

Child Rights in India – An Appraisal

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The children of today are the future of tomorrow. This is an age-old adage, yet it has a special significance. In India, children in the age group of 0 – 14 years comprise one-third of the total population of the country. Every child having a conducive and enabling environment can blossom and shine in all spheres of life. Realising the deprived and vulnerable condition of children, the law makers of the country have accorded a privileged status to children. The number of rights and privileges given by the Indian Constitution and duly supported by legal protection bears a testimony to this. Despite various initiatives both on legal as well as policy and programme levels, the condition of children remains a cause of concern that needs to be addressed urgently. There is no denying the fact that children hold the key to the nation's future and as such, due priority must be given to look into their needs and requirements, by giving them access to a range of opportunities for their holistic and all-round development.

Keeping in view the problems and challenges faced by the Indian children, laws have been introduced and programmes are being implemented for the welfare of children in India. There are a large number of child rights in India protected by our Constitution, special laws and commissions. These rights can not be realised unless the right to education is implemented in full swing as this very right is the main key to unlock the other rights of children. Let us now review the child rights in India as a whole and in the context of the RTE Act in particular.

Who is a Child?

A child domiciled in India attains majority at the age of 18 years. However, various legal provisions address children with differing definitions. The different definitions of a child in some laws and acts have been shown in Box- 1. The age-groups of 0-14 years, 15-59 years and 60 and above years form a commonly accepted standard in reporting demographic indicators.

Constitutional Provisions for Protecting Child Rights in India

In the Indian Constitution, prior to the 86th Amendment Act, 2002, three Articles in the Constitution had the child as their specific focus. These were Articles 24, 39 and 45 dealing with prohibition of children from being employed

in factories, mines or in other hazardous employment; development and protection of the tender age of children; and free and compulsory education.

Article 24: No child below the age of 14 years shall be employed to work in any factory or mine or engaged in hazardous employment.

Article 39: The state shall direct its policy toward securing that the tender age of children is not abused and that children are not forced by economic necessity to enter a vocation unsuited to their age or strength and that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45: The state shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of 14 years.

Article 21A: The State shall provide free and compulsory education to all children of the age of 6–14 years, in such a manner as the State may, by law determine.

Besides these, they also have rights as equal citizens of India, just as any other adult male or female:

- ◆ Right to equality (Article 14).
- ◆ Right against discrimination (Article 15).
- ◆ Right to personal liberty and due process of law (Article 21).
- ◆ Right to being protected from being trafficked and forced into bonded labour (Article 23).
- ◆ Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46).

National Policies for Indian Children

Further, the Nation is implementing a number of Child centric policies addressing the issues of Child Survival, Child Development and Child Protection. The important among them are –

1. **National Policy for Children 1974** is the first policy document concerning the needs and rights of children. It recognized children to be a supremely important asset to the country. The goal of the policy is to take the next step in ensuring that the constitutional provisions for children and the UN Declaration of Rights are implemented. It outlines services the state should provide for the complete

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development of a child, before and after birth and throughout a child's period of growth for their full physical, mental and social development.

2. **National Policy on Education, 1986** called for "special emphasis on the removal of disparities and to equalize educational opportunity," especially for Indian women, Scheduled Tribes (ST) and the Scheduled Caste (SC) communities. To achieve these, the policy called for expanding scholarships, adult education, recruiting more teachers from the SCs, incentives for poor families to send their children to school regularly, development of new institutions and providing housing and services. The NPE called for a "child-centered approach" in primary education, and launched "Operation Blackboard" to improve primary schools nationwide.
3. **National Policy on Child Labour, 1987** contains the action plan for tackling the problem of child labour. It envisaged a legislative action plan focusing on and for convergence of general development programmes for benefiting children wherever possible, and Project-based plan of action for launching of projects for the welfare of working children in areas of high concentration of child labour.
4. **National Nutrition Policy, 1993** was introduced to combat the problem of under - nutrition. It aims to address this problem by utilizing direct (short term) and indirect (long term) interventions in the area of food production and distribution, health and family welfare, education, rural and urban development, woman and child development etc.
5. **National Population Policy, 2000:** The national population policy 2000 aims at improvement in the status of Indian children. It emphasized free and compulsory school education up to age 14, universal immunization of children against all vaccine preventable diseases, 100% registration of birth, death, marriage and pregnancy, substantial reduction in the infant mortality rate and maternal mortality ratio etc.
6. **National Charter for Children (NCC), 2003** highlights the Constitutional provisions towards the cause of children and the role of civil society, communities and families and their obligations in fulfilling children's basic needs. Well-being of special groups such as children of BPL families, street children, girl child, child-care programmes, and educational programmes for prevention from exploitation find special mention in the NCC. It

