful legal tactics, this paper aims to provide a blueprint for promoting accessible and high-quality education for all. This includes fostering inclusive learning environments, culturally relevant teaching methods, and addressing the specific needs of marginalized groups. Ultimately, the goal is to contribute to a more equitable and just education system that empowers everyone to reach their full potential.

**KEYWORDS:** Right to Education, Marginalized groups, Social Exclusion, International legal instruments, Geographic isolation, Equitable education system, Economic disparities.

## CHAPTER 1: INTRODUCTION & BACKGROUND

The concept of marginalization is used to analyze social issues across various aspects of life, including culture, society, politics, and economics. It refers to the condition of disadvantaged groups who struggle to access resources and fully participate in social life. Millions of people worldwide live in marginalized situations. These individuals have limited control over their lives and the resources available to them, hindering their ability to contribute meaningfully to society and share in its benefits. This creates a vicious cycle: the lack of positive and supportive relationships further isolates them, preventing them from participating in their communities. This marginalization has a profound negative impact on both individual

development and society. Since development aims to create an environment where people can live healthy, productive, and fulfilling lives, addressing marginalization is crucial. As Peter Leonard puts it, marginalized groups find themselves excluded from the mainstream activities that contribute to societal progress and the well-being of the nation<sup>1</sup>.

The Encyclopedia of Public Health offers a clear definition of marginalized groups: "To be marginalized is to be pushed to the edges, shut out from the center where privilege and power reside." The Indian Constitution acknowledges this marginalization based on caste. Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), religious minorities, and women are all identified as being marginalized within the education system due to their caste or social standing.

Education isn't a luxury; it's a fundamental right, recognized globally. This right acts as the primary tool for individuals and communities to escape poverty. By acquiring an education, both children and adults gain the skills needed to fully participate in society, ultimately breaking free from economic and social marginalization. The significance of the right to education is emphasized by various international agreements and UN pronouncements. Key reports like the UDHR, ICCPR, ICESCR, CEDAW, and CRC all explicitly codify this right to education. The World Education Forum in 2000 further solidified the international community's commitment to ensuring education for all.<sup>2</sup> UNESCO, a champion for education, prioritizes "Education for All" as a core focus of its activities. The Dakar Forum established six key missions deemed achievable and affordable with strong international cooperation.

National governments also have a critical role to play in guaranteeing the right to education. The Dakar Framework for Action urges governments to strengthen mechanisms at both national and regional levels. This framework emphasizes the importance of fortifying the legal foundations that uphold the right to education within national systems.

Recognizing the financial challenges faced by developing nations in achieving universal education, the international community established the UN Millennium Development Goals in 2000. These goals outline a global commitment to eradicating poverty and promoting human dignity by 2025<sup>3</sup>. A key target within these goals is to halve extreme poverty by 2015.

Specifically, regarding education, the international community has set a global target for all children, regardless of gender, to complete a full course of primary schooling by 2015. This ambitious goal highlights the unwavering international commitment to ensuring that education becomes a reality for all. Before 2002, the right to education in India existed implicitly within the right to life and liberty guaranteed by the Constitution. However, the Supreme Court rulings clarified that this right wasn't absolute. Its content was defined by specific articles outlining the state's responsibility to provide education. These articles emphasized free education up to the age of 14, with limitations based on the state's economic capacity.

The Court's decisions played a crucial role in pushing for legislative action. Notably, they referenced international human rights instruments like the UDHR and the ICESCR, emphasizing education as a social right. This paved the way for the 86th Amendment to the Constitution, which made primary education

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<sup>1</sup> Dr. Jeeru Raghu Prasad, "Social Exclusion and Inclusion in India: Issues and Challenges of Marginalized Sections in 21st Century", Available at: <https://www.ijnrd.org/papers/IJNRD2211012.pdf>, 11 Nov. 2022

<sup>2</sup> United Nations, "World Education Forum in Dakar, Senegal, 26-28 April to Boost Drive for Education for all", available at: <https://press.un.org/en/2000/20000411.soc4543.doc.html>, 11 April 2000

<sup>3</sup> United Nations, "Transforming our World: the 2030 Agenda for Sustainable Development", Available at: <https://sdgs.un.org/2030agenda>, last visited 08 April 2024

free and compulsory for all children between 6 and 14 years old. This amendment also included new provisions in other articles, strengthening the legal framework for education<sup>4</sup>.

