**CONSTITUTIONAL RIGHT TO EDUCATION**



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**ABSTRACT**

**“ Education is the most powerful weapon which you can use to change the world ” [[1]](#footnote-2)** ( Nelson Mandela, South African civil rights activist )

Learning is a victory. It is fortunate to have the opportunity to do so. But due to various social, economic and religious backgrounds, many may lose the window to receive it. Aiming to give everyone equal rights to learn in the world that values equality, almost all countries in the world have taken legal steps to bring education closer as a constitutional right.

The right to education is practically enforced, going beyond statutory and constitutional frameworks. This is evident from day to day events as well as from the law of judgment. While some countries uphold constitutional rights, in some others the right to education is only a constitutional embellishment. It is worth considering the above condition with several countries especially prioritizing India.

When education is a commodity and not a right, it falls into the hands of the capitalists. It becomes a basic foundation for social revolutions, class struggles and other upheavals. If so, the affirmation of this right is also important for peaceful social security.

Lack of education subtly contributes to the weakening of literacy in a country and the collapse of the national economy also.

The right to education is the silent pioneer of overcoming ignorance and making positive changes in the journey towards a developed world. It is fruitful to look at the practicalities of how this is done systematically.

**INTRODUCTION**

**United Nations Educational, Scientific and Cultural Organization** (UNESCO)[[2]](#footnote-3) declares that education is a lifelong human right. This organization is also at the forefront of the 2030 Agenda for Ensuring the Right to Education as the fourth objective of Sustainable Development. Countries personally extend their support for this by establishing the right to education in their own countries as well.

Although this is primarily a provision targeting children, every human being has that right. Legislation gives legal force to allow education for all without discrimination. Let’s go through the about condition in the light of several countries.

**America** – Many Americans have assumed the Supreme Court seeking the right to education. ***Brown v. Board of Education[[3]](#footnote-4)*** case was the landmark Judgment of that. In there the judges unanimously ruled that children’s right to education should not be discriminated against on the basis of race or any other differences.

As a result of such efforts, education is declared a right. But, it is not mentioned in the constitution as a fundamental right. Even so, each and every child in America has the access to the right to free education regardless of gender, race, economic status or citizenship. Provisions have been made in this regard through the **14th Amendment[[4]](#footnote-5)** to the Constitution.

**Britain** – **Article 02 of the first protocol[[5]](#footnote-6)** of Britain refers to the right of Education. It states that no one should be deprived of the right to education. It also states that education should be conducted while respecting the religion, beliefs of the learner as well as the views of their parents. However, the right to education should not be specialized anyone on the rudiment of their religion, philosophy, regional identity or any other special reason. ***R (Hounslow London Borough Council) v School Admissions Appeal Panel for Hounslow London Borough Council*** [[6]](#footnote-7)case demonstrates above legal condition. In the issue of admitting students to a primary school in West London while giving priority for the students in the school’s designated catchment area, a group of parents challenged it. The court ruled that admission to the school should be based on the aptitude, qualifications, etc. of the applicants and not on other residual factors.

**India –** **Article 21-A of the Constitution[[7]](#footnote-8) (Eighty-sixth Amendment) Act**, 2002 inserted the right to education as a fundamental right. It provides free and compulsory education to all the children from age six to fourteen years. Not only that, Article 45 of constitution of India is about the early childhood care and education to children below the age of six years.

. **The Right to Education Act** 2009 is the major legal provision. There are 12 main constitutional provisions on education. Education and minorities, Education for weaker sections, Secular education, Instructions in Mother-Tongue, Promotion of Hindi and Equality of opportunity in educational institutions etc. can be pointed out as some of them.

**New Zealand –** According to the **Education Act,** 1989 there is the right to primary and secondary education in New Zealand. So everyone has the right to free primary education. With the provisions of The **Education Act in 1877**, free, compulsory and secular education rights did not apply for the Maori children. (Maori children are kids of traditional people who were consecrated to God and raised by other family members in addition to their parents.) They could attend to the schools according to their parents consent. But in 1894 New Zealand government made primary education of Maori children compulsory. It is an opportunity to ensure the right to education for all without considering any social and religious background such as Ethnicity and Tradition. In the time of COVID 19 pandemic also New Zealand enacted some laws about the online education. That is how the government took steps to protect that right, even during a pandemic. And also New Zealand has ratified almost all the international treatises on above right including the UNESCO Convention against Discrimination in Education.

