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## ARTICLE 21A: CONSTITUTIONAL TRANSFORMATION, IMPLEMENTATION, AND CHALLENGES

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### ABSTRACT

There is no secret that education has been largely accepted as a pillar to individual and societal development and growth. In India, right to education which was earlier constitutional right has been changed to a fundamental right in the Constitution by altering the right to education as a Directive Principle in the Articles 21A. In this paper, the history of education in India, debates during the Constituent Assembly and judicial interpretations which contributed to the Article 21 A will be discussed. It is an analysis of how the Act of Right of Children to Free and Compulsory Education Act, 2009<sup>1</sup> was applied, significant cases were decided, and the impacts and obstacles of making sure that every child receives an education. Finally, it also considers the international opinion and suggests the ways of improving the realization of this basic right. The paper would provide an in depth concept of how Article 21A has developed to be a social empowerment vehicle and nation-building and a list of the areas that could be improved.

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<sup>1</sup> “Right of Children to Free and Compulsory Education Act, 2009.”

## INTRODUCTION

Any society is supported by education. It is in education that members of the human species learn, develop values and are able to think critically. A democracy cannot exist without education since people have to know their rights and responsibilities to be able to take part in the common life. In India, where social and economic disparities have long been keen, education is not only a source of individual development but it is also an instrument of social change. The constituent assembly members were aware of this and education was made a Directive Principle of State Policy in Article 45<sup>2</sup>. Nevertheless, education was over many decades regarded as something that should be attained over time and not a right that can be imposed. This has changed with the addition of Article 21A in 2002, which introduced the free as well as compulsory education as a right to every child aged between 6-14 years<sup>3</sup>. Article 21A is important not only in the sense that it provides schooling to all children but it also links education with the right to life in Article 21. By so doing, the Constitution recognizes that the right to live with dignity can hardly be achieved unless all children have a chance to learn, develop, and grow. The following research paper will look at the history of Article 21A, how it received its recognition in the courts as well as its implementation by the government in the form of the Right to Education Act, and the obstacles in its current enforcement. It also examines key case laws, the global comparative approach and the way forward.

## HISTORICAL BACKGROUND

- Education in Pre-Independence India

The concept of state role in education in India may be found back to colonial times. The Charter Act of 1813<sup>4</sup> was the initial step where the British government realized that it had a role to play in the education of India. The Minute on Education (1835) of the Macaulay<sup>5</sup> stimulated the cause of English education, which sought to produce a breed of Indians, who would be Indian in blood and colour, yet English in taste and intellect. A number of commissions such as the Hunter Commission (1882) and the Sargent Plan (1944)<sup>6</sup> suggested universal primary education, which was never implemented (except on paper) as resources and political goodwill were lacking. Literacy rates were deplorable by

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<sup>2</sup> "INDIA CONST. art. 45."

<sup>3</sup> "INDIA CONST. art. 21A (inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002)"

<sup>4</sup> "Charter Act, 1813 (UK)."

<sup>5</sup> "Thomas Babington Macaulay, Minute on Indian Education (1835)."

<sup>6</sup> "Indian Education Commission (Hunter Commission Report), 1882; Sargent Plan, 1944."

the moment India became independent in 1947 and the number of people who could read and write was a mere 12 percent of the population.

- Constituent Assembly Debates

The question of education was a burning one when the Constituent Assembly met to frame the Constitution. Dr. B.R. Ambedkar and the rest of the group concurred that universal education was critical in democracy. They never, however, reduced it into a right to be enforced at once, on account of financial considerations. Article 45 was instead part of the Directive Principles of State Policy<sup>7</sup> that said that the State shall strive to ensure that within a period not exceeding ten years after the opening of this Constitution, free and compulsory education is provided to all children up to the age of fourteen years. It was a promise not a guarantee.

- Right to Education before Article 21A

The Indian judiciary, even before Article 21A was added to the Constitution, was important in acknowledging education as a critical element of the right to life in Article 21. Courts started realizing that right to life was not only about physical living but also about living with dignity which also involved access to education

## LANDMARK CASES

1. Mohini Jain v. State of Karnataka (1992)<sup>8</sup>

**Facts:** Mohini Jain, a student, questioned the legality of the capping of fee in terms of capitation in private medical colleges. She was of the opinion that education was not a commodity to make a profit.

**Issue:** Did Article 21 conferred on the right to education as part of the fundamental right to life

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<sup>7</sup> “INDIA CONST. art. 45; Constituent Assembly Debates, Vol. VII (Nov. 25, 1948).”

