

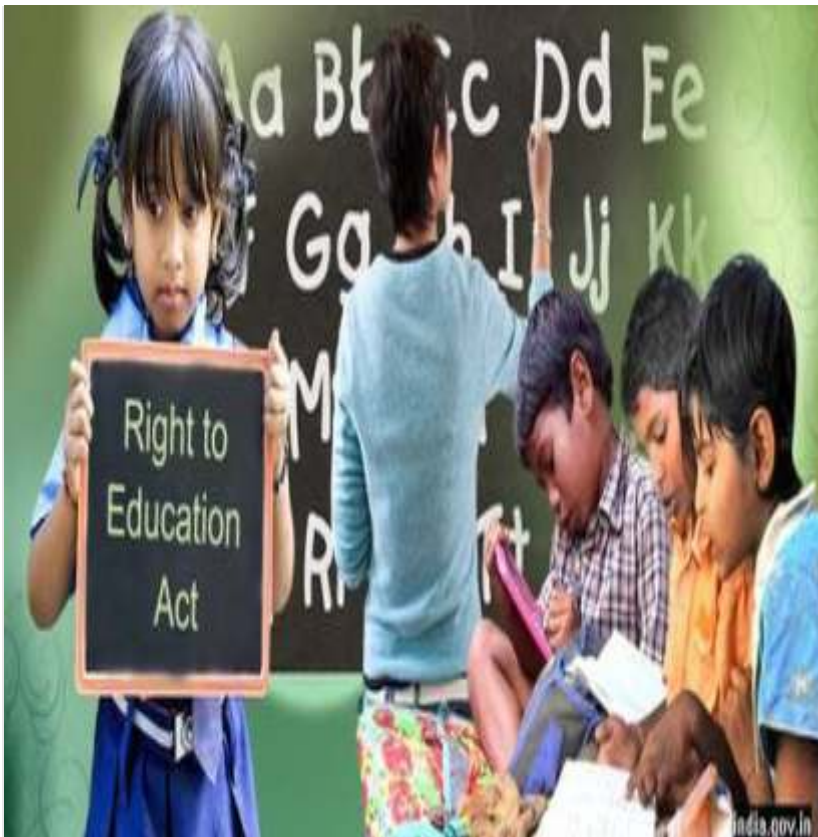
RIGHT TO EDUCATION, A HUMAN RIGHT



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Short Profile

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ABSTRACT:

The right to education is a universal entitlement to education. This is recognized in the International Covenant on Economic, Social and Cultural Rights as a human right that includes the right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all, in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education, ideally by the progressive introduction of free higher education.

KEYWORDS

Covenant, economic, International Covenant on Economic, Social and Cultural Rights as a human right.

INTRODUCTION

The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. In addition to these access to education provisions, the right to education encompasses the obligation to rule out discrimination at all levels of the educational system, to set minimum standards and to improve the quality of education.

The right to education is reflected in international law in Article 26 of the Universal Declaration of Human Rights and Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights.

The right to education has been reaffirmed in the 1960 UNESCO Convention against Discrimination in Education, the 1981 Convention on the Elimination of All Forms of Discrimination Against Women, and the 2006 Convention on the Rights of Persons with Disabilities.

In Europe, Article 2 of the first Protocol of 20 March 1952 to the European Convention on Human Rights states that the right to education is recognized as a human right and is understood to establish an entitlement to education. According to the International Covenant on Economic, Social and Cultural Rights, the right to education includes the right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education in particular by the progressive introduction of free higher education. The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. In addition to this access to education provisions, the right to education encompasses also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. The European Court of Human Rights in Strasbourg has applied this norm for example in the Belgian linguistic case. Article 10 of the European Social Charter guarantees the right to vocational education.

RIGHT TO EDUCATION & INDIA

Education narrowly refers to formal institutional instructions. Generally, international instruments use the term in this sense and the right to education, as protected by international human rights instruments, refers primarily to education in a narrow sense. The 1960 UNESCO Convention against Discrimination in Education defines education in Article 1(2) as: "all types and levels of education, (including) access to education, the standard and quality of education, and the conditions under which it is given."

In a wider sense education may describe "all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable the group to subsist". In this sense education refers to the transmission to a subsequent generation of those skills needed to perform tasks of daily living, and further passing on the social, cultural, spiritual and philosophical values of the particular community. The wider meaning of education has been recognized in Article 1(a) of UNESCO's 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms. The article states that education implies:

"The entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge."

The European Court of Human Rights has defined education in a narrow sense as "teaching or instructions... in particular to the transmission of knowledge and to intellectual development" and in a

wider sense as "the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young." Assessment of fulfillment.

The fulfillment of the right to education can be assessed using the 4 as framework, which asserts that for education to be a meaningful right it must be available, accessible, acceptable and adaptable. The 4 as framework was developed by the former UN Special Reporter on the Right to Education, but is not necessarily the standard used in every international human rights instrument and hence not a generic guide to how the right to education is treated under national law.

The 4 as framework proposes that governments, as the prime duty-bearers, have to respect, protect and fulfill the right to education by making education available, accessible, acceptable and adaptable. The framework also places duties on other stakeholders in the education process: the child, which as the privileged subject of the right to education has the duty to comply with compulsory education requirements, the parents as the 'first educators', and professional educators, namely teachers.

