



Are Our Fundamental Rights an Illusion? Examining the Gap between Theory and Practicality of Art.14 and Art.21(A).

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ABSTRACT:

This document deals with the breach of items Article 14 and Article 21(A) of the Indian Constitution. It identifies some problems and solutions that must be implemented before India to be considered a true democracy. The theory of classification should not be confused with the right to equality. Article 14 strikes at arbitrariness because any arbitrary action must necessarily involve the negation of equality. Article 14 is a court methodology used to determine whether a legislative or executive action is discriminatory and, as such, deprives people of their equality. Article 14 is merely a judicial formula for determining whether the legislative or executive question is bigoted and thus, constitutes a denial of equality. While Article 21(A) is the base of the pyramid, the nation's future should depend on primary education. Mahatma Gandhi said that basic primary education should be free and compulsory for all: 'Every child has a right to education that shall be free at elementary and fundamental stages. Elementary education shall be compulsory. (Article 26 of the 1948 Universal Declaration of Human Rights). The UN recommendation has been reinforced in the provisions of the Right of Children to Free and Compulsory Education (RTE) Act (2009). Right to Education Act, 2009 (Article 21 A) came into effect in India on 1 April 2010, which denotes ensuring free and compulsory education for all children of 6-14 years of age. I have collected responses through online mode. A random sampling method was used for this study. The essence of equality percolates through the Constitution of India. There are a total of 30 samples used for this study. This paper uses graphical representation. Therefore, the Constitution of India has given a good interpretation of this article.

Keywords- Equality, Constitution, Education, Democratic, Injustice.

INTRODUCTION:

The Constitution of India guarantees equal treatment to all through Art 14 to 18. In the series of Constitutional provisions from Articles 14 to 18, Art 14 is the most significant one. The objective stated in our Constitution concerning status and opportunity is typified in Art14 to Art18. The Right to Equality has been pronounced a Basic Feature of the Indian Constitution by the Supreme Court. The expression 'Uniformity under the steady gaze of Law' happens in the most composed Constitution which ensures the appropriate Equality, the Constitution of the US utilizes the expression 'Equal protection of law'. Our Constitution, otherwise uses two joints that are equally in constant views of the law and equal to the law. Both nodes can seem undisputable. However, mean different things to their creation, it will be said that 'Balance under the steady gaze of Law' while the contrary articulation owes its cause to the American Constitution. The Preface to the Constitution of India underscores the rule of Equality because it is essential to the Constitution. Indeed, even sacred revisions that affront crucial construction of the Constitution are invalid. The simple indisputable reality that Equality, a segment of the fundamental construction, is frequently rejected for a restricted reason to monitor such law, doesn't keep it from being a piece of the basic component of the Constitution. it had been held that the pith of the rule behind Art.14 is a segment of fundamental construction. Indeed, the pith or standard of the appropriate nature of infringement is a higher priority than uniformity in the theoretical or formal sense. Fairness is one of the heavenly foundations of the Indian majority rules system. The doctrine of equality before the law under the watchful eye of the law might be a culmination of the Rule of law which swarms the Indian Constitution. Neither Parliament nor any State Legislature can violate the principle of Equality. The study's main aim is to understand the concepts of Article 14 and Article 21(A) and the problems that still exist in equality and its implementation. As we know education is a powerful tool used in society and individuals are bestowed with the fundamental right of Right to Education under Article 21(A) of the Indian Constitution. However, post-independence, Article 45 stated that "the State shall endeavour to provide within a period of 10 years from the commencement of the Constitution, free and compulsory education to all children until they complete the age of 14 years" but nothing much happened towards the universalisation of the elementary education. National Policy on Education, 1968 was the first document towards elementary education. In 1992 itself, in the case of **Mohini Jain Vs State of Karnataka**, the Supreme Court of India held that right to education is a fundamental right enshrined under Part III of the constitution and that every citizen has a right to education under the constitution. Subsequently, in the case of **Unni Krishnan Vs State of Andhra Pradesh**, the Supreme Court held that "though right to education is not stated expressively as a fundamental right, it is implicit in and flow from the right to life guaranteed under article 21 and must be included in the light of the Directive Principles of the constitution. Thus, the right to education, in the context of Articles 45 and 41 means (a) every child/ citizen of this country has a right to free education until he/she completes the age of fourteen years