Following these developments, the Ministry of Human Resource Development drafted a bill on the Right to Education. This bill, seeking state feedback, proposed measures like requiring partially aided and unaided schools to provide free education to a specific percentage of children from underprivileged backgrounds. A key point of contention was the issue of funding, with states requesting the central government to bear the additional financial burden of implementing compulsory education. While numerous initiatives exist to improve educational opportunities for marginalized groups, simply creating policies and programs isn't enough. To ensure these programs are successful, we need strategies that address the deeper issues that hinder participation. These issues include ingrained social beliefs ideological in nature, unequal access to resources and infrastructure creating a structural problem, and potentially unsupportive family environments. By tackling these challenges alongside educational programs, we can empower marginalized communities to fully utilize the resources available and achieve educational equity.

## CHAPTER 2: UNDERSTANDING MARGINALIZATION AND VULNERABILITY

In India's deeply stratified society, the right to education remains elusive for many. Marginalized groups like Dalits (untouchables), tribal populations, and religious minorities (encompassing roughly 250 million people) face systematic exclusion based on factors like caste, ethnicity, or religion. This exclusion permeates all aspects of life, denying them access to basic needs like healthcare, housing, and most critically, education. The vicious cycle of poverty and discrimination takes hold, with economic constraints and social exclusion acting as formidable barriers to quality education. Dr. B.R. Ambedkar, a visionary leader advocating for social inclusion, particularly for Dalits, emphasized the need for comprehensive development to break free from this cycle<sup>5</sup>.

So, Marginalization, also known as social exclusion, refers to individuals or groups existing on the fringes of society. These groups may be historically or culturally distinct, hovering between established social classes or cultural groups without full integration. The concept takes on new meanings in the modern, post-colonial, and market-driven world. Cultural anthropology devotes significant study to marginalization, focusing on the social situations of various ethnic groups. Marginalization can manifest in various forms, including class, caste, gender, community, and economic and social hardship. Even in a nation like India, which has undergone significant socio-political changes, these groups continue to face marginalization at multiple levels.

Marginalization is a multifaceted process. It denies opportunities and positive outcomes to those on the margins, while simultaneously amplifying these benefits for those at the centre. The EFA Global Monitoring Report 2010 defines marginalization as "a form of acute and persistent disadvantage rooted in underlying social inequalities."<sup>6</sup> The definition and concept as explained in the Encyclopedia of Public Health give clear explanation of marginalized groups, i.e. "To be marginalized is to be placed in the margins, and thus excluded from the privilege and power found at the centre, the ones who are in majority."

<sup>4</sup> United Nations, "UN General Assembly adopts declaration to accelerate SDGs", Available at: <https://news.un.org/en/story/2023/09/1140857>, 18 Sep. 2023

<sup>5</sup> Dr. Priyanka Kumari, "A study of Dalit Consciousness of Dr. B.R. Ambedkar", Available at: <https://www.allresearchjournal.com/archives/2019/vol5issue7/PartC/5-6-51-282.pdf>, 26 June 2019

<sup>6</sup> USAID, "Designing Effective Education Programs for Underserved Populations", Available at: [https://www.edu-links.org/sites/default/files/media/file/ACFrOgACc46iW6LeVKSNOmsAIYqUJhldO2z2pSTxu3k1wTONwl8kF4ZY\\_i31RvM4KnQk3V5Vh4N2Y3LRebTtxtl\\_bdP4a6RP8XmgQWg7IddCaNJBBrna2r0dYO6NzXtOc\\_.pdf](https://www.edu-links.org/sites/default/files/media/file/ACFrOgACc46iW6LeVKSNOmsAIYqUJhldO2z2pSTxu3k1wTONwl8kF4ZY_i31RvM4KnQk3V5Vh4N2Y3LRebTtxtl_bdP4a6RP8XmgQWg7IddCaNJBBrna2r0dYO6NzXtOc_.pdf), June 2011

<sup>7</sup>This marginalization is also reflected in the education system in India, where the India Constitution recognizes the problem of social marginalization based on caste. Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Classes (OBC), religious minorities, and women all face educational marginalization due to their caste or social standing.

Similar challenges are being witnessed in other developing nations worldwide. Economic disparities often render vulnerable populations susceptible to educational exclusion. Poverty stands as a significant obstacle, and discrimination based on race, ethnicity, religion, or social status further marginalizes these communities, limiting their educational opportunities. Initiatives like India's National Education Policy 2020 (NEP 2020) strive for a more inclusive education landscape. This policy prioritizes equity and inclusion, aiming to bridge the gap for marginalized communities and children with disabilities<sup>8</sup>. Recognizing the crucial role of girls' education in breaking cycles of vulnerability is also paramount. Exploring alternative education models and schools has the potential to address issues of exclusion. Efforts specifically focused on uplifting Scheduled Castes, Scheduled Tribes, and other marginalized groups are essential for achieving true educational equity.

