

The Right to Education Legislation: A history

The Right to Education legislation has a long and chequered history, having been subjected to numerous rounds of heated debate and philosophical and semantic alterations. It was tailored into existence in the period following the passage of the 86th Constitutional amendment in 2002, which declared Education a fundamental right of all children in the age-group of 6-14. A participatory process of inviting comments from members of the public yielded several different drafts of the bill in the subsequent years until finally, in 2008, the Union Cabinet stamped its seal of approval on it and it was placed before the Rajya Sabha which passed it in July 2009. The bill then proceeded to the Lok Sabha, where it was passed in August 2009.

The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) has a long and chequered history. The right to education was discussed extensively during the drafting of the Constitution. The Constituent Sub-Committee on Fundamental Rights included the right to primary education as a fundamental right. However the Advisory Committee of the Constituent Assembly rejected this proposal and placed it in the category of non-justifiable fundamental rights (later known as Directive Principles of State Policy). The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the Acharya Ramamurti Committee. Thereafter, several political as well as policy level changes influenced the course of free and compulsory education. The country witnessed an increased international focus on its initiatives regarding free and compulsory education after its participation in the World Conference on Education for All in 1990. India also ratified the United Nations Convention on Rights of the Child in 1992.

The Supreme Court first recognised the right to education as a fundamental right in Mohini Jain v. Union of India (1992) 3 SCC 666. It was observed in this judgment that:

'Right to life' is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facility at all levels to its citizens. (para 12)

In 1993 the Supreme Court narrowed the ambit of the fundamental right to education as propounded in the Mohini Jain case in the case of J P Unnikrishnan vs. State of Andhra Pradesh, 1993 SCC (1) 645. The Court observed that:

The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. So far as the right to education is concerned, there are several articles in Part IV which expressly speak of it. Article 41 says that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases

of undeserved want". Article 45 says that "the State shall endeavor 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". Article 46 commands that "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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation..... The three Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, meant: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the state and its development. We may deal with both these limbs separately. (para 171)

In 2002, the 86th amendment to the Constitution introduced Article 21-A making the right to education a fundamental right. For the first time in independent India's history a fundamental right had been added to the Constitution. Unlike other fundamental rights the right to education required an enabling legislation to become effective. The RTE Act is this enabling legislation. The RTE Act came into force on April 1, 2010.