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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

COMPARING RIGHT TO EDUCATION LAWS AND POLICIES IN INDIA AND SOUTH AFRICA: ANALYZING ACCESS, QUALITY, AND INCLUSIVITY IN THE EDUCATION SYSTEMS

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ABSTRACT:

“Live as if you were to die tomorrow. Learn as if you were to live forever.”

- Mahatma Gandhi

Mahatma Gandhi implored us to "live as if you were to die tomorrow and learn as if you were to live forever." This philosophy underpins the critical role of education in shaping both individual lives and a nation's future. This research paper delves into a comparative analysis of the legal frameworks and policies governing the right to education in India and South Africa. It examines how these frameworks aim to ensure access, quality, and inclusivity within their respective education systems. The paper begins by providing historical contexts for both nations, tracing the evolution of their educational frameworks. India's journey is characterized by a commitment to universal access, evidenced through the "Right of Children to Free and Compulsory Education Act (2009)". South Africa, shaped by the legacy of apartheid, has navigated a path towards inclusivity and equity post-apartheid, as reflected in the South African Schools Act (1996). Both India and South Africa are developing nations and are moving towards providing socio economic rights to it's citizens and making them a part of fundamental rights so it becomes important to study the growth in respect of the implementation of education policies in both the nations.

INTRODUCTION:

Education is the most important factor that helps development of the whole nation in huge ways. It is important that the citizens of a country are well educated so that they can be a part of the overall development process of the country. Right to education also helps in the development of individual and empowers him or her to take his life to higher levels by being a part of the accessible economy and becomes a part of a profession, a business or any other occupation and helping that individual in developing his financial base and promoting societal development.

Among all the nations worldwide, India and South Africa stand out in their policies for implementing education due to their diverse populations, complex historical legacies and different educational reforms. Both the countries have addressed the challenges of ensuring access to education to each and every citizen from an early age and also focusing on improving the quality of educational experiences, and promoting the educational systems. Due to these efforts that both the countries have put irrespective of their colonial histories and the progress they have made in implementing education policies acts an example for the world.

The aim of this research paper is to conduct a comparative analysis of the education systems, educational policies of India and South Africa with a particular focus on the critical dimensions of access, quality, and inclusivity within their respective education systems. While both nations share a commitment to realizing the right to education, their paths towards this goal have been shaped by distinct historical narratives and socio-political realities.

The Right of Children to Free and Compulsory Education Act of 2009, an important step towards ensuring everyone has access to high-quality education, marks India's progress in this direction. The South African Schools Act (1996), on the other hand, has been a key tool for transforming education in South Africa, which has faced its apartheid past and begun to implement ambitious changes.

The goal of this research paper is to examine the historical developments, legal systems, and difficulties that India and South Africa have encountered in their fight for the right to education. It seeks to illuminate the benefits and drawbacks of each strategy through a comparative viewpoint.

HISTORICAL BACKGROUND OF EDUCATION SYSTEMS:

INDIA:

India's journey towards achieving the right to education has been shaped by substantial historical changes and legislative adjustments. It all started with Article 45 of the Indian Constitution, which set forth the directive principle that all children up to the age of 14 would get free and compulsory education within ten years of the Constitution's implementation in 1950. The state, however, struggled over the following 50 years to fulfil this fundamental promise.

India's announcement of the "Right of Children to Free and Compulsory Education Act, 2009" marked a big step forward for the country in 2009. This law established Article 21-A, which states that all children between the ages of 6 and 14 have a fundamental right to free and compulsory education, and it was approved by the 86th constitutional amendment.

The historical progress India made towards gaining the right to education may be used to illustrate how sociological, economic, and political factors interact. A multitude of elements, including the Vedic era, colonial control, and post-independence changes, have influenced the nation's approach to education. Notable improvements include the Kothari Commission, the National Policy on Education from 1986, and the National Policy on Education from 1992 with amendments.

A notable legal gain came with the Supreme Court's 1992 ruling that the right to education was inextricably linked to the right to life under Article 21 of the Constitution. However, it wasn't until the 86th constitutional amendment in 2002 that free and mandatory education was elevated to the status of a basic right. The subsequent enactment of the Right to Education Act in 2009 signalled a significant turning point.

