Children's Right to Education in India: Between Law and Reality

Dr. Bharti Prabhakar*

*Assistant Professor, Department of Lifelong Learning, University of Jammu-180006

ARTICLE INFO	ABSTRACT
	The recognition and protection of child rights are fundamental to a civilized society, acknowledging children as individuals entitled to safety, security, and opportunities for holistic development. As human resources constitute a vital national asset, their cultivation is primarily achieved through education, with a strong foundation in basic education being essential. Education is widely regarded as the pathway to individual progress and development. Following India's independence from British rule on August 15, 1947, the nation gained the opportunity to redesign its educational framework to extend learning to its maximum population. The constitution subsequently guaranteed free and compulsory elementary education, empowering India to modify previous systems and formulate policies aligned with national needs. Since independence, a series of commissions—such as the University Education Commission and the Secondary Education Commission alongside various policies, programs, and legislative acts, culminating recently in the National Education Policy (NEP) 2020, have been established. Despite these efforts, the educational rights of children remain unfulfilled, as they continue to be denied access and equity in various ways. From the household and the classroom to broader society, children frequently face discrimination and exclusion from education due to a multitude of socio-economic, cultural, and systemic barriers. The aim of this paper is to critically examine the status of children's educational rights in independent India. It will reflect upon persistent flaws within the Indian education system that contribute to the violation of these rights. Furthermore, the researcher will endeavor to identify actionable strategies and measures to secure equal educational rights for all children, thereby making the right to education a livable reality. **Keywords:** Child Rights, Indian Education System, Access to Education, Systemic Discrimination, right to education, NEP-2020.

I. Introduction

Rights form the foundational bedrock necessary for the existence and development every individual. Within this spectrum, certain rights are designated as fundamental, as they are officially recognized and enshrined in the Constitution. These fundamental rights are distinguished by two definitive characteristics: they are explicitly mentioned in the Constitution, and they are legally enforceable, allowing individuals to seek judicial remedies if these rights are infringed. Central to this framework lies the right to education, which is crucial for unlocking human potential and ensuring the realization of other rights.[i]The 86th Constitutional Amendment (2002)[ii] elevated the Right to Education to a fundamental right under Article 21A, mandating the state to provide free and compulsory education to all children aged 6 to 14 years.[iii] This was operationalized through the Right of Children to Free and Compulsory Education Act (RTE Act), 2010,[iv] which set key norms, including infrastructure standards, pupil-teacher ratios (PTR), provisions for disadvantaged groups, teacher training and qualifications and child-learning environment. The National Education Policy (NEP) 2020 further expanded this vision by advocating quality education from early childhood (age 3) to higher education, aiming to strengthen India's education system for future challenges.[v]
However, despite these progressive policies, significant challenges persist in implementation. Recent data from the UDISE+ dashboard (2021-22) reveals alarming gaps, including the presence of 4,500 under qualified

teachers in secondary and higher secondary schools—3,634 of whom teach Grades IX-X despite having education levels below secondary school, and 914 in Grades XI-XII with only middle-school qualifications. States like Tamil Nadu and Uttar Pradesh report the highest numbers of such teachers, while Uttarakhand faces a severe crisis, with 67% of primary school teachers lacking mandatory qualifications. This trend is seen nationwide, with higher proportions of under qualified teachers at the primary and middle school levels compared to secondary and higher secondary levels.[vi]

Additionally, in-service teacher training remains dismal, with Telangana failing to train any higher secondary teacher in 2021-22, and eight states and Union Territories (excluding Ladakh) training fewer than 5% of their teachers. Moreover, 31 of the 36 states and UTs trained fewer than half their elementary school teachers.