Therefore, understanding the interconnected concepts of marginalization and vulnerability within the context of education requires a multifaceted approach. We must dismantle systemic barriers that perpetuate exclusion, actively promote social inclusion, and advocate for policies that empower marginalized communities across the globe. Only then can we create a world where education is truly accessible to everyone.

### CHAPTER 3: LEGAL FRAMEWORK AND POLICIES

The Indian Constitution enshrines the ideals of justice, liberty, equality, and fraternity. It guarantees equal status under the law, access to justice, and freedom of thought and expression for all citizens. Several articles specifically address the rights of vulnerable groups and ensure their access to education and legal protection. In the Indian context, examining the right to education for marginalized and vulnerable populations involves a detailed analysis of the legal framework and governmental initiatives aimed at ensuring their access to quality education. Below is a comprehensive breakdown of the key provisions enshrined in our country<sup>9</sup>.

- Article 21: Recognizes the right to life and liberty, interpreted to encompass the right to education.
- Article 21A (introduced by the 86th Amendment): Establishes free and compulsory education as a fundamental right for children aged 6 to 14.
- Articles 41, 45, and 46: Directive Principles of State Policy highlight the state's obligation to provide free and compulsory education to all children up to a certain age.

Apart from these provisions, relevant legislations were made to strengthen the education system. Those are:

Right to Education Act (RTE) 2009<sup>10</sup>:

- A landmark legislation specifying provisions for free and compulsory education for children aged 6-14.

<sup>7</sup> Master class, "What is Marginalization? Types, Causes, and Effects" Available at: <https://www.masterclass.com/articles/marginalization-explained>, 17 Sep. 2022

<sup>8</sup> Digvijay Singh, "Equity & Inclusion in Indian Education: Constitutional Principles and NEP 2020 Approaches", Available at: [https://bssspublications.com/PublishedPaper/Publish\\_530.pdf](https://bssspublications.com/PublishedPaper/Publish_530.pdf), Last visited 08 April 2024

<sup>9</sup> Oishika Banerji, "Article 21A of the Indian Constitution", Available at: <https://blog.ipleaders.in/article-21a-of-indian-constitution/>, 31 Aug. 2022

<sup>10</sup> Ministry of Education, "Right to Education", Available at: <https://www.education.gov.in/rte>, 11 Feb. 2019

- Mandates the establishment of neighbourhood schools, prohibits child labour and exploitation, and sets standards for teacher qualifications.
- Other pertinent acts may focus on promoting education for specific marginalized groups such as Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs).

Policies, such as Reservations in Education, and allocation of reserved seats in educational institutions for SCs, STs, and OBCs to address historical disadvantages and promote their educational inclusion. Schemes for Inclusive Education were also introduced where Government initiatives like the Inclusive Education Policy Framework (2017) aim to deliver quality education for children with disabilities, often involving resource rooms, teacher training, and scholarship programs. Schemes like Sarva Shiksha Abhiyan (SSA) may allocate funds to support inclusive education endeavors.

Monitoring and Implementation of such provisions also becomes important. Responsibility lies with the Ministry of Human Resource Development (MHRD) and state education departments to oversee the implementation of the RTE Act and related policies<sup>11</sup>. Mechanisms such as District Institutes of Education and Training (DIETs) may facilitate teacher training and support the adoption of inclusive education practices. This comprehensive framework underscores India's commitment to ensuring equitable access to education for all, particularly for marginalized and vulnerable populations, through a combination of legal mandates, legislative measures, and targeted policies and schemes.

Therefore, the following articles are enshrined in our constitution to provide for education and equal access to everyone to protect social, political, and economic justice. These articles are as follows:

1. **Article 14-** Equality before Law: This fundamental right prohibits discrimination based on factors like caste, religion, gender, or social status. It ensures equal opportunities for progress for all citizens.
2. **Article 15-** Prohibition of Discrimination: While prohibiting discrimination based on religion, race, caste, sex, and place of birth, this article allows for affirmative action programs. This enables the state to make special provisions for upliftment of marginalized groups, including women, children, and socially and educationally backward classes.
3. **Article 17-** Abolition of Untouchability: This crucial article outlaws the practice of untouchability in any form. These constitutional provisions offer a legal framework to protect marginalized groups and ensure their access to education. In case of violations, individuals can seek legal recourse through the court system.
4. **Article 21A- The Right of Children to Free and Compulsory Education Act (RTE)**<sup>12</sup>: Building on Article 21 (Right to Life), the RTE Act, enacted in 2009, guarantees free and mandatory and compulsory education for all children between 6 to 14 years of age. This landmark legislation positions India among over 135 countries that recognize education as a fundamental right.
5. **Article 29(2)-** Access to Educational Institutions: This article prohibits educational institutions receiving state aid from discriminating against admission based on religion, race, caste, or language.
6. **Article 45-** Early Childhood Care and Education: This Directive Principle of State Policy mandates the government to strive towards providing free and compulsory education for all children up to the