secures for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation. The Charter provides that the State and community shall undertake all possible measures to ensure and protect the survival, life and liberty of all children. For empowering the adolescents, the Charter states that the State and community shall take all steps to provide the necessary education and skills to adolescent children so as to equip them to become economically productive citizens.

7. **National Plan of Action for Children (NPA), 2005** was adopted by the Government of India in the pursuit of well-being of children. NPA has a significant number of key areas of thrust out of which the one's relating to child protection are:
 - ◆ Complete abolition of female foeticide, female infanticide and child marriage and ensuring the survival, development and protection of the girl child,
 - ◆ Addressing and upholding the rights of children in difficult circumstances,
 - ◆ Securing for all children legal and social protection from all kinds of abuse, exploitation and neglect.
8. **The Commissions for the Protection of Child Rights Act, 2005** provides for the Constitution of National and State Commissions for protection of Child Rights in every State and Union Territory. The functions and powers of the National and State Commissions will be to:
 - ◆ Examine and review the legal safeguards provided by or under any law for the protection of child rights and recommend measures for their effective implementation;
 - ◆ Inquire into violations of child rights and recommend initiation of proceedings where necessary;
 - ◆ Spread awareness about child rights among various sections of society;
 - ◆ Help in establishment of Children's Courts for speedy trial of offences against children or of violation of Child Rights.

In spite of several focused initiatives addressing the various needs of children in India, there is a lot needed to be done to improve their condition in all realms of child

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survival, child development and child protection. The gender inequality is also wide in these areas, calling for special attention on girl child.

Educational Status of Children in India – An Overview

The importance of education in India is indeed rising with passing time. Though India has always been a great source of learning for many years, it still needs to improve not just on the quality of education but also on the number of people being educated. In India, still many are deprived of education mainly due to poverty and less accessibility to educational services. The lack of education, adds to the vulnerability of children, forcing them into social evils of child labour and crime. The Indian education landscape saw significant developments during the 11th Plan. There was a surge in school enrollments, and gender and social category gaps in enrollments narrowed considerably. Expansion of school infrastructure and facilities significantly widened access to schooling, and incentives and child entitlements, such as textbooks, mid day meals and uniforms began reaching a considerably large number of children. The most significant development, however, was that Article 21-A, inserted in the Constitution of India through the Constitution (86th Amendment) Act, 2002 to make elementary education a fundamental right, and its consequential legislation, the Right of Children to Free and Compulsory Education (RTE) Act, 2009, became operative on 1st April 2010. This development has far reaching implications for elementary education in the years to come: it implies that every child has a right to elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

There has been substantial spatial and numerical expansion of primary and upper primary schools; access and enrollment at the primary stage of education have reached near universal levels; the gender gap in enrollment has narrowed. However, there remains much to achieve in universalizing education at the upper primary stage. Efforts to universalize elementary education gained momentum during the 11th Plan. Table 1 gives the details of progress in the first three years of the 11th Plan period with reference to the terminal year of the 10th Plan. According to District Information System for education, enrolments at elementary level increased from 169 million in 2005-06 to 188 million in 2009-10 in the Country.

Despite various initiatives both on the legal as well as the policy and programme levels, the condition of children remains a cause of concern that needs to be addressed

urgently. The programme and policy initiatives like Sarva Shiksha Abhiyan (SSA) and Right to Education (RTE) have contributed to a new vibrancy, meaning and urgency in the country's efforts to universalize elementary education, and are expected to infuse new life in the schooling system in the years to come. However, the issue of drop-outs continues as a major issue in all levels of education. Urgent and more focused measures are required to address and tackle these enduring issues in the education sector of the country. There are a large number of child rights which can not be met unless the right to education is addressed as the key to unlock other child rights.