Compounding these issues is a staggering shortage of 986,565 teachers (15% of sanctioned posts) as reported by a parliamentary committee in March 2023. Here it is important to underline that the RTE norm specifies a pupil-teacher ratio (PTR) of one teacher per 35 students. While most states meet this standard, Bihar is an exception, with each teacher catering to about twice the number of students compared to the national average. Additionally, 81% of schools with PTRs above 35:1 are in rural areas, exacerbating the challenge. Adding insult to the injury, there are around 117,285 single-teacher schools in India, and only 34.4% of all schools have the number of teachers required to be compliant with the RTE teacher requirements.[vii]

India's education crisis is exacerbated by deep-rooted social issues, including child marriage, child labour and trafficking depriving children of schooling; domestic violence and child sexual abuse creating unsafe learning environments; and corporal punishment in schools deterring attendance and mental well-being.

Education is a powerful tool for poverty reduction, gender equality, and social cohesion. As Justice P.N. Bhagwati rightly emphasized, *"Education is the most important function of the State; it is the very essence of the Constitution."*[viii] Yet, systemic failures—under qualified teachers, inadequate training, severe shortages, and socio-economic barriers—have hindered progress.

Unless urgent reforms address these gaps, the vision of universal quality education will remain an unfulfilled promise. This chapter examines these harsh realities through latest data and statistics, revealing why India's education system continues to struggle despite progressive policies.

II. Examining Issues and Challenges in the Indian Context

A. Child Marriage in India Leads to denial for Education:

India has made notable progress in reducing child marriage, yet it remains home to the largest number of child brides globally, jeopardizing the education, health, and future of millions of girls. According to a 2023 UNICEF report, *"Ending Child Marriage: A Profile of Progress in India,"* one in three child brides worldwide lives in India, highlighting the scale of the challenge. While advancements have been made, the current rate of decline is insufficient to meet the Sustainable Development Goal (SDG) target of eliminating child marriage by 2030.[ix]

The problem is geographically concentrated, with over half of India's child brides residing in just five states—Uttar Pradesh, Bihar, West Bengal, Maharashtra, and Madhya Pradesh. Once married, girls face immense barriers to continuing their education—fewer than 2 in 10 married girls remain in school, cutting short their academic and professional prospects. The consequences are severe: without education, these girls lack the skills and qualifications needed for employment, trapping them in a cycle of poverty and dependency.[x]

Early marriage also leads to early pregnancies, which pose serious health risks for young mothers and further restrict their ability to pursue education. The interplay of child marriage, school dropout rates, and limited economic opportunities creates a self-perpetuating system of disadvantage, particularly for girls in rural and marginalized communities. Despite legal prohibitions and policy efforts, deeply entrenched social norms, economic pressures, and gender disparities continue to drive the practice.

B. Child Trafficking and Denial of Education:

Childhood should be a time of learning, play, and joy—a foundational period that shapes a child's future. Yet child trafficking continues to rob thousands of children of their basic rights and education. Despite laws and policies, weak implementation has allowed this crime to persist, threatening the nation's goal of universal education. As per Ministry of Women and Child Development, there were 751 reported child trafficking cases in the country in the year 2020.[xi] In January 2022 alone, the Railway Protection Force rescued 1,045 children from trafficking networks.[xii] According to National Crime Records Bureau report in 2020, Maharashtra, Madhya Pradesh and West Bengal emerge as the worst-affected states, accounting for the highest numbers of child abductions.[xiii] Since child trafficking is a hidden crime, there could be a vast difference in the reported cases and the ground reality of it. However, a more realistic estimate suggests that annually there are 135000 children being trafficked in the country[xiv] and of the people who are rescued, majority (60%) are children.[xv]

Without addressing this hidden epidemic, India's progress on child rights and education goals remains fundamentally compromised.