<sup>11</sup> Gorav Sharma, "What is Right to Education Act (RTE Act)?", Available at: <https://timesofindia.indiatimes.com/readersblog/igoravsharma/what-is-right-to-education-act-rte-act-32034/>, 15 May 2021

<sup>12</sup> Byju's, "Right to Education Act (RTE)", Available at: <https://byjus.com/free-ias-prep/right-education-act-rte/>, Last Visited: 11 April 2024

age of six. The 86th Amendment in 2002 further strengthened this commitment by making ECCE a constitutional right.

7. **Article 46-** Promotion of Education for Weaker Sections: This Directive Principle emphasizes the state's responsibility to promote the educational interests of disadvantaged groups, particularly Scheduled Castes and Scheduled Tribes. It also mandates protection from social injustice and exploitation.

#### Schemes and Programs for Marginalized Groups

Beyond constitutional provisions, various schemes and programs target the educational needs of marginalized children as discussed above. These initiatives fall into two broad categories:

- Programs for all children, including those from marginalized groups.
- Programs specifically designed for marginalized groups.

The Ministry of Social Justice and Empowerment spearheads several programs with special provisions for marginalized communities. These initiatives aim to uplift these groups and empower them to integrate into mainstream society.

**ICDS (Integrated Child Development Scheme):** Launched in 1975, this program focuses on improving the health and well-being of mothers and children under six through healthcare education, health services, supplementary nutrition, and pre-school education<sup>13</sup>.

**Mid-Day Meal Scheme:** This nationwide program provides nutritional support to primary school children, aiming to improve enrolment, retention, and overall educational quality.

## CHAPTER 4: QUALITY OF EDUCATION FOR MARGINALIZED POPULATIONS

There are initiatives underway to address the issue of quality education in India. The Right to Education Act, though guarantees free and compulsory schooling, and affirmative action programs for increasing the active engagement of disadvantaged groups in education. The position on the quality of education for marginalized populations is described below:

1. **Educational Disparities and Marginalized Groups:** Scheduled Tribes (ST), Scheduled Castes (SC), and Other Backward Classes (OBC) have historically faced systemic discrimination and limited access to quality education. Despite achievements, the Gross Enrolment Ratio in higher education remains low at 27.2 percent<sup>14</sup>. NEP 2020 aims to achieve a higher gross ratio of 50% by 2035 and emphasizes addressing recruiting disparities among marginalized communities.
2. **Significance of Inclusive Education:** Social Justice and Inclusivity will provide for equal educational opportunities that are crucial for social justice and harmony in India's diverse society. Augmenting enrolment among marginalized groups unlocks untapped talent, stimulating economic growth and innovation. India's youth population represents a demographic dividend, and access to higher education is vital for global competitiveness. Human Capital Development is necessary for quality education that will further contribute to a skilled workforce. Encouraging enrolment bridges income and employment gaps, fostering a more equitable society.
3. **Government Initiatives:** The Indian government has implemented measures such as reservation policies, scholarship programs, and awareness campaigns to motivate marginalized students. Challenges

<sup>13</sup> Y Sachdev, "Integrated Child Development Services (ICDS) Scheme", Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4925843/>, 21 July 2011

<sup>14</sup> T.K. Rajalakshmi, "The struggle for social representation in education and employment", Available at: <https://frontline.thehindu.com/politics/caste-survey-are-reservations-in-the-private-sector-the-next-logical-step-impact-nullified-by-tightening-net-of-privatisation-despite-increase-in-representation-of-marginalised-groups-in-government-in/article67415576.ece#:~:text=The%20GER%20stood%20at%2027.3,per%20cent%20in%202012%2D13.,> 19 Oct. 2023

persist, including inadequate access to quality education in remote areas and socio-economic barriers. Collaboration among the government, educational institutions, and civil society is essential to meet the 2035 GER target<sup>15</sup>.