<sup>8</sup> “Mohini Jain v. State of Karnataka, (1992) 3 S.C.C. 666.”

**Decision:** The Supreme Court concluded that the right to an education is certainly an Art.21 item. It focused on the fact that education is necessary in order to be able to lead a dignified life and that the State had the responsibility of offering it.

**Significance:** This case provided the basis of acknowledging education as the basic right though it was not placed in the Constitution formally.

## 2. Unni Krishnan, J.P. v. State of Andhra Pradesh (1993)<sup>9</sup>

**Facts:** This was a case concerning the control of the private educational institutions and fixing of charges.

**Issue:** When can the State control the fees imposed in the private unaided schools and colleges?

**Decision:** The Supreme Court confirmed the right to education and it was a component of Article 21 and that the State had to provide free education up to the age of 14. It gave some freedom to the private institutions but limited the scope to discourage commercialization.

**Significance:** The court emphasized the responsibility of the State to educate every child and had an impact on the subsequent formulation of Article 21A. The cases also underscored the increased judicial consciousness regarding education as inseparable to the right to life. They also demonstrated how the constitution was to be amended so that this right can be binding and national.

## **BIRTH OF ARTICLE 21A**

The historical need to have a constitutional guarantee was met with the 86th Constitutional Amendment in 2002 which added Article 21A.<sup>10</sup>

### Text of Article 21A:

*"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."*

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<sup>9</sup> "Unni Krishnan, J.P. v. State of Andhra Pradesh, (1993) 1 S.C.C. 645."

<sup>10</sup> "Constitution (Eighty-Sixth Amendment) Act, 2002."

### Rationale and Objectives:

Turn education into a basic right and not a Directive Principle. Provide equal opportunities to access quality education to all children, especially disadvantaged groups. Make education directly connected to the right to life and dignity. Empower the democratic structure by creating enlightened and conscious citizens. Association with other Constitutional Provisions.

### Relationship with Other Constitutional Provisions

Article 45: Initially conceived of free and compulsory education under what was called Directive Principles; Article 21A has made it an enforceable right. Article 51A(k): Imposes an inalienable responsibility of educating children on the parents. All these provisions help to make education a collective responsibility between the families and the State.

## **IMPLEMENTATION THROUGH LEGISLATION: THE RTE ACT, 2009**

Once Article 21A was inserted, it followed up with a legal framework to render this basic right useful. This has been done through the right of Children to Free and Compulsory Education Act, 2009, popularly referred to as the RTE Act<sup>11</sup>.

### **Purpose of the Act :**

The RTE Act operationalizes Article 21A by:

- *Ensuring free as well as compulsory education for all children between 6–14 years.*
- *Providing clear and good standards for infrastructure, teacher's qualification, and also curriculum.*

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<sup>11</sup> "Right of Children to Free and Compulsory Education Act, 2009."

- *Making the right to education enforceable in courts.*

### **Salient Features of the Act :**

#### **1. Free as well as Compulsory Education:**

- *Education must be free; no child can be charged tuition or any capitation fee.*
- *Schools are obliged to admit all children without doing any discrimination.*

#### **2. 25% Reservation in Private Schools:**

- *One-fourth of seats of the private schools are to be reserved for children who are from economically weaker sections (EWS) and disadvantaged groups.*
- *This promotes social inclusion and equality in education.*

#### **3. No Screening or Capitation:**

- *Admission cannot be based on academic performance or entrance exams for children in the 6–14 age group.*
- *Private schools cannot charge additional fees from children admitted under the 25% quota.*

#### **4. Child-Friendly Curriculum:**

- *Curriculum must be stress-free and inclusive, focusing on overall development rather than rote learning.*
- *Emphasis on critical thinking, creativity, and life skills.*

#### **5. Teacher Qualification and Accountability:**

- *Teachers must meet minimum qualifications.*
- *The ratio between teachers and the students, the infrastructure, and the classroom standards are well articulated.*

## 6. School Infrastructure:

- *There must be sufficient classrooms, clean drinking water, toilets and boundary walls. Particular attention to safety and accessibility of children with disabilities.*

## Significance of the Act :

- Translates Article 21A into practical action.
- Ensures equal opportunity for children from marginalized backgrounds.
- Addresses historical inequalities in access to education.
- Brings India nearer to the international benchmark of education as a basic human right, as it is identified in few UN documents.

