



Educational Rights of Children in UDHR and Indian Constitution: A Human Rights Perspective

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Received: 21 Sept., 2024

Revised: 28 Nov., 2024

Accepted: 07 Dec., 2024

ABSTRACT

The Universal Declaration of Human Rights (UDHR), adopted in 1948, established education as a fundamental human right, articulating its aims and setting a global standard for nation-states. This paper attempted a comparative analysis of the provisions for children's educational rights within the UDHR and provision for rights to education for children in the constitution of India. From a human rights perspective, the study critically examines the history of the right to education for children in India, tracing its journey from a non-justiciable "Directive Principle of State Policy" to an enforceable fundamental right under Article 21-A. According to the study, there is still a big implementation gap even though the Indian Constitution's Articles 21-A and 45 have established a strong legal framework that supports and even builds upon the principles of the UDHR. The paper evaluates Educational Rights of Children, particularly the Right of Children to Free and Compulsory Education (RTE) Act, 2009, as a powerful attempt to realize the right to education. It examines the Act's provisions on nondiscrimination, free education, and basic standards and evaluates how well they address issues including quality, equity, and access. The study comes to the conclusion that India's experience with educational rights is a prime example of the dynamic process of converting international human rights standards into national legislative requirements. However, it emphasises that in order to fully realise this right as outlined in the UDHR, there must be a consistent political will, sufficient funding, and a determined effort to remove socioeconomic obstacles that stand in the way of all Indian children achieving universal and meaningful educational attainment. The Universal Declaration of Human Rights, adopted in 1948, is the first international legal instrument that recognises education as a human right.

How to cite this article: Halder, T.K. (2024). Educational Rights of Children in UDHR and Indian Constitution: A Human Rights Perspective. *Learning Community*, 15(02): 109-115.

Source of Support: None; **Conflict of Interest:** None



Article 26 of the UDDHR states, ‘Everyone has the right to education’. It is a non-legally binding instrument but with a immense political and moral force.

Keywords: Right to Education, Human Rights, UDHR, Indian Constitution, Article 21-A, RTE Act, Children’s Rights, Directive Principles of State Policy

Education is a basic and universal human right that is essential to the development of the human potential as well as the practice of all other human rights. It is the main pillar of any society that is just, equal, and democratic. The Universal Declaration of Human Rights (UDHR), which was adopted in 1948, was the first significant step towards the formulation of this right in the middle of the 20th century. The UDHR established a global norm as a founding instrument of international human rights law, encouraging and compelling countries to incorporate its tenets into their own domestic legal frameworks.

At the time the UDHR was adopted, India, a young republic, was also working on a new constitution. A profound commitment to the UDHR’s human rights principles is reflected in the Indian Constitution. But within the Indian constitutional framework, the right to education has undergone a dynamic history marked by legislative action, judicial interpretation, and long sociopolitical campaigning.

This essay compares the UDHR’s vision with India’s constitutional and legislative frameworks in order to analyse children’s educational rights from a human rights perspective. It analyses the historic Unnikrishnan ruling and the enactment of the Right of Children to Free and Compulsory Education (RTE) Act, 2009, to chart the evolution from a non-justiciable directive principle to an enforceable basic right. This paper’s major argument is that, despite India’s development of an advanced, rights-based legal framework for education that reflects the spirit of the UDHR, there is still a significant gap between legal entitlement and everyday reality. The conclusion of the study affirms that a determined effort that goes beyond simple legislative passage is necessary to fully realise this right.

Establishing Education as a Human Right: Universal Declaration of Human Rights (UDHR)

The right to education was initially stated by the United Nations in the 1948 Universal Declaration of Human Rights. Everyone has the right to afree and compulsory elementary education, according to Article 26, and everyone has equal access to technical, professional, and higher education based on merit. Promoting the full development of human potential and enhancing adherence to fundamental freedoms and human rights are the goals of education.

Article 26 of the UDHR as adopted by the UN General Assembly in 1948 declares:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

A critical analysis of Article 26 of the UDHR articulates this right with three core components:

Free and Compulsory Elementary Education: The Article states that “everyone has the right to education” and that “education shall be free, at least in the elementary and fundamental stages.”

Accessibility based on Merit: It also declares that “technical and professional education shall be made generally available” and “higher education shall be equally accessible to all on the basis of merit.”