Despite these legal gains, problems with execution, resource limitations, and budgetary talks between federal and state governments persisted. Every child between the ages of 6 and 14 is required under the Act to have the fundamental right to an education. It also makes provisions for the admission of economically disadvantaged pupils to private schools, the creation of School Management Committees, and the requirement that schools adhere to certain norms and standards.

In conclusion, a number of legal and policy advancements have been made throughout India's history

that have shaped the country's dedication to ensuring that all children have equitable access to high-quality education. The Right to Education Act, which was passed in 2009, was a significant step towards the realisation of this fundamental right.

SOUTH AFRICA:

Early on, the Dutch Reformed Church played a major role in establishing European schools in the Cape Colony, with a particular emphasis on teaching the Bible. With the emergence of British mission schools, language became a difficult subject, which sparked opposition from Afrikaners who felt that the English language and curriculum were inappropriate to their ideals. With the influx of educated British families in 1820, education expanded, but tensions continued.

Due to opposition to British education, white school attendance had increased by 1877, particularly in Natal, but remained low in the old Afrikaner republics. After the Boer War, attendance in these areas rose as a result of the usage of Afrikaans and increased Afrikaner influence over education.

Various kinds of schools got official support in the late 19th century, but African enrolment in public schools was all but non-existent. With certain exceptions, higher education was scarce, and racial segregation was pervasive. Between 1900 and 1948, the British left their mark on South African education, and after the National Party won the election in 1948, Afrikaans began to take front stage in the classroom. Black kids received substandard education thanks to the Bantu Education Act of 1953 and the Christian National Education pedagogy. In 1976, conflicts about language in the classroom turned violent, severely disrupting teaching. The government continued to have influence over education, setting separate standards for various racial groups. Significant changes occurred during the 1990s as South Africa prepared for democracy. In addition to the introduction of educational paradigms, the Curriculum 2005 experiment was also started but later abandoned. With the exception of Afrikaans institutions, English usage in schools increased.

In conclusion, there has been significant racial segregation, linguistic restrictions, and political involvement throughout South Africa's educational history. Education has been a crucial battleground for societal change and equality from the early colonial period to the post-apartheid era.

LAWS IN INDIA AND AFRICA FOR IMPLEMENTATION OF RIGHT TO EDUCATION:

INDIA:

“The 86th amendment act of 2002 where an addition was made to Article 21 which added Article 21-A which specifically elaborated the implementation of right to education in the country to all children of ages between six to fourteen. This article provides for free and compulsory education.”¹

In India, there are essentially two levels of education: the Indian school system and the higher education system.

1. The education system in India contains ten years of general education, which are divided into various educational levels as follows:
 - a. “Pre-elementary (kindergarten, lower or upper)
 - b. Elementary school, grades 1–5, students aged 6–10; middle school, grades 6–8, students aged 11–14; secondary, grades 9–10, students aged 14–16; and higher/senior secondary, grades 10–12, students aged 16–18.”²

All children up to the age of 14 are eligible for free primary or elementary education, making it available to all societal groups, even the most vulnerable. This action has proven to be highly beneficial in ensuring that all children receive an education and progress to later stages of schooling. India has a national curriculum framework that aims to unify subjects taught in public schools all around the country. The schools must join a board that trains pupils for external exams, such as the ICSE, CBSE, or state boards, among others. Public or private schools may be affiliated. While curricula are same across India, specific topic requirements may differ depending on the state's examination board. The student is ready to pursue further education thanks to their general education. India has successfully created a formal educational system that is uniform overall yet has varied effects on states.

SOUTH AFRICA:

Given the country's history of apartheid and its post-apartheid efforts to establish a more egalitarian

¹ Nic, Laxminarayan Prajapati. Right to Education | Ministry of Education, GoI. Available at: dsel.education.gov.in/rte.

