



Fundamental Right to Education in India: An Overview

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ABSTRACT

Education as a tool is the most potent mechanism for the advancement of human beings. Education emancipates the human beings and leads to liberation from ignorance. Education is now being visioned as a human right and an instrument of social change. Universal Declaration of Human Rights 1948 by way of Article 26(1) lays down that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Thus, UN recommendation has been re-enforced in the provisions of the Right of Children to Free and Compulsory Education (RTE) Act 2009, which came into effect as on 1st April 2010. In fact, this act lays down the state's responsibility towards education. In this paper an attempt has been made by the authors to highlight the constitutional and legislative perspective of the right to free and compulsory education under Article 21-A. This paper significantly aims to explore the attitude of Indian system towards compulsory education and to pinpoint the flaws in the existing RTE Act.

Keywords: Right To Education; Free and Compulsory Education; Internal Declaration; Implementation; Constitution; Implementation, Combating Challenges, Fundamental Right, Higher Education.

Introduction

Education is the basis for development and empowerment of every nation. Education is the most powerful weapon which can be used to change the world. In fact, education has its functionalism in almost all spheres of life. Its signification can never be marginalized. An education can create educated society which prepares the present generation for a bright future and enables the individual to galvanize the capacity of collective.¹ According to ancient thinkers in India, *Vidya* or knowledge or learning or education is the '*third eye*' of man, which gives him an insight into all affairs and teaches him how to act; it leads us to our salvation; in the mundane sphere it leads us to all round progress and prosperity.²

Emile Durkheim defined education as, "the action exercised by the older generations upon those who are not ready for the social life. Its object is to awaken and develop in the child those physical, intellectual and moral states which are required of him / her both by his society as a whole and by the milieu for which he is specially destined."³ Presently, education is a fundamental human right⁴ and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. The right to education has been universally recognized since the Universal Declaration of Human Rights, 1948 and has since been enshrined in various international conventions, national constitutions and development plans. The enacted Right of Children to Free and Compulsory Education Act, 2009 is a milestone in the field of educating millions of children, who are unable to reach the schools due to poverty and illiteracy of parents.

International Perspective Regarding Right to Education

The main international instruments have also recognized right to education as a basic human rights. Article 26 of the Universal Declaration of Human Rights lays down that:

*Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*⁵

Besides this the principal global treaty which covers this right in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which under Article 13 also recognizes the general right to education enumerated by the Universal Declaration of Human Rights (UDHR). As per this covenant, the states parties to the present covenant recognize the right of everyone to education. The states parties to the covenant recognize that primary education shall be compulsory and available free to all. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.⁶

It is worthwhile to mention here that recently about 140 countries enacted right to education acts Bangladesh,⁷ Canada,⁸ China,⁹ Germany,¹⁰ India,¹¹ Japan,¹² Nepal,¹³ Pakistan,¹⁴ Singapore,¹⁵ South Africa,¹⁶ Switzerland,¹⁷ United Kingdom¹⁸ and USA¹⁹ also elementary education in their constitution.

Constitutional Perspective Regarding Right to Education in India

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. The founding fathers of the nation recognizing the importance and significance of right to education made it a constitutional goal, and placed the same under the constitution of India. The commitment enshrined in the preamble and various articles of the constitution.

- Article 15(3) enables the state to make special provisions.

- Article 21A deals with Right to Education.
- Article 24 prohibits employment of children below the age of 14 years in hazardous jobs.
- Article 39(f) recommends the protection of childhood against exploitation and moral and material abandonment. The founding fathers made these safeguards to protect interest of the weaker sections of the society.
- Article 45 directs the state to provide free and compulsory education to all the children under the age of 14 years.

Further, Article 46 declares that state shall promote with special care the education and economic interest of the weaker section of the people. It is important to mention here that among several Articles enshrined in Part IV; Article 45 has been given much importance as education is the basic necessity of the democracy. In simple words, compulsory education is one of the elements for stability of democracy, social integration and to eliminate social evils.

Judicial Contribution towards Right to Free and Compulsory Education

The judiciary showed keen interest in providing free and compulsory education to all the children below the age of 14 years. In the year the Supreme Court of India decided two Public Interest Litigation cases i.e. *Mohini Jain* and *Unni Krishnan* case in which the court enforced right to education. In reality, both cases concerned the impact of certain state laws on private educational institutions of higher learning, the court took the opportunity to develop a precedent that also governed the public provision of elementary education. In *Mohan Jain vs. State of Karnataka*,²⁰ popularly known as the 'capitation fee case', the Supreme Court has held that the right to education is a fundamental right under Article 21 of the constitution which cannot be denied to a citizen by charging higher fee known as the captivation fee. The right to education flows from right to life. In the instant case the petitioner had challenged the validity of a notification issued by the government under the Karnataka Education Institution (Prohibition of Captivation Fee) Act 1984 passed to regulate tuition fee to be charged by the private medical colleges in the state. The division bench of two judges held that the right to education at all level is a fundamental to citizen under Article 21 of the constitution and charging captivation fee for admission to education institutions is illegal and amount to denial to citizen's right to education and also violative of Article 14 being arbitrary, unfair and unjust.