**Sri Lanka –** The **Constitution of Democratic Socialist Republic of Sri Lanka** does not provide the right to education as a fundamental right of Sri Lankans. The **Education Ordinance No 31 of 1939** (as amended) is the major legal provision about the right to education in Sri Lanka. But with the **Sri Lankan free education policy[[8]](#footnote-9)**, all the children from age five to sixteen have offered the right to free education. Although that the education is not a fundamental right, the above policy has allowed Sri Lanka’s literacy rate progressed up to 92 percent. Sri Lanka’s education system has improved astonishing the world since the de-colonial era, with the number of schools increasing by 50 percent. By ratifying the Convention against Discrimination in Education, Sri Lanka paid more attention towards the above right legally.

**PRACTICALITY OF CONSTITUTIONAL RIGHT TO EDUCATION**

The right to education is practically enforced, going beyond statutory and constitutional frameworks. This is evident from day to day events as well as from the law of judgment. While some countries uphold constitutional rights, in some others the right to education is only a constitutional embellishment.

Although the people have the right to free education in **India**, at all the time they could not protected that right of all due to many reasons. ***Mohini Jain v. State of Karnataka*** [[9]](#footnote-10)and ***Unni Krishnan J.P. v. State of Andhra Pradesh[[10]](#footnote-11)*** cases are the best examples for above statement. These are just two of the many cases against extreme ‘capitation’ fees of the private higher education institutes. Quoting the provisions of the **Article 21 of the constitution Act** in India, the judges decided that the right to free education is offered only for the children from age six to fourteen years.

According to the **Afghan Independent Human Rights Commission** (AIHRC)[[11]](#footnote-12) Education is an indispensable human right in Afghanistan. And also they introduced education right as a way of protecting children from labor and sexual exploitation and empowering women etc. However, the new rules imposed by the new Taliban regime have created a number of obstacles to women and girl’s right to education. They severely restricted school and university education for girls. We could argue that it is a violation of their constitutional rights.

In some countries like **India, Niger, Bangladesh, some African countries, Mali and California[[12]](#footnote-13)** etc. child marriage practices can be seen. Some countries allowed children from age 12 to get married.

But countries like **California** and **Mississippi** do not have any specific minimum age limit for marriage if there is their parents’ consent. This traditions and conditions are badly affected to the right to education, especially of children below 18 years of age. In happens indirectly.

As well, this right to education is also being violated by child slavery around the world. Not only that, it is also a subtle form of labor exploitation that does not take place in public.

**CONCLUSION**

As stated at the outset, education is, in fact, a weapon. It can make a big positive difference through an intellectual transformation. We need to use it properly for a beautiful world. It paves the way for many global successes. It is not something that an individual should receive or that an individual can receive on his own. If so, it should have the support of a state force. State assistance is to legislate education as a fundamental right. Then no one can steal it. Security is a guarantee.

Overall, seventy two million children worldwide are out of school due to poverty and marginalization. Those innocent children did not receive the aid of local or international law. This suggests that theoretically existing insurance are stalling due to certain practical shortcomings. The **UN Convention on the Right of the Child[[13]](#footnote-14)** asserted that every child has a right to education. Actually, just as food is essential to sustain life, so education is essential to the success of life. Even poverty in a country can be overcome if everyone in a country is well educated.

This right should not be hindered by any religious custom, social policy, political philosophy or economic hardship etc. But without such a diverse social status, no regime or human company can function. Therefore, societies should be accustomed to combine them and keep the educational process intact. This is because a good religious environment enhances the morality of an education. Just as good education illuminates the world, bad education destroys the good social corporations.

Since the right to education is well established in almost every country, there are loopholes in its enforcement. So, the executive systems need to be strengthened and made more efficient and better monitored. The easiest way to do it is country wise. And also it is very important to setup institutions where free education is available and to recruit scholars for formal education without any discrimination. Then the golden right to education around the world will be gradually established. Education is the key to universal independence. It is the responsibility of the rulers as well as the society to safeguard it as a constitutional right. That right is safe when it cannot be broken. Then anyone of any level will be able to enjoy it without interruption.

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