² Somya Sharma, Access to Higher Education in India, Amity Unity Rajasthan, Vol. 8, No. 1 & 2, 2019,

educational system, access to education in South Africa has experienced major changes and difficulties over time. Here is some information on how South Africans can receive education:

- **Historical Perspective:** Before racial segregation in South Africa's school system was abolished in 1994, it was severely entrenched. Black South African kids in particular received a subpar education with few resources and possibilities. The majority of the people had very little access to high-quality education.
- **Post-Apartheid Reforms:** South Africa has made significant attempts to redress historical disparities in education since the end of apartheid. No matter their socioeconomic level or race, all individuals will have equal access to education under the new democratic government's programmes.
- **In the 1996-approved South African Constitution,** education is acknowledged as a constitutional right. Section 29 of the Constitution states that everyone has a constitutional right to basic education, including adult education. This fundamental constitutional principle has given rise to a strong legislative framework for increasing access.
- **Free basic Education:** All children between the ages of 7 and 15 are entitled to free basic education in South Africa. Access to elementary education has considerably improved as a result of this programme, particularly in underprivileged areas. However, there are still issues like packed classrooms and insufficient supplies.
- **Realisation that gaining equal access to education is a progressive process:** South Africa is aware of this. To gradually raise the standard and diversity of education through time, the government has established specific objectives.
- **Early Childhood Development:** To make sure that kids have a solid educational foundation from a young age, the government has also given early childhood development (ECD) programmes a high priority. These initiatives seek to increase access to high-quality preschool instruction.
- **Infrastructure of schools:** Despite advancements, there are still differences in school facilities between urban and rural locations. Basic amenities like electricity, clean water, and good sanitation are sometimes lacking in schools in remote areas. Programmes have been started by the government to deal with these issues.³

³ Sharmila Bhattacharya, and Venkateshwar. D. Rao, "Right to Education: Issues and Perspectives." Sage Publications. (2019).

- Education for Special Needs: South Africa has made an attempt to integrate students with disabilities in regular classes. All kids should have equal access to special needs schools and policies that promote inclusive education.
- Financial Obstacles: Although primary education is free, there are still obstacles to higher education access due to cost. For many South African students, the cost of tuition, books, and living expenses can be prohibitive. To deal with this issue, numerous financial aid schemes and scholarships have been developed.
- Challenges and Disparities: In spite of great advancements, South Africa still has difficulties ensuring that all people have equal access to high-quality education. Language obstacles, socioeconomic divides, and unequal distribution of resources all endure and have a role in educational inequality.

Last but not least, South Africa has improved access to education significantly since the end of apartheid. The country's legal framework considers education as a basic right, and steps have been taken to provide free elementary education and address past inequities. It is still necessary to find solutions to problems like resource distribution, infrastructure development, and budgetary constraints to ensure that all South African children have equitable access to high-quality education.

ROLE OF INDIA AND AFRICA IN STRENGTHENING THE EDUCATION SECTOR:

INDIA:

“The Union HRD ministry has been working actively to improve India's educational system ever since the implementation of the New Education Policy. Several significant improvements were outlined by Union HRD Minister Dr. Ramesh Pokhriyal 'Nishank' on June 24, 2019, at a Lok Sabha session.”⁴

1. “Emphasis on Quality Education: The 2009 amendments to the Right of Children to Free and Compulsory Education (RTE) Act place a greater emphasis on learning outcomes in the subjects of languages, mathematics, environmental studies, science, and social science at the

⁴ Vidhith Kaushik, Steps Taken by Indian Government, , 2020 Available at: www.indiatoday.in/education-today/

class and topic levels. All youngsters will achieve suitable learning levels thanks to these rules.”⁵

2. “National Achievement Survey (NAS): The National Council of Educational Research and Training (NCERT) conducts periodic surveys that show increased learning outcomes in specified disciplines for classes 3, 5, 8, and 10.”⁶
3. Minimum Teacher Requirements: The RTE Act's Section 23(2) prolonged in-service training for primary teachers without a degree until March 31, 2019. Unqualified teachers had to meet basic requirements.
4. Four-Year BEd degree: To improve teacher education, a four-year integrated BEd degree was developed, concentrating on topics including gender, inclusive education, and more.
5. International Assessment (PISA): India took part in PISA to evaluate student competencies as a step away from memorization and in the direction of a competency-based approach.
6. Cultural Festivals (Rangotsav): Promoted a happy learning atmosphere by celebrating variety through artistic expression.
7. Performance Grading Index (PGI): A matrix-based system aids in assessing how well states and UTs are doing in terms of educating children.
8. Educational Management Information System (UDISE+): This system, which was introduced in 2018–19, collects information from all schools to help in decision-making.
9. DIKSHA Platform: Provides teachers and students with high-quality online learning resources that advance their technical and content expertise.
10. Rashtriya Aavishkar Abhiyan (RAA): RAA uses experimentation and observation to engage kids in science, math, and technology.
11. e-PATHSHALA: An online library with NCERT textbooks and other educational resources.
12. MOOCs (SWAYAM): Provides online courses for secondary and postsecondary education using NCERT-developed modules.
13. Educational Channels (SWAYAM PRABHA): This channel broadcasts educational material through national channels using satellite connection.