and (b) after a child completes 14 years, has a right to education is circumscribed by the limits of the economic capacity of the State and its development” Finally, in 2002, the amendment of the Constitution of India made education a fundamental right, but qualified it by adding that the manner of this right would be as determined by a follow up consequential legislation. This follow-up legislation referred to in the 2002 Amendment of the Constitution of India (the Constitution 86th Amendment) is the ‘The Right of Children to Free and Compulsory Education Act 2009’, passed by parliament in August 2009, and notified into force in April 2010. Based on this Act, subordinate legislation, the Model Rules, was framed by the centre to provide guidelines to states for implementing the Act. National Policy of Education of 1968 was the first document of the Government of India, which reannounced its commitment to provide primary education and this was further assimilated in the National Policy of Education in 1986. Ultimately when NPE 1986 was reviewed in 1990, it was suggested that the Right to Education be incorporated as Fundamental Right. By the same time, India had signed with United Nations Conventions of the Rights of the Child in 1992, and India also started to work on the legislation to introduce the Right to Education as a Fundamental Right. In **Wisconsin v. Yoder**, the Court recognized that: "Providing public schools ranks at the very apex of the function of a State." The history and the evolution of the theme within the United Nations (UN)²⁹, and it is evident that the centrality of human rights in the UN has been translated into a multitude of human rights documents generated through political discussions and negotiations among nation-states. International treaties, covenants, and conventions that aim to establish and regulate human rights in the international sphere are numerous and it is patent that the practice of generating international legislation on rights will continue for many years as the challenges which surprise the world with inequality, ignominy, and constraints are under continuous transformation.

CONSTITUTIONAL AMENDMENTS ON RTE ACT, 2009:

The RTE Act, inter alia, provides for the following:

- (i) Up until they finish elementary school, children have the right to free, mandatory education at a neighbourhood school.
- (ii) It clarifies that "compulsory education" refers to the obligation of the relevant government to guarantee free elementary education and to make sure that all children between the ages of six and fourteen are admitted, attend, and finish primary school. "Free" means that no child will have to pay any fees, charges, or expenses that would keep them from attending and finishing elementary school.
- (iii) It provides for the admission of an unadmitted kid to a class that is appropriate for their age.
- (iv) It outlines the obligations of relevant governments, duties and responsibilities of appropriate Governments, local authorities, and parents in providing free and compulsory education and sharing financial and other responsibilities between the Central and State Governments.
- (v) It establishes the rules and guidelines for, among other things, teacher-student hours, school-working days, facilities and infrastructure, and pupil-teacher ratios (PTRs). By guaranteeing that the designated student-teacher ratio is upheld for every school, rather than merely as an average for the State, District, or Block, it allows for the logical deployment of teachers and eliminates any disparity between urban and rural teacher postings.
- (vi) It also forbids the use of teachers for non-educational purposes, except for disaster assistance, local government elections, state legislative and parliament elections, and decennial censuses.
- (vii) It allows for the hiring of teachers who have received the necessary training, meaning they possess the necessary academic and entrance credentials.
- (viii) It forbids (a) mental and physical abuse; (b) screening processes for child enrolment; (c) capitation fees; (d) teacher private tuition; and (e) operating schools without authorization.
- (ix) A system of child-friendly and child-centred learning, it enables curriculum development by following the values enshrined in the Constitution, ensuring the child's holistic development, building on their knowledge, potential, and talent, and removing their fear, trauma, and anxiety. Since India has a vision for the right to education, it was initially included as a separate chapter in 2009 to ensure that this desire is realized.

Section 8(c) ensures that children belonging to weaker sections or disadvantaged groups are not discriminated against and prevented from pursuing complementary education on any grounds. This shift in itself is a huge challenge to cope with because initially the system concentrated on selection from day one, even before the child is formally a part of a school, and judged and labelled the child as a slow, failure, even when the education providers chose to ignore the psychology that any child shall learn and develop in an environment, which would ensure quality education to them, thereby destroying the very fabric of „equitable” quality.

PROBLEMS WHILE IMPLEMENTING THE RIGHT TO EDUCATION ACT:

The actual implementation is far from easy and even after more than ten years, there is much more to be seen in terms of changes brought about by the act. Some of the major challenges faced by the society are as follows:

1. **Lack of Funds:** The first issue that springs to our mind is the obvious lack of funding necessary to carry out this Act's provisions as effectively as feasible. Even with coordination between the federal and state governments, educating such a huge population requires a significant amount

of funding. At first, a lot of state governments stated that they would need more money to carry out the Act. At that point, the Orissa administration also demanded that the state be placed in a special category. Since every demography is unique and will need varying amounts of funding, state governments are perfectly justified in alleging a shortage of resources. The same ratio of 55:45 might not be practical everywhere or in the long run.