## Challenges while Implementing:

Inspite of its comprehensive framework, this Act undergoes through several challenges:

- **Infrastructure gaps:** A large number of schools, particularly in rural stations do not have basic facilities.
- **Teacher shortages:** There is a lack of qualified teachers.
- **Private school compliance:** There are some schools which are against the 25% quota and this somehow can create some conflict
- **Quality of education:** Enrollment has increased, but learning outcomes remain low in many regions.
- **Monitoring and accountability:** State machinery often struggles to enforce the provisions effective

## JUDICIAL INTERPRETATION OF ARTICLE 21A

The judiciary has played an important role in shaping the extent and application of Article 21A. The access and quality of education have been enforced by courts as the right to education that has not been only accepted, but also put into practice

### Landmark Judgments :

#### 1. **Society for Unaided Private Schools v. Union of India (2012)** <sup>12</sup>:

- **Facts:** Private unaided schools challenged the constitutionality of the 25% reservation for economically weaker sections under the RTE Act.
- **Issue:** Whether the 25% quota violated the rights of private institutions.
- **Judgment:** The Supreme Court upheld the 25% quota, emphasizing that social justice and inclusion are fundamental to India's constitutional vision.
- **Significance:** This judgment reinforced the principle that the right to education is not just about quantity (enrolment) but also about ensuring equity and access for disadvantaged children.

#### 2. **State of Uttar Pradesh v. Pawan Kumar Divedi (2014)**:<sup>13</sup>

- **Facts:** The case involved non-compliance with RTE norms in government schools.
- **Issue:** Whether the State could be held accountable for failing to provide quality education.

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<sup>12</sup> "Society for Unaided Private Schools of Rajasthan v. Union of India, (2012) 6 S.C.C. 1 (India)."

<sup>13</sup> "State of Uttar Pradesh v. Pawan Kumar Divedi, (2014) 9 S.C.C. 692 (India)."

- **Judgment:** The court held the State accountable, emphasizing that education must be meaningful, not just formal.
- **Significance:** Highlighted that Article 21A entails a duty on the State to ensure proper implementation, not just create laws.

### **3. Environmental & Consumer Protection Foundation v. Delhi (2012):<sup>14</sup>**

- **Facts:** Petitioners challenged poor infrastructure in government schools in Delhi.
- **Issue:** Whether lack of basic facilities violated the right to education.
- **Judgment:** The court ruled that inadequate infrastructure, teacher shortages, and unsafe conditions violate the RTE Act.
- **Significance:** Strengthened the interpretation that education under Article 21A must be safe, inclusive, and of reasonable quality.

#### **Key Judicial Principles Derived :**

- **Right to Education is Justiciable:** Courts have repeatedly emphasized that children can approach the judiciary if their right under Article 21A is denied.
- **Access and Quality:** Education is not merely about enrolment; it must be meaningful, with adequate infrastructure, trained teachers, and inclusive policies.
- **State Accountability:** States cannot shift responsibility; they are duty-bound to provide free and compulsory education.
- **Inclusion:** The 25% quota is a constitutional obligation to ensure social equity in private institutions.

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<sup>14</sup> “Envtl. & Consumer Prot. Found. v. Delhi, (2012) 7 S.C.C. 197 (India).”

### **Impact of Judicial Interpretation:**

- It gave more Strength for enforcement of Article 21A across India.
- Governments were held more accountable for maintaining and improving school standards
- The judgment helped ensure that children from marginalised communities could truly benefit from the constitutional promise of free and compulsory education.
- It also promoted policies that linked education to wider objectives of social justice, equality and human dignity as education was seen to be a means of empowerment and change.

### **IMPACT OF ARTICLE 21A AND THE RTE ACT**

From the day Article 21A and RTE Act were inserted and implemented, India has seen a significant progress in making education accessible and affordable, though the challenges are still there

#### **1. Expansion of Enrolment**

- School admission among the 6-14 years child, particularly girls and children of minority groups has been on the rise.
- The 25 percent quota in the privates schools has enabled children of all the backgrounds such as economically disadvantaged groups to receive higher quality education that is eventually propelling India towards universal primary education..

#### **2. Reduction in Child Labor**

- Article 21A has in some way facilitated reduction of child labor in India by making education mandatory to children aged between 6-14 years.
- The children are currently going to school instead of going to work, which is quite essential in breaking poverty and marginalization cycles.