The quality of education for marginalized communities in India presents a multifaceted challenge influenced by various socio-economic, cultural, and systemic factors. Following is the detailed exploration of the issues surrounding the quality of education for marginalized populations in India:

- **Infrastructure Disparities:** Educational institutions situated in marginalized areas often grapple with fundamental infrastructural deficiencies such as inadequate classrooms, lack of proper furniture, insufficient sanitation facilities, and absence of libraries. Schools in remote rural or tribal regions are particularly affected, thereby compromising the overall learning environment.
- **Teacher Shortages and Quality:** Many marginalized regions suffer from a scarcity of qualified educators. Challenges such as inadequate teacher training and low levels of teacher motivation contribute to a disparity in teaching quality. Additionally, issues like teacher absenteeism, especially prevalent in remote or rural areas, have detrimental effects on students' academic achievements.
- **Curriculum Relevance:** The curriculum in mainstream educational institutions frequently fails to adequately reflect the socio-cultural context of marginalized communities. This lack of relevance can lead to disengagement among students, hindering their academic progress. Incorporating local knowledge, languages, and cultural perspectives into the curriculum can significantly enhance its effectiveness.
- **Language Barriers:** Language barriers pose significant obstacles for marginalized students, particularly those belonging to linguistic minority groups. When the medium of instruction in schools does not align with students' mother tongue, it often results in comprehension difficulties and undermines academic performance.
- **Access to Resources and Support:** Marginalized students often lack access to essential educational resources such as textbooks, learning materials, and digital technologies. Limited availability of libraries, inadequate internet connectivity, and a shortage of educational support services further exacerbate disparities in learning outcomes.
- **Discrimination and Social Stigma:** Discrimination based on factors such as caste, ethnicity, gender, or socio-economic status remains pervasive within educational institutions in India. Marginalized students frequently encounter social stigma, prejudice, and exclusion, which negatively impact their self-esteem, confidence, and overall educational experience.
- **Dropout Rates and Retention:** Marginalized communities exhibit higher dropout rates compared to the general population due to various socio-economic challenges, including poverty, child labor, early marriage, and limited access to quality education. Implementing retention strategies such as scholarships, incentives, and targeted support programs is crucial in addressing this issue.
- **Special Education Needs:** Marginalized populations, including children with disabilities and those from disadvantaged backgrounds, require specialized educational support tailored to their diverse

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<sup>15</sup> Education for all in India, "Bridging Educational Disparities in India: An Analysis of AISHE 2020-21 Data by Social Groups: SC, ST, & OBC", Available at: [https://educationforallinindia.com/bridging-educational-disparities-in-india-an-analysis-of-aishe-2020-21-data-by-social-groups-sc-st-obc/#:~:text=To%20meet%20the%202035%20GER%20target%20of,educational%20institutions%2C%20and%20civil%20society%20is%20imperative](https://educationforallinindia.com/bridging-educational-disparities-in-india-an-analysis-of-aishe-2020-21-data-by-social-groups-sc-st-obc/#:~:text=To%20meet%20the%202035%20GER%20target%20of,educational%20institutions%2C%20and%20civil%20society%20is%20imperative;); Last visited: 11 April 2024

learning needs. However, there often exists a deficiency in inclusive education policies, trained personnel, and infrastructure to effectively cater to these requirements.

- **Government Initiatives and Interventions:** The Indian government has introduced several initiatives and interventions aimed at improving the quality of education for marginalized communities. Programs such as Sarva Shiksha Abhiyan (SSA), Rashtriya Madhyamik Shiksha Abhiyan (RMSA), and the Mid-Day Meal Scheme focus on enhancing access, equity, and quality in education<sup>16</sup>.
- **Community Participation and Empowerment:** Empowering marginalized communities through community-driven educational initiatives, parental involvement, and grassroots advocacy plays a vital role in enhancing the quality of education. Engaging local stakeholders, including community leaders, NGOs, and civil society organizations, is essential for fostering inclusive and sustainable educational development.

So, addressing the quality of education for marginalized populations in India requires a comprehensive approach that tackles infrastructural, pedagogical, socio-cultural, and systemic challenges. It demands concerted efforts from government agencies, educational institutions, civil society organizations, and communities to ensure equitable access to quality education for all segments of society.

## CHAPTER 5: INCLUSIVE EDUCATIONAL STRATEGIES

Inclusive educational strategies for marginalized populations focus on creating an equitable and supportive learning environment. Key approaches include implementing anti-discrimination policies to promote respect and prevent bias based on ethnicity, gender, disability, or socioeconomic status. Customizing the curriculum to meet the specific needs of marginalized students, fostering cultural sensitivity, ensuring inclusive decision-making, and allocating resources for specialized programs and teacher training are essential components of this approach.