2. **Infrastructural Challenges:** The Act requires schools to maintain a minimal level of facilities for pupils. In essence, ensuring that drinking water, sanitary kitchens for midday meals, the number of classrooms and their capacities, playgrounds, and, lastly, separate restrooms for boys and girls are all provided to students as part of free education. The fundamental truth is that the majority of schools continue to fall short in numerous areas and fail to satisfy these fundamental standards. According to a National University of Education Planning and Administration report, about half of the nation's elementary schools lack separate restrooms for females. More and more surveys or inquiries into this issue would only. Better decision-making and better allocation of funds can potentially fix this problem.
3. **Shortage of Qualified Teachers:** The shortage of qualified instructors in the majority of Indian schools is a much less obvious issue. Although it is more common in rural government schools, private schools can also experience this issue. The average teacher-to-student ratio is significantly higher than the 1:30 allowed by the Act, even in cases when there are qualified teachers. The cause of educating such a large population is severely harmed by this depressing teacher scarcity. What is very much needed is the presence of regulatory bodies, similar to bar councils for lawyers, school teachers, and administrators. It would enforce strict adherence to certain prescribed qualifications that the teachers must meet. A sense of accountability is also bought in as necessary actions can be taken against teachers or administrators, without involving the school.
4. **Policy of no detention:** One rule that has shown to be a weakness is the Act's prohibition on holding kids in class. This implies that a formal exam that a student must write and pass to advance to the next class is not required. If a student was detained, the action was done to lessen the likelihood that they would leave school. Its failure to assess a student's knowledge base is a direct result of this. Additionally, students lack the motivation to study and compete. Overall, this strategy encourages teachers to be irresponsible and have a relaxed attitude. There is no clear necessity for detention because there is no chance of it.
5. **Disproportionate allocation of resources for elementary schooling:** As a result, according to UDISE+ data, there are 122.5 million enrolments in primary schools. However, it decreases to 38 million at the secondary level, and only 27.8 million at the higher-secondary level.
6. **Is education really free under the Right to Education Act?** The availability of a school close to a child is the fundamental component of access, as there are still regions in the nation where this is not the case. According to the Act, every child must be able to attend a local school within three years after the when the Act is officially announced. However, a child's ability to attend a neighbouring school is not guaranteed by its existence. Cost is one of the main obstacles, especially for the underprivileged and impoverished. This is the point at which the state's obligation to provide "free" education—one of the key provisions of Article 21A—comes into play namely the state shall provide free. Typically, "free" means that the child's parents are not paying any costs. However, several studies have found that the charge is simply one element of spending on education. Additionally, because those who are landless, impoverished, and socially disadvantaged are unable to pay for additional expenses, their children do not attend school. While uniforms, copies, books, and other expenses may be comparable, they vary from location to location. The Act requires the state to provide free education, which it defines as any cost, charge, or expense that prevents a kid from attending school. With consequences for increased state spending, this more expansive definition seems to be a more cost-effective approach to addressing the issue of access than offering a list of topics that will be discussed, which is not comprehensive because it is hard to predict what will happen in various places and in the future.
7. **Is quality education available to all?**

Ongoing participation in education is, similarly affected by the quality of access, despite increased enrolments in recent years, clearly demonstrating that quality concerns cannot wait until access is assured, especially given the growing trend of seeking out dubious private schools perceived to offer 'better' quality. The strategy of providing education through guarantee centres and employing untrained para teachers has also significantly worsened the quality of government schools since the introduction of the District Primary Education Programme, this cost- reduction approach was further extended through the Sarva Shiksha Abhiyan (SSA) in various states across the country. This strategy has led to a more unequal educational landscape, as the government system now comprises multiple types of institutions – such as EGS centres, neglected rural schools, alternative schools, as well as Kendriya, Sarvodaya, and Navodaya, among others. Access to these different types of schools is influenced by the social and economic background of the children, resulting in further segregation. As a result, the social integration that education was intended to foster, by uniting children from varying backgrounds in the same classrooms, has instead, some might argue intentionally, led to greater fragmentation. It is not surprising, then, that a growing number of parents, both in urban and rural areas, are drawn to the option of buying education from private profit-driven schools that appear to offer quality through superficial enhancements and consistent teacher availability, despite facing significant financial challenges. While the Act ensures that every child who goes through the elementary education system receives a completion certificate, it does not ensure that the child has developed the necessary competencies from this educational experience. There are no established standards for learning outcomes. This is a situation where graduation is assured, but education is not. The inability of a child to demonstrate the acquisition of competencies also goes unaddressed, missing opportunities for corrective actions and improvements within the system. Furthermore, the Act ought to outline a framework to assess the quality of the education provided; without consistent and innovative assessments, there can be no assurance of educational quality.