C. Child Victims of Domestic Violence:

Domestic violence, characterized by abusive and coercive behaviors including physical, sexual, and psychological aggression severely undermines children's education. Research by Valerie Garnett (2013)

highlights that children exposed to intimate partner violence (IPV) often experience reduced academic progress and increased disruptive or unfocused behavior in school. Those from dysfunctional families are significantly less likely to perform successfully in educational settings.[xvi]

Globally, UNICEF reports that approximately 275 million children are affected by domestic violence each year, enduring the long-term consequences of a turbulent home environment.[xvii] A study from the Lee Kuan Yew School of Public Policy, *The Link Between Mothers' Vulnerability to Intimate Partner Violence and Children's Human Capital*, reveals that IPV in India negatively impacts young children's cognitive development and educational attainment. This, in turn, poses a threat to the country's future economic growth by hindering human capital accumulation—a critical factor for development.[xviii]

Beyond immediate academic struggles, UNICEF emphasizes that domestic violence inflicts long-term physical and psychological damage, impairing children's ability to learn and socialize. Studies from major developing nations including China, Colombia, Egypt, India, Mexico, the Philippines, and South Africa consistently demonstrate a strong correlation between violence against women and violence against children, further exacerbating the cycle of disadvantage.[xix]

D. Violation of Rights of Education due to Child Sexual Abuse:

The Indian educational system must prioritize the safety, rights, and well-being of children and adolescents, particularly girls, throughout their schooling. This includes safeguarding them from sexual abuse, harassment, and other violations while establishing clear, accessible, and effective reporting mechanisms. As emphasized in the National Education Policy (NEP) 2020, schools must create efficient, timely, and widely known systems to address such issues, ensuring due process and accountability.

However, a stark gap exists between policy and practice. A survey conducted by OutLawed India's initiative assessing school sexual assault frameworks across 200 Indian cities revealed alarming discrepancies. Schools, which should be safe havens for students, are increasingly sites of abuse. For instance, Chennai alone recorded nearly 200 complaints of sexual harassment against teachers in May 2021.[xx] Worse, many institutions actively discourage reporting to protect their reputation. A study by Sadaf Modak (2020) highlights this trend, citing a case where a school van driver was sentenced to 10 years for raping a 6-year-old student in 2016, an incident the school had initially suppressed to avoid stigma.[xxi]

Adding to these concerns is the rising threat of online exploitation. With 60% of India's internet users being children and young people, digital spaces have become hotspots for abuse. According to the U.S. National Center for Missing & Exploited Children (NCMEC), at least 25,000 images of child sexual abuse are uploaded daily from India, accounting for 12% of global circulation.[xxii] This alarming reality also exposes the vulnerabilities in digital education. With the rise of EdTech platforms and online learning systems, children now spend more time online, increasing their exposure to predators, cyberbullying, and inappropriate content. While these tools provide crucial access to education, the lack of strong safeguards, parental controls, and cybersecurity measures leaves students at risk. Schools and policymakers must ensure that digital learning does not come at the cost of child safety, implementing strict data protection laws, mandatory cyber hygiene training, and secure authentication mechanisms to protect young users.

E. Child Labour and Educational Rights of the Children:

India has made significant progress in universalizing school education, which has contributed to a decline in child labour over the years. The government has demonstrated strong commitment by ratifying ILO Conventions 138 and 182, and enacting progressive legislation like the Child Labour (Prohibition and Regulation) Act, 1986 and its 2016 amendment, which completely prohibits employment of children below 14 years and protects adolescents (14-18 years) from hazardous occupations. However, ground realities paint a concerning picture - children across the length and breadth of the country, from Kashmir to Kanyakumari, continue to work in various unorganized sectors including workshops, mines, domestic work (both paid and unpaid), and even begging. Many spend their crucial formative years, which should be dedicated to education, working as shoe-shiners, shop assistants, rag-pickers or street vendors instead of attending school.

While increasing school enrollment rates have contributed to reducing child labour overall, millions of children remain trapped in exploitative work situations that often go unreported or undercounted. According to Census 2011 data, 11.8 million children aged 5-17 years were classified as "main workers" (working six months or more annually).[xxiii] Subsequent surveys (estimates derived from combining the Employment Unemployment Survey 2011/12 and the Indian Human Development Survey 2011/12) found that about 4% of children in this age group (approximately 13.2 million) were engaged in child labour in 2011-12.[xxiv] More recent data from the 2019 India Time Use Survey suggests that about 7% of children aged 6-17 years were involved in child labour, including household chores. The persistence of child labour can be attributed to multiple factors including household poverty, lack of access to quality education, and economic shocks like those experienced during the COVID-19 pandemic which forced many children out of schools and into workplaces.[xxv]