### 1. Universal Elementary Education:

With the formulation of the National Policy on Education, India initiated a wide range of programs aimed at achieving Universal Elementary Education (UEE) through various interventions which include<sup>17</sup>:

- **Sarva Shiksha Abhiyan (SSA):** SSA is India's primary program for universalizing elementary education. It aims to achieve goals like universal access and retention, bridging gender and social category gaps, and enhancing learning levels among children.
- **Mid-day Meal Scheme:** Launched in 1995, this scheme provides nutritional support to primary education. It aims to boost participation, retention, and quality improvement in primary education.
- **Mahila Samakya:** This scheme, launched in 1989, focuses on education for women's equality. It emphasizes education as a means of bringing about positive change in the status of women.
- **Operation Blackboard:** Launched in 1987, Operation Blackboard aims to provide essential facilities to all primary schools in India, in line with the goals of the National Policy on Education (1986).
- **District Primary Education Programme (DPEP):** DPEP, initiated in November 1994, aims to achieve Universal Elementary Education at the district level. It emphasizes decentralized management, community mobilization, and district-specific planning.

<sup>16</sup> Ministry of Education, "Rashtriya Madhyamik Shiksha Abhiyan (RMSA)", Available at: <https://www.education.gov.in/rmsa>, 19 Feb. 2021

<sup>17</sup> eGyanKosh, "Elementary Education", Available at: <https://www.egyankosh.ac.in/bitstream/123456789/31785/1/Unit-1.pdf>, Last visited: 11 April 2024



## 2. For Secondary Education:

Rashtriya Madhyamik Shiksha Abhiyan (RMSA): Launched in March 2009, RMSA aims to make quality secondary education accessible and affordable for young people aged 15-16<sup>18</sup>. Various schemes such as the Girls Hostel Scheme, National Scheme of Incentives to Girls for Secondary Education, Scheme of Vocational Education, National Merit-cum-Means Scholarship Scheme, etc., are implemented to support secondary education.

The National Council for Educational Research and Training (NCERT) plays a crucial role in promoting educational development and equalizing educational opportunities. It implements schemes like the National Talent Search Scheme and the Chacha Nehru Scholarships to recognize and support educational excellence.

## 3. For Higher Education:

Higher Education is a shared responsibility of the Centre and States. The Central Government provides grants to institutions like the University Grants Commission (UGC) and establishes Central Universities<sup>19</sup>. Various fellowship schemes and scholarships are available for meritorious students, including those from disadvantaged backgrounds, to incentivize academic excellence and support their educational pursuits. These initiatives and schemes aim to address disparities, promote inclusion, and enhance the quality of education across different levels of the education system in India.

## CHAPTER 6: LEGAL CHALLENGES AND ADVOCACY

Legal challenges and advocacy involve addressing critical challenges for equitable educational opportunities. The aspects such as:

- **Refugees:** India hosts a significant number of refugees, including those from neighbouring countries. Ensuring their right to education remains a challenge due to language barriers, documentation issues, and limited access to quality schools.
- **Advocacy efforts should focus on Inclusive Policies:** Developing policies that explicitly address refugee education, including language support and recognition of prior learning.
- **Community Engagement:** Involving refugee communities in decision-making processes to tailor educational programs to their needs.
- **Legal Advocacy:** Advocating for legal frameworks that protect refugee children's right to education.
- **Persons with Disabilities (PWD)<sup>20</sup>:** Despite legal provisions like the Rights of Persons with Disabilities Act (RPWD Act), PWDs face barriers in accessing quality education. Advocacy strategies will include accessibility that ensures schools are physically accessible and provide assistive technologies. Reasonable Accommodations advocating for individualized support, such as the extra time during exams or sign language interpreters. It also becomes important to raise awareness about disability rights and combating the stigma.