Aims of Education: Article 26(2) clearly outlines the humanistic objectives of education. It mandates that “education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms” emphasizing the promotion of “understanding, tolerance and friendship among all nations, racial or religious groups.”

From a human rights perspective, Article 26 establishes education as an indispensable right for human dignity, empowerment, and the promotion of a culture of human rights. It sets the basic standard against which national policies are measured.

The Right to Education and Indian Constitution

The way the Indian Constitution addresses the right to education demonstrates a practical and dynamic approach.

The Initial Position: A Directive Principle

In the beginning, the right to education was placed under the non-justiciable Directive Principles of State Policy (DPSP). It declares, “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.” This positioning indicated that although the framers acknowledged its critical necessity, they saw it as a goal to be gradually attained, depending on the state’s financial resources. Its effectiveness as a legal tool for citizens was hampered by its non-enforceable status.

Article 41: The State shall make effective provision for securing the right to education within its economic capacity.

Article 45 (originally): Directed the State to provide free and compulsory education for all children up to the age of 14 (later revised after the 86th Amendment).

Article 46: Promotes educational and economic interests of weaker sections, especially Scheduled Castes and Scheduled Tribes.

The History: From DPSP to Fundamental Right

The gap between the DPSP and Fundamental Rights was bridged by a transformative judicial activism during 1990s. The Supreme Court accomplished a significant jurisprudence milestone in the 1993 case of Unnikrishnan, J.P. v. State of Andhra Pradesh. Despite being a DPSP stated, the Court determined that the right to education is latent in and stems from the fundamental rights to “life” and “personal liberty” that are protected by Article 21.

The Court concluded that the right to life cannot be completely and dignifiedly exercised without having right to education. It stated, “The right to education, understood in the context of Articles 45 and 41, means: (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.” This ruling was a paradigm shift that brought Indian jurisprudence closer to the UDHR’s mandate and elevated the right to education to the rank of a fundamental right for children up to the age of 14.

The 86th Amendment and Article 21-A: Constitutional Codification

In 2002, the Parliament passed the 86th Constitutional Amendment Act, building on the judicial momentum. The right to education became legally enforceable with this modification, which added Article 21-A to the chapter on fundamental rights. It reads, “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” This was a significant move since it gave the right, which had been acknowledged for decades in the UDHR and aspired to in the DPSP, explicit constitutional standing.

The Articles:

Article 21A (inserted by the 86th Amendment, 2002): “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” This gives a constitutional status to the right to education as a Fundamental Right.

Article 14: Ensures equality before law and equal protection of laws, implying equal educational opportunities.

Article 15(1) & (4): Prohibits discrimination on grounds of religion, race, caste, sex, or place of birth; allows special provisions for the advancement of socially and educationally backward classes.

Article 29 & 30: Protects cultural and educational rights of minorities, ensuring they can establish and administer their own educational institutions

The Indian Constitution reflects the spirit of Article 26 of the UDHR through several Articles:

Aspect	Universal Declaration of Human Rights	Indian Constitution
Legal Status	International declaration (non-binding)	National law (binding and enforceable)
Right to Education	Article 26 – Universal right to free and compulsory elementary education	Article 21A – Fundamental right for children aged 6–14
Purpose of Education	Full development of personality, promotion of tolerance and peace	Implicit in Preamble and DPSPs– development of human dignity, equality, fraternity
Equality in Education	No discrimination based on status, religion, or race	Articles 14, 15, 17, 46 – equality and affirmative action
Minority Rights	Not specifically mentioned	Articles 29 & 30 – protection of minority educational rights
Higher Education	Equal access based on merit	State policies encourage access through reservation and financial aid

The Right to Education Act, 2009: Legislative Realization

To give effect to Article 21-A, the Parliament passed the Right of Children to Free and Compulsory Education (RTE) Act, 2009, which came into force in April 2010. This Act is the primary legislative vehicle for operationalizing the human right to education in India. Its key provisions, analyzed from a human rights perspective, include:

Free and Compulsory Education: It mandates that every child has a right to full-time elementary education of “equitable and quality” standard in a formal school. The term “free” ensures no child is liable to pay any fee or charge, removing financial barriers.

Non-Discrimination and Inclusion (Section 12(1)(c)): A pioneering provision, it mandates that private unaided schools reserve at least 25% of their entry-level seats for children from economically weaker sections and disadvantaged groups. This directly promotes the UDHR’s aim of “understanding, tolerance and friendship” by creating socially inclusive classrooms.