Particularly alarming is the continued prevalence of bonded labour, where children are forced to work to repay family debts, despite clear legal prohibitions. The 41st report of the Lok Sabha's Standing Committee on Labour (2022-23) revealed disappointing progress in eliminating this practice, noting inadequate implementation of rehabilitation programs and identification of high-risk districts.[xxvi] These findings underscore the need for stronger enforcement of existing laws, expanded social protection measures, and more robust education

systems to truly eliminate child labour and ensure all children can enjoy their right to education and a childhood free from exploitation.

F. Corporal Punishment and Educational Rights of children:

India's education system continues to grapple with the persistent issue of corporal punishment despite its explicit prohibition under the Right to Education Act, 2009. Corporal punishment manifests in various forms, including physical violence (beating with sticks, slapping, pinching), psychological humiliation (forcing children to stand for hours, sit in awkward positions, or run around school grounds), and extreme abuses such as sexual harassment, torture, or solitary confinement in classrooms. Shockingly, this issue extends beyond schools, with many children facing violent discipline at home under the guise of "parental correction."

The World Development Report (2018) placed India second after Malawi in a list of twelve countries where a standard II student could not read a single word of short text. The issue of learning outcomes and schooling is even more pertinent when viewed in conjunction with the issue of corporal punishment and praise in schools. The persistence of corporal punishment reflects deep-rooted societal attitudes, including the misguided belief in the adage *"spare the rod and spoil the child"*[xxvii], which discourages reporting. Legal accountability remains weak—while teachers can be charged under Section 323 of the Indian Penal Code (voluntarily causing hurt), prosecutions are rare due to underreporting, school management's reluctance, and lack of parental awareness.[xxviii]

Deb et al. (2017), in their study on public and private schools in Puducherry, report that youth who experienced school corporal punishment reported more anxiety and depression. This was higher in public schools as compared to private schools.[xxix] Studies using Young Lives data for Andhra Pradesh and Telangana reveal that corporal punishment at age 8 reduces math and vocabulary outcomes by age 12, even after controlling for various child and household characteristics. It has been found that children from disadvantaged backgrounds face disproportionate punishment, exacerbating existing educational inequalities.[xxx]

Corporal punishment is not just a disciplinary issue—it is a barrier to India's educational progress and a violation of children's dignity. Eliminating it requires systemic change and a cultural shift away from violence as a teaching tool.

III.   Strategies for Equal Educational Access and Child Rights Protection

To address the systemic barriers preventing India's children from accessing quality education and safeguarding their rights, a multi-pronged approach is essential:

A. Combating Child Marriage
- Grassroots Monitoring: Establish village-level committees (Gram Panchayats) to identify and report child marriages, with mandatory registration of underage marriages.
- Financial Incentives: Expand conditional cash transfer programs (e.g., Dhanalakshmi Scheme) to incentivize families to keep girls in school.
- Awareness Campaigns: Partner with NGOs and local leaders to challenge patriarchal norms and highlight the legal consequences of child marriage.

B. Preventing Child Trafficking
- Strengthening Surveillance: Enhance coordination between railways, police, and child welfare committees to intercept trafficking networks (modeled on RPF's Operation AAHT).
- Community Vigilance: Train Anganwadi workers and ASHAs to identify at-risk children in vulnerable communities.
- Economic Support: Provide scholarships and vocational training to economically disadvantaged families to reduce coercion into labor.

C. Addressing Domestic Violence
- School-Based Interventions: Mandate School Management Committees (SMCs) to monitor absenteeism linked to domestic violence and collaborate with child protection services.
- Parental Counseling: Integrate mental health support and parenting workshops into Anganwadi centers.
- Legal Empowerment: Simplify reporting mechanisms under the Protection of Women from Domestic Violence Act (2005) to include child victims.