India's diverse population includes various minority groups and indigenous communities. These groups often face discrimination and exclusion. Advocacy efforts should focus on Cultural Sensitivity by promoting education that respects their cultural, linguistic, and religious identities. Advocating for

<sup>18</sup> Vishal Sood, "Major Issues and Challenges in Secondary Education under RMSA in Himachal Pradesh and Suggestive Measures for Further Improvement", Available at: <https://ijrcs.org/wp-content/uploads/IJRCs202402009-min.pdf>, Feb. 2024

<sup>19</sup> Department of Higher Education, "University and Higher Education", Available at: <https://www.education.gov.in/university-and-higher-education>, 19 Feb. 2021

<sup>20</sup> National Library of Medicine, "Disabilities Inclusive Education Systems and Policies Guide for Low- and Middle-Income Countries", Available at: <https://www.ncbi.nlm.nih.gov/books/NBK554622/>, July 2017

representation in educational institutions and decision-making bodies. Equitable Resource Allocation emphasizes fair distribution of educational resources. It includes Budget Allocation which ensures marginalized communities receive adequate funding for schools, infrastructure, and teacher training. Scholarships and Grants for targeted scholarships and grants to support vulnerable students' education. Providing facilities for monitoring and accountability for holding authorities accountable for resource allocation and utilization. Providing Legal Literacy and Empowerment for marginalized communities with legal knowledge which will include Legal Aid Clinics within schools to provide information and support, Community Workshops on education-related legal rights, and Filing PILs to address systemic issues affecting marginalized students.

So, legal strategies for ensuring the right to education for marginalized and vulnerable populations in India require a multi-pronged approach, combining policy advocacy, community engagement, and legal empowerment. By addressing these challenges, we can work toward a more inclusive and equitable education system for all, but these strategies are not put into action in the practical field. Thus, navigating various legal challenges and advocating for strategies to ensure access and quality for the right to education for marginalized and vulnerable populations becomes important. The exploration of legal challenges is described as follows:

- a. **Legal Framework and Enforcement:** Despite constitutional guarantees and legislative measures, there are challenges in effectively enforcing the right to education for marginalized populations. Lack of awareness about existing laws, inadequate implementation mechanisms, and bureaucratic hurdles often hinder the realization of educational rights.
- b. **Access to Education:** Marginalized communities face barriers such as poverty, discrimination, social exclusion, and geographical remoteness, which impede their access to education. Legal challenges include ensuring enrolment and retention of marginalized children, especially girls, children with disabilities, and those from socio-economically disadvantaged backgrounds.
- c. **Quality of Education:** While access to education is crucial, ensuring quality education is equally important. Marginalized populations often receive substandard education due to factors such as inadequate infrastructure, lack of trained teachers, outdated curriculum, and language barriers. Legal advocacy focuses on improving teaching standards, curriculum relevance, and learning outcomes for marginalized students.
- d. **Discrimination and Social Exclusion:** Discrimination based on caste, religion, gender, disability, and socio-economic status persists in educational institutions, contributing to the marginalization of certain groups. Legal strategies involve combating discriminatory practices, promoting inclusive education policies, and holding authorities accountable for ensuring equal treatment and opportunities for all students.
- e. **Special Needs Education:** Children with disabilities face unique challenges in accessing quality education. Legal advocacy efforts aim to enforce inclusive education policies, provide reasonable accommodations, ensure accessibility to educational facilities, and combat discrimination against students with disabilities.
- f. **Advocacy for Policy Reform:** Civil society organizations, human rights activists, and legal experts advocate for policy reforms to address systemic inequalities in the education system. This includes lobbying for amendments to existing laws, drafting inclusive education policies, and promoting budgetary allocations for marginalized communities.
- g. **Litigation and Legal Remedies:** Public interest litigation (PIL) plays a crucial role in highlighting

systemic failures and advocating for the rights of marginalized populations. Legal strategies involve filing PILs to address issues such as inadequate infrastructure, teacher vacancies, discriminatory practices, and exclusionary policies in educational institutions.

- h. Capacity Building and Legal Empowerment:** Empowering marginalized communities through legal literacy programs, community mobilization, and capacity-building initiatives strengthens their ability to advocate for their educational rights. Providing legal aid services and facilitating access to justice mechanisms ensures that marginalized individuals can seek redress for violations of their right to education.
- i. International Human Rights Framework:** Advocacy efforts leverage international human rights instruments such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities to hold the Indian government accountable for fulfilling its obligations towards marginalized populations' right to education.

Therefore, addressing legal challenges and advocating for access and quality education for marginalized and vulnerable populations in India requires a multi-dimensional approach involving policy reform, litigation, capacity-building, and international human rights frameworks. By addressing systemic barriers and promoting inclusive education policies, stakeholders can work towards ensuring equitable educational opportunities for all segments of society.