Specified Pupil-Teacher Ratios (PTR): The Act specifies norms for PTR to ensure adequate attention to each child, impacting the quality of education.

Infrastructure Standards: It lays down minimum standards for school infrastructure (e.g., buildings, toilets, drinking water) to create a safe and conducive learning environment.

No-Detention Policy: Initially, the Act prohibited detaining children until the completion of elementary education to reduce dropout rates and reduce fear of failure, though this has since been amended by states.

The RTE Act represents a comprehensive attempt to translate constitutional and international human right into a justiciable legal claim.

Challenges from a Human Rights Perspective: The Implementation Gap

According to the recent figures (UNESCO Institute for Statistics), over 86% of people worldwide are literate, up from 68% in 1979. This indicates significant growth in literacy. Despite this, at least 250 million children are not learning the fundamentals of literacy. Prior to the COVID-19 epidemic, which caused the worst interruption to education in a century, 617 million children and teenagers had not reached minimum reading levels.

Worldwide Literacy datav as per (UNESCO Institute for Statistics)

Region	Primary	Lower secondary	Upper secondary	Total
Central and Southern Asia	15.8	16.2	57.6	89.7
Eastern and South-eastern Asia	7.2	8.2	15.8	31.6
Europe and Northern America	1.2	0.9	2.0	4.2
Latin America and the Caribbean	2.2	2.2	5.4	9.7
Northern Africa and Western Asia	6.3	2.8	5.9	14.9
Oceania	0.3	0.1	0.3	0.7
Sub-Saharan Africa	35.9	28.6	34.0	98.4
WORLD	69.9	59.1	121.5	250.0

Source: (UNESCO Institute for Statistics).

NEP 2020 aims for a 100 % Gross Enrolment Ratio (GER) by 2030. The GER is near universal at the primary (93 %) and the efforts are underway to bridge the gaps at the secondary (77.4 %) and higher secondary level (56.2 %), driving the nation closer to its vision of inclusive and equitable education for all.

The Survey says school dropout rates have steadily declined in recent years, standing at 1.9 % for primary, 5.2 % for upper primary, and 14.1 % for secondary levels. Gender gaps favour girls in dropout reduction.

Despite the robust legal framework, the realization of the right to education in India faces significant challenges, revealing a stark implementation gap.

Quality of Learning: Poor learning quality compromises the vision of full human potential.

Infrastructure and Resource Deficits: Many government schools, particularly in rural areas, lack basic infrastructure, trained teachers, and learning materials, failing to meet the standards set by the RTE Act itself.

Equity and Exclusion: Children from marginalized communities—Scheduled Castes, Scheduled Tribes, girls, and children with disabilities—continue to face barriers to access and retention. The promise of Section 12(1)(c) is often hampered by bureaucratic hurdles and social resistance.

Scarcity of Fund: Inadequate public investment in education remains a perennial problem, constraining the state's capacity to fulfill its obligations under Article 21-A.

From a human rights perspective, these challenges signify that for millions of children, the right to education remains a theoretical promise rather than a lived reality. The state's obligation to "respect, protect, and fulfill" this right is only partially met.

CONCLUSION

Both the UDHR and the Indian Constitution recognize education as a fundamental human right essential for the development of individuals and society. However, The UDHR provides a global moral and ethical framework, The Indian Constitution translates that framework into enforceable legal rights and state responsibilities, ensuring inclusivity, equality, and social justice in education.

The journey of the educational rights of children in India, from the visionary ideals of the UDHR to the legal guarantee of Article 21-A and the RTE Act, is a testament to the country's commitment to human rights. The Indian judiciary played a crucial role in interpreting the Constitution in light of the UDHR's spirit. The legislature codified this right, creating one of the world's most ambitious educational laws.

To conclude, it may be said that the framing a law is the beginning, not the end, of the struggle for rights. The persistent implementation gap, reflected in drop out rates, poor learning outcomes, infrastructural deficits, and systemic inequities, remains the main obstacle on the way of the full realization of the right to education.

Closing this gap requires more than legal provisions; it demands sustained political will, appropriate financial allocation, systemic reforms in teacher education and pedagogy, and above all a societal commitment to holding the state accountable. The right to education is the key that unlocks all other rights, and its effective realization is indispensable for India to truly become a society based on justice, liberty, equality, and fraternity.

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