- 8. Who will implement and monitor child rights?** The Act does not address the actual abilities or the quality of oversight provided by the national and state commissions tasked with the protection of child rights. Although the provisions allow an aggrieved individual to file a complaint with the local authority, there is a clear issue with this clause, as the very body responsible for safeguarding children's rights is also tasked with resolving complaints against itself. The Act does not specify which state parties will be accountable if its enforcement is found to be lacking. Is it possible to have a Fundamental Right to an unequal and substandard education? The clear response from the central government is: Yes, Professor Amartya Sen stated to the Confederation of Indian Industries in December 2007 that funding for school education can only come from the state. No advanced nation has ever successfully provided universal quality education by undermining or devaluing its publicly funded education system. This holds for all G-8 countries, including the USA. In contrast to this universal reality, the Right to Education Act is audaciously challenging historical precedents.

These are the various challenges faced by the Indian society and the government. To overcome these challenges various amendments need to be executed to impart education to every child residing in the country.

PROBLEMS WHILE EXECUTING ART.14 IN ITS REAL SENSE:

According to the Indian Constitution, no citizen is subjected to discrimination based on their caste, religion, sex, or financial status. During elections, every citizen has the right to cast their ballot for the representative of their choice. However, in practice, not everyone feels equal under the tenet of "one vote, one person." Because of their financial situation, the im-poverished feel abandoned. Because of poverty and a lack of resources, they are compelled to work in difficult conditions. When it comes to health, education, etc., these people are not treated fairly. In India, people are also subjected to discrimination based on their gender, caste, and religion. In rural places, people from lower castes are still viewed as untouchables. According to the Indian Constitution, no citizen is subjected to discrimination on the basis of their caste, religion, sex, or financial status. During elections, every citizen has the right to cast their ballot for the representative of their choice. However, in practice, not everyone feels equal under the tenet of "one vote, one person" because of their financial situation, the impoverished feel abandoned.

A. DISCRIMINATION AMONGST GENDERS: Due to the belief that education should only be available to boys, many young girls are not sent to school. Women are subjected to both physical and sexual harassment. In addition to discrimination against women, there are several social issues such as dowries, domestic violence, sexual abuse, and female foeticide.

B. DISCRIMINATION BASED ON CASTE, CREED, RACE, AND SEX: Inequality is widespread because of incorrect and hostile definitions of race, even though race is a social and political construct. Racial discrimination is one of the most prevalent types of discrimination in the world, according to UN statistics. Racial discrimination, as well as related prejudice based on colour, language, and ethnicity, affects both men and women. Every aspect of society is impacted by racial disparity, including public health, education, and employment. Racism can also be fueled by inequality. Systemic injustices that deprive particular groups of resources, for instance, can foster false perceptions about their IQ, skills, and work ethic. A vicious cycle is thus created as a result of this stigma reinforcing inequality.

C. SOCIAL CLASS: Social class stereotypes support inequality through various routes: ambivalent content, early appearance in children, achievement consequences, institutionalization in education, appearance in cross-class social encounters, and prevalence in the most unequal societies. Class-stereotype content is ambivalent, describing lower-SES people negatively (less competent, less human, more objectified).

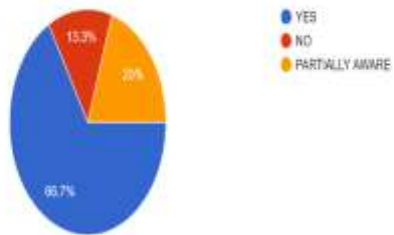
D. MARGINALIZATION: Placing or maintaining someone in a position of helplessness or insignificance within a community or organization is known as marginalization. Social turmoil may result from it. Marginalization is likely to be experienced by dissidents. People who experience marginalization may be classified according to a variety of factors, including age, socioeconomic situation, gender, sexual orientation, ethnicity, and handicap status. Disenfranchised populations frequently face barriers to accessing quality healthcare, education, and jobs that would enhance their quality of life. One of the major reasons for marginalization is poverty. Because they reside in underserved communities and lack access to essential services, or because they spend too much time and effort attempting to support themselves and their families, persons in poverty frequently lack the time and resources to advocate for their interests. This problem is made worse by the disproportionate influence that money has on the political system. For instance, a large number of homeless persons are unable to obtain mental health care or other social benefits that could help them live better lives.