⁵ Desk, India Today Web. “15 Initiatives Taken by Central Government to Improve Teaching Standards in India: HRD Minister.” India Today, 26 June 2019, Available at: www.indiatoday.in/education-today/news/story/15-initiatives-taken-by-central-government-to-improve-teaching-standards-in-india-hrd-minister-1556357-2019-06-26.

⁶ Ibid.

14. These programmes represent a concerted effort to raise the quality, accessibility, and innovation of education throughout India.

AFRICA:

Africa has surmounted numerous obstacles, including hunger, drought, famine, and conflict, to advance economically during the 1990s. This approach heavily relies on the idea of comparative advantage, which contends that nations should specialise in their efficient fields and engage in global trade. Although natural circumstances or governmental decisions may give rise to comparative advantage, what counts right now is how Africa may take advantage of its advantages. Avoiding the colonial approach to education, which benefited the colonisers and maintained education a privilege for a minority, is essential. Instead, education should be given top priority in Africa as a catalyst for social, political, and economic advancement.

“Colonial education was historically intended to establish a gap between the educated elite and the general populace and to produce a subservient population to support the colonial objectives. Africa has made efforts to grow its education sector since gaining independence, but financial restrictions and a lack of employment have caused a brain drain. In order to properly utilise Africa's people resources, it is essential to offer high-quality education and employment opportunities to the continent's young population. Education should be in line with the demands of the nation, resulting in qualified graduates who will promote progress.”⁷

Governments must oversee and plan education in order to maintain orderly development, but decentralisation is also required for enthusiastic local participation. Although there are worries about the standard of living and wealth distribution, recent development in Africa is encouraging, with a rising GDP and optimistic growth prospects. Africa should concentrate on adding value to its resources and look for partnerships that support capacity building, like India's contribution in bolstering the education sector, in order to secure sustained growth.

Critics contend that in order to eliminate inequality and spread wealth throughout the continent, resources must be managed by educated Africans. Economic progress should enhance the lives of

⁷ Juma Kennedy, and Odora Hoppers, Catherine-Austin.. "The Right to Education in Kenya and South Africa: A Comparative Analysis." *International Journal of Comparative and Applied Criminal Justice*, 40(3), pp. 241-258, (2016)

common people across the continent, not merely benefit an elite handful or foreign multinationals.

SUGGESTIVE MEASURES INDIAN AND SOUTH AFRICAN GOVERNMENTS CAN TAKE IN ORDER TO IMPROVE THE EDUCATION SYSTEMS:

IN INDIA:

Although the Indian educational system has developed from gurukuls to digital smart classes, it still finds it difficult to stay up with the rest of the world. There is still opportunity for improvement despite successes like the Right to Education Act of 2009 and the National Education Policy 2020. UNICEF recognises that access to high-quality education has improved, but India needs to adjust to a competitive post-pandemic environment. Here are five suggestions for improving traditional education:

1. Engaging Stakeholders for Successful Implementation Progress is hampered by systemic problems despite hopeful policies. Reforms are only implemented on paper due to ineffective management and oversight. Government and stakeholders at all levels must share responsibility for overcoming these obstacles and bringing about genuine change.⁸
2. Support purposeful learning: The current educational system emphasises memorization and facts over insight. Students will be more adequately prepared for the global stage by moving towards purposeful education, emphasising concept-based learning, and encouraging critical thinking.
3. Develop 21st-century skills, including: Youth in India frequently lack the abilities required for the employment market of today. Students will become more independent and competitive on the global stage if transferable skills are incorporated into the curriculum.
4. Improve the calibre of teachers: Good educators are essential. India must prioritise luring enthusiastic educators, providing them with professional development opportunities, and regulating their workload. Talent retention depends on rewards, work-life balance, and recognition.

⁸ Laxminarayan Prajapati. National Council of Educational Research and Training (NCERT) Ministry of Education, GoI. Available at: dsel.education.gov.in/ncert.

5. Utilise Technology: Technology can close the achievement gap in education. Learning possibilities will be improved, particularly in distant places, by embracing ed-tech, increasing internet access, and boosting digital literacy.