## CHAPTER 7: CASE STUDIES AND COMPARATIVE ANALYSIS

The concept of the Right to Education is increasingly recognized globally, but for marginalized populations, this legal right often doesn't translate to reality. Socioeconomic factors like poverty and child labor, along with discrimination based on caste or language, can still prevent these children from attending school, even if education is free. Even when they do attend, language barriers and potential discrimination within the school system can hinder their learning and create a hostile environment. Despite legal recognition of the Right to Education, marginalized groups globally still face hurdles. Poverty, discrimination, and child labor can keep them out of school even if it's free. Language barriers can hinder their learning, and they may face discrimination within schools. Strategies like quotas, scholarships, multilingual education, and inclusive classrooms can help bridge this gap and create a more equitable education system that empowers all children. These case studies highlight the growing recognition of the Right to Education as a fundamental right:

- Following the commencement of the Indian Constitution, the relationship between Directive Principles of State Policy (DPSP) and fundamental rights came under scrutiny in the **State of Madras v. Champakam Dorairajan**<sup>21</sup> case. The view expressed by Das suggested that DPSP should be subordinate to fundamental rights, which initially hindered the implementation of economic, social, and cultural rights.
- However, subsequent judicial decisions such as **M.H. Qureshi v. State of Bihar**<sup>22</sup> and **I.C. Golak Nath v. State of Punjab**<sup>23</sup> introduced the doctrine of harmonious construction and emphasized the integrated nature of constitutional provisions.
- The acceptance of the primacy of DPSP came with the **25th Amendment of the Indian Constitu**

<sup>21</sup> State of Madras v. Champakam Dorairajan, AIR 1951 SC 226

<sup>22</sup> M.H. Qureshi v. State of Bihar, AIR 1958 SC 731

<sup>23</sup> I.C. Golak Nath v. State of Punjab, AIR 1967 SC 1943

tion.<sup>24</sup> While other branches of government seldom advocated for the subordination of DPSP to fundamental rights, the judiciary played a significant role in affirming the importance of DPSP. It is now recognized that Article 21 encompasses both negative and affirmative dimensions, and Parts III and IV of the Constitution are complementary to each other.

- In India, education falls under concurrent jurisdiction, with both central and state governments sharing responsibility. While the central government sets broad policies and guidelines, states have the flexibility to frame their own educational policies within the national framework.
- The judiciary in India has shown a commitment to providing free and compulsory education to all children below the age of 14 years. The Supreme Court has declared the right to free primary education as a fundamental right, aligning with the complementary nature of rights in Parts III and IV of the Constitution.
- In cases like **Bandhua Mukti Morcha**<sup>25</sup> and **Mohini Jain v. State of Karnataka**<sup>26</sup>, the Supreme Court emphasized the implicit right to education flowing from the right to life guaranteed by Article 21. The Court highlighted the interdependence of fundamental rights and DPSP, asserting that the state must create conditions for individuals to enjoy their fundamental rights, including the right to education.
- While the judiciary has elevated the right to education to the status of a fundamental right, its enforcement remains a challenge. The effectiveness of enforcing this right lies with the state machinery and its commitment to implementing state-level legislation aimed at providing free and compulsory primary education. Without education, the realization of human rights and the objectives outlined in the Constitution's Preamble would be compromised.

## CONCLUSION

Over the past six decades, the Indian government has made commendable strides in advancing primary education across the nation. The shift towards providing primary education in regional languages or mother tongues has fostered greater accessibility and reduced disparities based on class and caste. However, despite these achievements, the goal of universal elementary education (UEE) remains elusive. While school engagements have increased, the out-of-school children persist. India grapples with one of the largest illiterate populations globally. Although caste, gender, and regional disparities have diminished, they continue to cast shadows on the UEE landscape.

The educational administration in various states and union territories faces endemic challenges: teacher shortages, absenteeism, inadequately designed school infrastructure, and a curriculum that often lacks real-world relevance. Traditional administrative approaches, coupled with centralization tendencies, hinder genuine community participation and effective collaboration with non-governmental organizations. Transparency gaps and rigid procedures impede confidence-building measures essential for empowering women and marginalized communities. Looking ahead, a clear vision, unwavering commitment, increased investments, rapid decentralization, and robust community engagement hold the key to achieving the desired quality of education for all Indian children within the next decade. By addressing these challenges head-on, India can pave the way toward a brighter and more equitable educational future.

<sup>24</sup> DrishtiIAS, Directive Principles of State Policy, Available at: <https://www.drishtias.com/to-the-points/Paper2/directive-principles-of-state-policy-dpsp>, 05 Jul. 2021

<sup>25</sup> *Bandhua Mukti Morcha, Union of India and Others*, 3 SCC 1984

<sup>26</sup> *Mohini Jain v. State of Karnataka*, AIR 1982 SC 1858