The 4 as have been further elaborated as follows:

- **Availability** – funded by governments, education is universal, free and compulsory. There should be proper infrastructure and facilities in place with adequate books and materials for students. Buildings should meet both safety and sanitation standards, such as having clean drinking water. Active recruitment, proper training and appropriate retention methods should ensure that enough qualified staff is available at each school.[11]
- **Accessibility** – all children should have equal access to school services, regardless of gender, race, religion, ethnicity or socio-economic status. Efforts should be made to ensure the inclusion of marginalized groups including children of refugees, the homeless or those with disabilities in short there should be universal access to education i.e. access to all. There should be no forms of segregation or denial of access to any students. This includes ensuring that proper laws are in place against any child labour or exploitation to prevent children from obtaining primary or secondary education. Schools must be within a reasonable distance for children within the community, otherwise transportation should be provided to students, particularly those that might live in rural areas, to ensure ways to school are safe and convenient. Education should be affordable to all, with textbooks, supplies and uniforms provided to students at no additional costs.
- **Acceptability** – the quality of education provided should be free of discrimination, relevant and culturally appropriate for all students. Students should not be expected to conform to any specific religious or ideological views. Methods of teaching should be objective and unbiased and material available should reflect a wide array of ideas and beliefs. Health and safety should be emphasized within schools including the elimination of any forms of corporal punishment. Professionalism of staff and teachers should be maintained.
- **Adaptability** – educational programs should be flexible and able to adjust according to societal changes and the needs of the community. Observance of religious or cultural holidays should be respected by schools in order to accommodate students, along with providing adequate care to those students with disabilities.

A number of international NGOs and charities work to realize the right to education using a rights-based approach to development.

• Historical development

In Europe, before the Enlightenment of the eighteenth and nineteenth century, education was the responsibility of parents and the church. With the French and American Revolution education was

established also as a public function. It was thought that the state, by assuming a more active role in the sphere of education, could help to make education available and accessible to all. Education had thus far been primarily available to the upper social classes and public education was perceived as a means of realizing the egalitarian ideals underlining both revolutions.

However, neither the American Declaration of Independence (1776) nor the French Declaration of the Rights of Man (1789) protected the right to education as the liberal concepts of human rights in the nineteenth century envisaged that parents retained the primary duty for providing education to their children. It was the states obligation to ensure that parents complied with this duty, and many states enacted legislation making school attendance compulsory. Furthermore child labour laws were enacted to limit the number of hours per day children could be employed, to ensure children would attend school. States also became involved in the legal regulation of curricula and established minimum educational standards.

In *On Liberty* John Stuart Mill wrote that an "education established and controlled by the State should only exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus to keep the others up to a certain standard of excellence." Liberal thinkers of the nineteenth century pointed to the dangers of too much state involvement in the sphere of education, but relied on state intervention to reduce the dominance of the church, and to protect the right to education of children against their own parents. In the latter half of the nineteenth century, educational rights were included in domestic bills of rights. The 1849 Paulskirchenverfassung, the constitution of the German Empire, strongly influenced subsequent European constitutions and devoted Article 152 to 158 of its bill of rights to education. The constitution recognized education as a function of the state, independent of the church. Remarkable at the time, the constitution proclaimed the right to free education for the poor, but the constitution did not explicitly require the state to set up educational institutions. Instead the constitution protected the rights of citizens to found and operate schools and to provide home education. The constitution also provided for freedom of science and teaching, and it guaranteed the right of everybody to choose a vocation and train for it.

The nineteenth century also saw the development of socialist theory, which held that the primary task of the state was to ensure the economic and social well-being of the community through government intervention and regulation. Socialist theory recognized that individuals had claims to basic welfare services against the state and education was viewed as one of these welfare entitlements. This was in contrast to liberal theory at the time, which regarded non-state actors as the prime providers of education. Socialist ideals were enshrined in the 1936 Soviet Constitution, which was the first constitution to recognize the right to education with a corresponding obligation of the state to provide such education. The constitution guaranteed free and compulsory education at all levels, a system of state scholarships and vocational training in state enterprises. Subsequently the right to education featured strongly in the constitutions of socialist states. As a political goal, right to education was declared in F. D. Roosevelt's 1944 speech on the Second Bill of Rights.

International law does not protect the right to pre-primary education and international documents generally omit references to education at this level. The Universal Declaration of Human Rights states that everyone has the right to education hence the right applies to all individuals, although children are considered as the main beneficiaries.

The rights to education are separated into three levels:

- Primary (Elemental or Fundamental) Education. This shall be compulsory and free for any child regardless of their nationality, gender, place of birth, or any other discrimination. Upon ratifying the International Covenant on Economic, Social and Cultural Rights States must provide free primary education within two years.

- Secondary (or Elementary, Technical and Professional in the UDHR) Education must be generally available and accessible.
- Higher Education (at the University Level) should be provided according to capacity. That is, anyone who meets the necessary education standards should be able to go to university.

Both secondary and higher education shall be made accessible "by every appropriate means, and in particular by the progressive introduction of free education".

COMPULSORY EDUCATION

The realization of the right to education on a national level may be achieved through compulsory education, or more specifically free compulsory primary education, as stated in both the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.

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