E. HIGH INFLATION AND STAGNANT WAGES: India is currently grappling with a challenging economic situation characterized by high inflation and stagnant wages. The wages of casual workers have also decreased. This wage stagnation, coupled with rising inflation, which stood at nearly 5.4% in 2024, has made it difficult for individuals to maintain their standard of living. Additionally, the growth of the Indian economy has slowed; in the second quarter of the current fiscal year, GDP growth rates dropped from 8.2% in 2023–2024 to 5.4%. The country's long-term growth prospects are seriously threatened by this economic slowdown, excessive inflation, and stagnating wages. This leads to unequal wealth distribution and is one of the contributing factors when a country is unable to maintain its right to equality.

These are the various social and economic challenges faced by Indian society and that's the reason it is unable to achieve its Right to Equality in its real sense. Unawareness is also one of the leading reasons for society to not achieve their fundamental rights in their true sense. The data or the pie chart presented below shows the percentage of unawareness and understanding of their fundamentals.

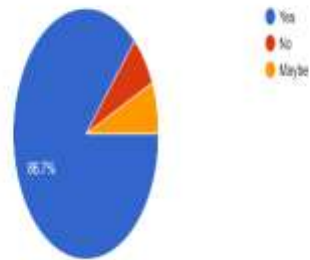
ARE YOU AWARE ABOUT THE BASIC FUNDAMENTAL RIGHTS GUARENTEED BY OUR INDIAN CONSTITUTION?

33 responses



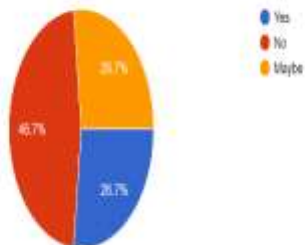
HAVE YOU EVER HEARD ABOUT THE TERM RIGHT TO EQUALITY?

33 responses



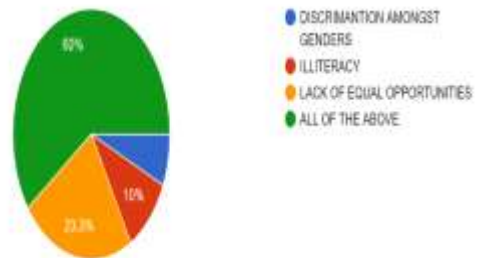
DO YOU THINK RIGHT TO EQUALITY IS FULFILLED IN ITS REAL SENSE?

33 responses



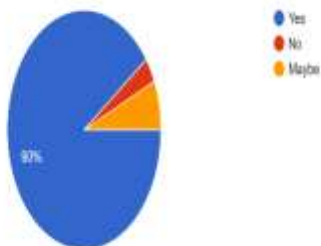
WHAT DO YOU THINK IS THE ROOT CAUSE BEHIND THE NON-IMPLEMENTATION OF ART.14?

33 responses



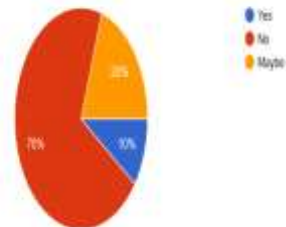
HAVE YOU HEARD ABOUT THE TERM RIGHT TO EDUCATION?

30 responses



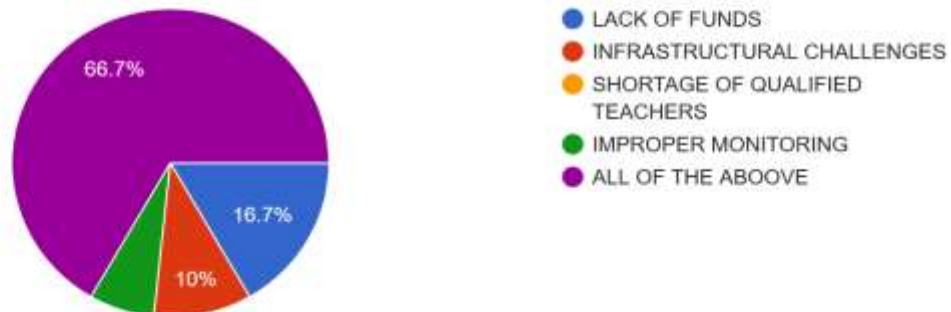
DO YOU THINK EVERY CHILD IN THE COUNTRY IS GETTING ELEMANTARY EDUCATION AS PER THE RIGHT TO EDUCATION ACT?