D. Eradicating Child Sexual Abuse
- Safe Schools Initiative: Implement NEP 2020's mandate for gender-sensitive grievance redressal systems, including anonymous complaint boxes and trained counselors.
- Digital Safety: Enforce POCSO-eBox for online abuse reporting and mandate cybersecurity modules in school curricula.
- Teacher Accountability: Suspend licenses of educators implicated in abuse cases under Section 21 of the POCSO Act.

E. Eliminating Child Labour
- Direct Benefit Transfers: Expand programs like NEP's Kasturba Gandhi Balika Vidyalayas to cover all BPL families, tying subsidies to school attendance.
- Bonded Labour Eradication: Fast-track rehabilitation under the Central Sector Scheme for Rehabilitation of Bonded Labourers, with priority education access.
- Supply Chain Audits: Penalize businesses employing children under Child Labour (Prohibition) Act, 2016.

F. Banning Corporal Punishment
- Teacher Training: Revise B.Ed curricula to include positive discipline techniques and child rights education.
- Community Oversight: Empower Panchayats to conduct surprise school inspections and public hearings on abuse cases.
- Legal Consequences: Enforce stricter penalties under Section 23 of the Juvenile Justice Act for violators.

G. Cross-Cutting Measures
- Data-Driven Policies: Use UDISE+ and NFHS data to target high-prevalence districts for intervention.
- Inter-Ministerial Task Force: Coordinate between Education, Women & Child Development, and Labour Ministries to align efforts.

IV. Conclusion

Seven decades after independence, India's pursuit of universal education remains a work in progress. Despite significant advances in legislation and policy, the fundamental promise of equitable and secure schooling for every child has yet to be fully realized. This paper underscores a troubling disconnect between formal guarantees and on-the-ground realities, where systemic failures perpetuate the widespread denial of children's educational rights. This denial manifests through interrelated forms of violence and exclusion: child marriages that abruptly end formal education, trafficking that commodifies young lives, domestic abuse that stifles cognitive and emotional development, sexual violence that breaches the safety of educational spaces, and persistent corporal punishment that instills fear rather than fostering learning.

These challenges are not discrete issues but interconnected symptoms of deeper societal disparities. Structural barriers—including entrenched poverty, pervasive gender discrimination, and inadequate implementation of safeguards—continue to hinder access as effectively as any historical obstacle. In this context, the insight of Dr. Amartya Sen remains profoundly relevant: education is the most transformative tool for expanding human capabilities and fostering social equity.

Moving forward requires a coordinated, multi-pronged strategy. First, enforcement of existing legal and policy frameworks must be strengthened through technology-driven oversight and active community monitoring. Second, root causes must be addressed via integrated interventions that combine poverty alleviation with targeted gender empowerment initiatives. Third, a broader cultural shift is essential to cultivate a societal consensus that values and protects every child's right to a safe, inclusive, and quality education.

Reflecting on India's post-independence trajectory, it becomes clear that genuine freedom will be achieved only when no child is denied education due to fear, prejudice, or circumstance. The constitutional vision of education as a fundamental right cannot be deferred any longer—the moment for deliberate and decisive action has arrived. The collective imperative is to transform classrooms into truly inclusive sanctuaries of learning, where India's future can flourish, free from the shadows of violence and exclusion.

Endnotes:

i. Anisha Sahuwala, "Harmony in Rights: A Comprehensive Analysis of Constitutional, Legislative, and Judicial Dynamics Shaping the Right to Education in India" 1 SARVALOKUM: Law and Society 8-9 (2024)
ii. The Constitution (Eighty-sixth Amendment) Act, 2002 [12th December, 2002]
iii. The Constitution of India, 1950, art. 21(A)
iv. The Right of Children to Free and Compulsory Education Act, 2009, Act No. 35 of 2009.
v. From RTE 2009 to NEP 2020: Policies, practices and progress towards equipping youth for the future, available at: https://asercentre.org/wp-content/uploads/2022/12/Rukmini-Banerji_article-1.pdf .
vi. Mohammad Alamullah, Alarming Situation: Thousands of Teachers Underqualified, Reveals New Report, Clarion India, June 1, 2024.
vii. Ibid.
viii. Supra note 1.
ix. United Nations Children's Fund, Ending Child Marriage: A profile of progress in India, 2023 update, UNICEF, New York, 2023.
x. Ibid.