In conclusion, India's educational system need a workable blueprint for change that incorporates technology. Despite ongoing difficulties, development is possible, and India has the potential to lead the world in education.

IN SOUTH AFRICA:

After apartheid was abolished, Nelson Mandela sought to totally reform South Africa's educational system in order to provide black pupils with access to a top-notch education. Mandela's policies ended racial segregation and made it possible for all universities and schools to receive equal financing.

South Africa has theoretically established a progressive educational system. According to UNICEF, South Africa spends more of its GDP on education than any other African nation because it provides free and required elementary education to all children between the ages of 7 and 15, regardless of race.

"Despite these achievements, a 2013 World Economic Forum assessment ranked South Africa's educational system 143rd out of 144 nations. Numerous concerns are addressed in South African schools. 78% of them lack access to computers or libraries, and 27% lack running water. In South African public schools, poor performance rates are also pervasive. According to UNICEF, just 12 to 31% of South African students are proficient in their course work. Two thirds of South African youths between the ages of 14 and 18 are unable to obtain jobs because they lack the necessary training." Unfortunately, a lot of South African teachers aren't very knowledgeable in the things they teach. As a result, the majority of South African students fall short of global standards in maths and science. Teachers and school employees are already under a lot of pressure, but their workload is made worse by the dire lack of essential supplies.

According to a 2009 research by the South African Department of Education, 5.8% of female secondary school students left their studies to have babies. The number of teenage pregnancies has gone up.

In addition, a survey by the Centre for Justice and Crime Prevention revealed that 15.3% of South African primary school students had been victims of robberies and violent attacks. Teachers and administrators concur that children cannot learn in such a dangerous setting.

“Prior to 1991, there were different educational systems for blacks and whites in South Africa. Black students in South Africa were forced to attend "Bantu" schools, which emphasised black subservience to whites. Based on race, these institutions caused inequities in the classroom. Many current problems affecting South African education now have their roots in this period of abuse and neglect.”⁹

22 years have passed since the end of apartheid, and progress has been made gradually. Youth in South Africa who are in school have a 95 percent literacy rate, according to UNSECO. This figure indicates significant progress. South Africa's education system is not hopeless; as teachers become more qualified and schools receive the funds they need, education will get better.

*“Nelson Mandela said that the most effective tool you can employ to change the world is education. Future generations will have access to a high-quality education as a free and democratic South Africa rediscovers its identity.”*¹⁰

CONCLUSION:

In conclusion, both South Africa and India have made tremendous progress in recognising and defending the right to education, which is a basic component of any democratic society. The complete realisation of this right for all citizens, however, presents special difficulties for both nations.

In India, the path to achieving the right to education has been complicated by historical and socioeconomic inequalities, as well as a varied and complex system of state-level government. Although the 86th Amendment and the RTE Act that followed are significant steps forward, there are still problems that need to be solved, such as the standard of education, the availability of qualified instructors, and the adoption of inclusive policies for underrepresented communities. Achieving

⁹ Peter Nilon, Project Borgen. “Improving Education in South Africa.” The Borgen Project, Available at: borgenproject.org/education-in-south-africa. 12 June 2020

¹⁰ S. Ntshoe, Isaac and Sayed Yusuf, "The Politics of Curriculum Reform in South Africa: A Critical Analysis of Policies and Practices." Springer. (2017).

universal access to high-quality education also faces opportunities and problems due to the participation of private schools, particularly in urban areas.

Apartheid's legacy in South Africa has had a significant impact on education, resulting in glaring disparities that still exist today. The nation has made admirable efforts to correct historical wrongs by enacting laws that seek to guarantee free and equal access to education for all. The right to education is fundamentally protected by the Constitution, yet issues including poor infrastructure, a lack of qualified teachers, and gaps between urban and rural areas continue to exist. It takes constant dedication and effort to continue the process of changing the educational system.

India and South Africa both share a dedication to achieving the right to education as a means of advancing social justice, economic development, and personal empowerment despite the distinct difficulties each nation faces. Both countries understand the need of education in rectifying historical injustices and ensuring their inhabitants have a better future.

It becomes clear that the fight for access, excellence, and inclusivity in education is a never-ending one when we consider the experiences of India and South Africa in the context of the right to education.



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