30 responses



WHAT ARE THE VARIOUS REASONS FOR THE NON- IMPLEMENTATION OF THE RIGHT TO EDUCATION ACT?

30 responses



WHAT ARE THE VARIOUS SUGGESTIONS THAT SHOULD BE EXECUTED IN ORDER TO ENSURE THAT EVERY CHILD ATLEAST COMPLETES ELEME...UARENTED BY THE RIGHT TO EDUCATION ACT?

30 responses



As per the data presented in chart number (a), it is clearly understood that there is a lack of awareness amongst individuals, as 13.3% of individuals are not aware of their basic fundamental rights, while 20% of the population is still partially aware of their basic rights. Hence, an increase in awareness should be raised to achieve a stable and complete data. Every data presented below shows the disparities in the working system of the Indian Constitution, and that is the sole purpose of penning down the instability and inefficiency in the functioning of the Constitution. Various implementations and suggestions should be taken down into consideration by the Indian government for the efficient working and achieving these rights in real sense.

SUGGESTIONS:

Given the difficulties previously described, the following recommendations could be useful in overcoming the difficulties.

1. The RTE Act must be implemented promptly by the state governments. States that have not yet issued notifications under the Act are required to do so. The Central Government ought to set a deadline for the states' receipt of funding. The Centre shouldn't give any money to a state to construct new schools if the state government continues to be unresponsive to notifications.
2. Priority should be given to establishing primary schools in underserved communities with the bare minimum of infrastructure facilities. The central government should give the states their share of the budget as soon as possible. The current government schools' facilities ought to be upgraded. Unrecognized private schools must be assisted in improving their facilities through resource support and financial institution connections to prevent closure for failing to meet the required recognition standards within three years.

3. The necessary number of instructors must be hired as soon as possible in order to satisfy the growing demand for full-time, certified teachers. The required student-teacher ratio must be preserved. It becomes necessary to construct more schools and hire more teachers when more kids enter the primary school age range in order to maintain improvements in the standard of education.
4. Primary schools need to be made aware of the provisions made for 25 percent reservation of seats for the economically and socially weaker and disadvantaged children and the role of school managing committees in this regard. The identification, selection, and verification procedure of such children should be well-defined and well-informed. It should also be noted how the whole process will be monitored.
5. There is a need to streamline educational administration. The pace of implementation of the Act can become faster if bottlenecks in administration are removed. Altogether, it is essential to adopt an integrated approach and establish linkages between education and other related areas such as child care, nutrition, and health. Each state should formulate a 'State Programme of Action' and each district and school should formulate a Programme of Action of its own by taking into account the State Programme of Action.
6. To achieve the goals of Free and Compulsory Elementary Education, it is of utmost importance to develop curricula that is responsive to changing needs and facilitates the incorporation and integration of new content areas related to science, technology, population, and the environment as well as the surroundings.
7. For achieving the Right to Equality in its real sense, gender discrimination should be avoided. Every individual should be given equal rights and opportunities despite their caste, creed, race, and sex. Women's empowerment should be regarded as the topmost priority and an increase in the number of women in every field should be prioritized.
8. The Patriarchal system or male dominance should be abolished and every man or woman should be given equal powers and opportunities to succeed in every possible field.
9. Strengthening legal frameworks and ensuring that culprits are getting punished as early as possible either male or female.
10. Educational Reforms, economic empowerment, social awareness campaigns, Judicial Activism, community engagement, monitoring and evaluation are the various factors which should be prioritized in order to achieve right to equality.

CONCLUSION:

It is necessary to focus all efforts with complete passion and commitment in order to meet the challenges and overcome the obstacles that stand in the way of implementing the Right to Education Act. In this sense, the entire country should bear responsibility, not just the federal and state administrations. Support and involvement from the community can significantly impact the achievement of this objective. More coordination between the various agencies and functionaries working on this project is required. At every level, cost effectiveness and accountability must be determined in order to overcome budgetary restrictions and demographic demands. The entire program should be improved qualitatively as the main goal.

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