xi.   Ministry of Women and Child Development. (2021). Human trafficking in women and children, available at: https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1779262 .

xii.   ANI. (2022). Railway Protection Force rescued 1045 children from trafficking this January, available at: https://theprint.in/india/railway-protection-force-rescued-1045-children-from-trafficking-this-january/835725/.

xiii.   National Crime Records Bureau (2020). Crime in India 2020. NCRB, available at: https://ncrb.gov.in/en/Crime-in-India-2020.

xiv.   Children of a Lesser God: Trafficking Soars in India. Inter Press Service, available at: http://www.ipsnews.net/2016/06/children-of-a-lesser-god-trafficking-soars-in-india/.

xv.   The Fight Against Human Trafficking in India. The Borgen Project, available at: https://borgenproject.org/human-trafficking-in-india/.

xvi.   Valerie McGaha-Garnett (2013). The Effects of Violence on Academic Progress and Classroom Behavior: From a Parent's Perspective, available at: https://www.semanticscholar.org/paper/The-Effects-of-Violence-on-Academic-Progress-and-%3A-McGaha-arnett/5fcec42a76544e1a5f5cbf749c5c94df4ef4be54.

xvii.   Himanshu Shekhar, Indian Children: Innocent Victims of Domestic Violence (May 28, 2021), available at: SSRN: https://ssrn.com/abstract=3875074 or http://dx.doi.org/10.2139/ssrn.3875074.

xviii. Domestic violence impacts children's education in India, available at: https://lkyspp.nus.edu.sg/gia/article/domestic-violence-impacts-children's-education-in-india.

xix.   UNICEF-for every child, available at: https://www.unicef.org/sowc07/docs/sowc07_panel_2_1.pdf..

xx.   Vibha Nadig and Jwalika Balaji, "Majority of Indian Schools don't have means to prevent, combat child sexual abuse, survey finds" The Print, March 9, 2022.

xxi.   Sadaf Modak, "Schools 'rarely report' child sexual abuse to avoid stigma, says Mumbai court" The Indian Express, January 31, 2020.

xxii.   UNICEF – Strategy for Ending Violence against Children (2020), available at: https://www.unicef.org/india/media/4151/file/End%20Violence%20Against%20Children%20Strategy%20India.pdf.

xxiii. K.G. Santhya et al., Child Labour and Schooling in India: A reappraisal, Population Council India and UNICEF Innocenti-Global Office of Research and Foresight, New Delhi and Florence, July 2024.

xxiv.   Jihye Kim, Wendy Olsen and Arkadiusz Wiśniowski, 'A Bayesian Estimation of Child Labour in India', Child Indicators Research 13, 1975-2001 (2020).

xxv.   Supra note 23.

xxvi.   Orchie Bandyopadhyay, Child Labour in India: a persistent problem, Safety Management, February 8, 2024.

xxvii. . Deswal, Corporal punishment against children and the law, The Times of India, February 22, 2019.

xxviii. Choking Childhood: School Corporal Punishment- Everyday Violence Faced by Disadvantaged Children in India, A Research Report by Agrasar (2018).

xxix.   Sibnath Deb, Aneesh Kumar et al., School corporal punishment, family tension, and students' internalizing problems: Evidence from India, 38(1) School Psychology International 60-77 (2017).

xxx.   V. Morrow and R. Singh, 2015. Children's Perceptions of Punishment in Schools in Andhra Pradesh, India Gender Violence in Poverty Contexts: The Educational Challenge, 32, pp. 67–83. See also, Ogando Portela, M.J., Pells, K. (2015). Corporal punishment in schools: longitudinal evidence from Ethiopia, India Peru and Viet Nam.