### **3. Empowerment of Marginalized Communities**

- Education under Article 21A has facilitated social mobility to the children of Scheduled Castes, Scheduled Tribes, OBCs and minority communities.
- Girls, in particular, have been the beneficiaries of this awareness creation and gender equality in education field through RTE Act special programs.

### **4. Improving Awareness and Citizenship Education under Article 21A assists children to have an insight on their rights, duties and values of democracy**

Educated citizens are more prepared to be part of society, challenge the wrong and demand accountability on the part of institutions.

### **5. Challenges in Realizing Full Impact**

Despite these achievements, many challenges still stand in the way of ensuring that everyone truly enjoys the right to education.

#### **(i) Infrastructure Gaps:**

*Many schools, especially in rural areas, lack classrooms, toilets, drinking water, and boundary walls, affecting attendance and learning.*

#### **(ii) Teacher Shortages and Quality:**

- *While enrolment has somehow increased, but qualified teachers are insufficient, and teacher absenteeism remains a problem.*
- *Poor teacher training and outdated teaching methods affect learning outcomes.*

#### **(iii) Private School Compliance Issues:**

*Some private schools resist admitting 25% quota children or fail to implement the provisions effectively.*

(iv) Quality vs. Quantity Debate:

*Enrollment rates have risen, but learning outcomes remain low in many areas. Children may attend school but not achieve meaningful education.*

(v) Budgetary Constraints:

*Many State governments struggle to fund schools adequately, leading to uneven implementation of the RTE Act across India.*

(vi) Exclusion of Certain Age Groups:

*Children below 6 years and above 14 years are not covered under Article 21A, leaving gaps in early childhood and secondary education.*

## **CHALLENGES AND CRITICISMS OF ARTICLE 21A AND THE RTE ACT**

While Article 21A and the RTE Act represent major milestones in India's journey toward universal education, their implementation has faced several practical, structural, and social challenges.

### **1. Infrastructure Deficiencies**

- Many schools, especially in rural and remote areas, lack basic facilities such as classrooms, toilets, clean drinking water, and electricity.
- Poor infrastructure affects attendance, retention, and the overall learning environment. Children often drop out due to unsafe or uncomfortable school conditions.

### **2. Teacher Shortages and Training Issues**

- A shortage of qualified teachers is a persistent problem, particularly in underprivileged regions.

- Even where teachers are available, quality of teaching is often low due to insufficient training, outdated methods, and lack of accountability.

### **3. Compliance Challenges in Private Schools**

- Some private schools resist admitting students under the 25% quota, arguing that it affects their financial model.
- There are instances where reserved seats are offered without proper facilities or quality education, undermining the purpose of the RTE Act.

### **4. Quality of Education**

- Enrollment rates have improved, but learning outcomes remain uneven across India.
- Many children attend school without achieving meaningful literacy, numeracy, or critical thinking skills.
- This “quantity over quality” issue highlights that right to education is not just access, but also effective learning.

### **5. Budgetary and Resource Constraints**

Implementation requires significant financial investment for infrastructure, teacher salaries, training, and monitoring.

Some State governments face budgetary limitations, leading to incomplete or inconsistent application of the Act.

### **6. Social and Cultural Barriers**

- Gender discrimination, caste-based exclusion, and early child labor still prevent some children from attending school regularly.
- In certain communities, education—especially for girls—is not prioritized, limiting the impact of Article 21A.

## 7. Limited Age Coverage

- Article 21A covers children aged 6 to 14 years, leaving early childhood (0–6 years) and secondary education (14–18 years) unprotected.
- Early education is crucial for cognitive development, and secondary education is essential for employability and higher studies.

## 8. Monitoring and Accountability Issues

- Effective implementation depends on active monitoring and enforcement, which is often weak in many states.
- Complaints and violations are not always addressed promptly, reducing trust in the system among parents and children.

## COMPARATIVE PERSPECTIVE: RIGHT TO EDUCATION IN GLOBAL CONTEXT-

Understanding Article 21A in a global perspective helps highlight India's achievements and areas for improvement. Education is recognized internationally as a fundamental human right, and many countries have adopted legal frameworks similar to India's.

### 1. Universal Declarations and Conventions

- **Universal Declaration of Human Rights (UDHR), 1948:**<sup>15</sup>  
Article 26 recognizes education as a fundamental right. It emphasizes free and compulsory primary education for all children.