The Right to Education Act, 2009 and Child Rights

With the Right to Education Act, 2009 coming into force, India has joined the league of over 130 countries which have legal guarantees to provide free and compulsory education to children. According to UNESCO's Education for All Global Monitoring Report 2010, about 135 countries have constitutional provisions for free and non-discriminatory education for all. The framers of the Constitution of India in their wisdom chose to include education in the Directive Principles of State Policy and not in the section on fundamental rights and correspondingly Article 45 stated that "The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years". However education remained a neglected area of state policy with universalization of elementary education continuing to be a distant goal. Efforts from educationists, academics and civil society groups that focused on a right based approach finally yielded results in 2002, when the 86th Constitutional Amendment was passed by Parliament and Article 21A, which makes right to education a fundamental right, was included in the Constitution. In doing so, it put the Right to Education on par with the Right to Life stated in Article 21. Article 21A states: "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine". Following from this, a Right to Free and Compulsory Education Act (RTE) was drafted and passed in Parliament on August 27, 2009 (notified on February 16, 2010 to come into effect from April 1, 2010).

Provisions of Child Rights under the RTE Act

The Right to Education Act, 2009 seeks to provide free and compulsory education of equitable quality to all children in the age group of six to fourteen years. The salient provisions relating to Indian children embedded in

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the Act are overviewed as follows:

- ◆ Section 3 provides for every child of the age of six to fourteen years, the right to free and compulsory education in a neighbourhood school till completion of elementary education.
- ◆ Section 4 provides for every child above six years of age, the right to admission in a class appropriate to his or her age even if the child has not been admitted before in any school or though admitted, could not complete his elementary education.
- ◆ Section 5 provides for every child, the right to seek transfer to any other school from a school where there is no provision for completion of elementary education.
- ◆ Section 12 imposes on schools the responsibility of providing free and compulsory education. Under this section, unaided private schools shall admit 25 per cent children to Class-I from among children belonging to weaker sections and disadvantaged groups for continued education of such children till completion of elementary education.
- ◆ Section 14 is meant for prohibition of denial of admission to a child for lack of age proof.
- ◆ Section 15 is meant for prohibition of denial of admission to a child, irrespective of the time in the academic year.
- ◆ Section 17 provides for prohibition of physical

punishment and mental harassment of any child in school.

- ◆ Section 30 prohibits detention or failing of any pupil in any class till completion of elementary education.
- ◆ Section 32 provides for remedy for grievances relating to the rights of the child under the legislation.

Conclusion

The landmark passing of the Right of Children to Free and Compulsory Education (RTE) Act 2009 makes a historic movement for the children of India. For the first time in India's history, children are guaranteed their right to quality elementary education by the state. However, it is very necessary to involve the Panchayati Raj Institutions (RPIS) in rural areas for implementing the RTE Act. To achieve the objectives of the Right to Education, the RTE must be aligned with the Sarva Shiksha Abhiyan (SSA). The existing operational norms of the SSA must be revised to implement the right of children to free and compulsory education. Given the diversity and complexity of the situations of children, teachers need to have at their disposal a deep fund of empathy, commitment, conviction and ability and motivation to persevere; of knowledge and resources to respond and create meaningful educational experiences for all children. The RTE Act is the only single tool to usher all other child rights in India. ◆

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Box – 1: Indian Children with Differing Definitions at a Glance

Different Acts under Labour Laws declare different age criteria :	
➤ The Apprentices Act (1961)	'A person is qualified to be engaged as an apprentice only if he is not less than fourteen years of age....'
➤ The Factories Act (1948)	'A child below 14 years of age is not allowed to work in any factory. An adolescent between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor....'
➤ The Child Labour Prohibition and Regulation Act (1986)	'Child means a person who has not completed his fourteenth year of age'.
◆ Prohibition of Child Marriage Act (2006)	declares 'Child means a person who, if a male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age'.
◆ The Juvenile Justice (Care and Protection of Children) Act 2000, amended in 2006 and 2010	declares "juvenile or "Child" a person who has not completed eighteenth year of age".
◆ Indian Penal Code in its Criminal law states	'Nothing is an offence which is done by a child under age of 7 years. The age of criminal responsibility is raised to 12 years if the child is found to have not attained the ability to understand the nature and consequences of his / her act.
◆ Article 21A: Right to Education mandates	"The State shall provide free and compulsory education to all children of the age of 6 – 14 years, in such a manner as the State may, by law determine".

Source: Children in India, 2012 – A Statistical Appraisal, MSPI, GOI.