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<sup>15</sup>"Universal Declaration of Human Rights art. 26, G.A. Res. 217 (III) A (Dec. 10, 1948)"

- **International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966:**<sup>16</sup>  
Article 13 obligates states to make primary education compulsory and free and to progressively make secondary and higher education accessible.
- **Convention on the Rights of the Child (CRC), 1989:**<sup>17</sup>  
Affirms every child's right to free and compulsory primary education and emphasizes equal access for vulnerable groups.

India's Article 21A aligns with these international instruments, making it part of the global human rights framework.

## 2. Comparative Overview with Other Countries

### (i) South Africa

- The South African Constitution guarantees free right to basic education for children.
- The government provides free primary education, with a strong focus on inclusion for historically disadvantaged communities.
- Lessons for India: Monitoring and enforcement mechanisms are robust, ensuring accountability.

### (ii) United States of America

- Education is primarily a state responsibility, with compulsory schooling laws varying by state.
- Federal initiatives like the Elementary and Secondary Education Act (ESEA) promote access, but equality remains a challenge due to economic disparities.
- Lessons for India: State-level implementation must be strengthened to reduce regional inequalities.

### (iii) United Kingdom

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<sup>16</sup> "International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3."

<sup>17</sup> "Convention on the Rights of the Child art. 28, Nov. 20, 1989, 1577 U.N.T.S. 3."

- Education is compulsory from age 5 to 18.
- Focus on quality, inclusivity, and child welfare alongside access.
- Lessons for India: Extending coverage beyond primary education is essential for long-term development.

### **3. Key Takeaways for India**

- India has made significant progress in recognizing education as a fundamental right.
- Compared to other countries, India's 25% reservation in private schools is unique, emphasizing social justice.
- However, like other countries, India faces challenges in ensuring quality, monitoring compliance, and covering all age groups.
- Learning from international experiences can help India strengthen early childhood education, secondary schooling, and teacher training programs.

## **CONCLUSION**

Article 21A of the Indian Constitution is not just a law, but it is an embodiment of what India has vowed to, which is education as a human right. It makes education a right and not just an ideal of the Directive Principles of State Policy by making it a free and compulsory right to children between the ages of 6 to 14 years and it is mandatory as it realizes the importance of education in human development and social progress. Education is not merely a device of learning, but the basis of a life with dignity, equality and opportunity. Article 21A confirms that the right to life promise in Article 21 is not complete without the right to education.

Historically, education in India was not very accessible and equal. The colonial policies favored the elite and left the majority of the population in illiteracy and without the basic learning. Although Article 45 offered free and compulsory education to children after independence, it was a dream since decades because of the lack of resources and administrative difficulties. Judicial branch of

government took a radical step to fill this gap by identifying education as an extension of the right to life. Cases like those of *Mohini Jain v. State of Karnataka*, *Unni Krishnan v. State of Andhra Pradesh* emphasized that the right to live with dignity is grossly reduced without education. Such judicial interferences prepared the way to the 86th Constitutional Amendment that officially included Article 21A and established education as a constitutional right.

There has been a tangible change with the implementation of the Article 21A by the way of the RTE Act, 2009. Millions of children who never attended school are now attending school, social inequalities are being eliminated and marginalized groups such as Scheduled Castes (SC's), Scheduled Tribes(ST's) and economically weak groups are now having access to quality education. The 25 percent quota in the private schools guarantees that the children having a disadvantaged background have the chance of better education, thus creating social inclusion and fairness. Further, judiciary still protects this right and the provisions of the RTE Act are implemented and states are held responsible to offer meaningful education.

Although these advances are made there are still challenges. The problems that have been encountered are infrastructure gaps, the lack of teachers, low quality of education, and social obstacles that still influence learning outcomes. The fact of enrolment is not how one can be knowledgeable and the emphasis needs to be made towards meaningful learning experiences, capacity building, and comprehensive child growth. Moreover, children under 6 years and older than 14 years are not covered under Article 21A, as compared to which there should be a complete coverage since early childhood to secondary education. The technology, teacher training, community awareness and proper monitoring mechanisms play a significant role in ensuring that these challenges are overcome.

Conclusively, Article 21A is not simply a constitutional amendment, it is a social-transforming tool. It focuses on the right of all children irrespective of caste, gender and economic conditions to learn, develop and become full members of society. Connecting education to dignity, equality, and social justice, Article 21A enhances the democratic base of India and gives its citizens the opportunity to create the future they would like to see. Going forward, the principles of quality, inclusivity, and accessibility have to stay prominent and the right to an education has to become the lived right of all children, thus, making the Constitution come to the full, ensuring the growth of the country.

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