Subsequently, in *Unni Krishna vs. State of Andhra Pradesh*,²¹ the Apex court was asked to examine the correctness of the decision given by the court in *Mohini Jain* case. The five judge bench by 3-2 majority partly agreed with the Mohini Jain Decision and held that right to education is a fundamental right under Article 21 of the constitution as 'it directly flows' from right to life. But as regards its content the court partly overruled the *Mohini Jain's* case, and held that the right to free education is available only to children until they complete the age of 14 years, but after the obligation of the state to provide education is subject to the limits of its economic capacity and development. The obligation created by Article 41, 45 and 46 can be discharged by State either establishing its own institutions or by aiding, recognizing or granting affiliation to private institutions. Thus, the Supreme Court by rightly and harmoniously construing the provision of Part III and Part IV of the Constitution has made right to education a basic fundamental right.

In the case of *Bandhuwa Mukti Morcha vs. Union of India and others*,²² it has been held that it is the solemn duty of the state to provide basic education to children also working in different industries or factories and the court directed the government to take such steps and evolve scheme assuring education to all children either by the industry itself or in co-ordination with it.

In the case of *TMA Pai Foundation vs. State of Karnataka*²³ the scheme formulated by the court in the case of *Unni Krishnan* was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue shortfalls making it difficult for the educational institutions. Consequently, all order and directions issued by the state in furtherance of the directions in *Unni Krishnan's* case was held to be unconstitutional. The court observed that right to establish and administer an institution includes the right to admit students; rights to set up a reasonable fee structure; right to constitute a governing body; right to appoint staff and right to take disciplinary action.

Frankly speaking, *TMA Pai foundation's* case for the first time brought into existence the concept of education as in 'occupation', a term used in Article 19(1)(g) of the Constitution. The majority held that Article 19(1)(g) and Article 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. Additionally, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice.

In *Islamic Academy of Education vs. State of Karnataka*,²⁴ another issue arose for the determination of fees structure in private unaided professional educational institutions. It was submitted that management has been given complete autonomy not only as regard to admission of students but also as regards to fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of education.

The Apex Court also held that right of education further means that a citizen has a right to call upon the state to provide educational facilities within the limits of its economic capacity and development.²⁵ In connection to this, the Supreme Court in the case of *State of Bihar and others vs. Project Uchha Vidhya, Sikshak Sangh and others vs. Union of India*,²⁶ also observed that establishment of High Schools may not be a constitutional function in the sense that citizens of India above 14 years might not have any fundamental right in relation thereto, but education as a part of human development indisputably is a human right. Chief Justice of India Dr. A.K. Lakshmanan rightly observed:²⁷

"(E)ducation is perhaps the most important function of state and a local government. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful and child may reasonable be expected to succeed in life if he is denied the opportunity of education."²⁸

The similar kind of observations regarding fundamental significance of education has also been made by Justice S.B. Sinha in the case of *Election Commission of India vs. Sant Merry's School & Others*.²⁹ In the case of *Ashoka Kumar Thakur vs. Union of India and others*³⁰ rightly observed that India has suffered in the past because of severe under

investment in higher education. This has been caused partly by the thinking that looks at primary and higher education in an either or manner. Thus, truly speaking special care is needed to strengthen the nation to properly re-construct education system. Justice K. Ramaswamy and Justice Sagar Ahmad, has observed:³¹

*Illiteracy has many adverse effects in a democracy governed by rule of law. Educated citizen could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform.*³²

Thus, compulsory education is one of the duties of the states for stability of democracy, social integration and to eliminate social evils. The Supreme Court by rightly and harmoniously construing the provision of Part III and IV of the Constitution has made right to education a basic fundamental right.

The Government of India by Constitutional (86th Amendment) Act, 2002 had added a new Article 21-A which provides that, "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine."³³

It is submitted that on the basis of constitutional mandate provided in Article 41, 45, 46, 21A as well as, as per the various judgments⁷ of the Supreme Court, the Government of India has taken several steps to eradicate illiteracy, improvement the quality of education and make children back to school who left the schools for one or the other reasons.³⁴

Enactment of the Right to Free and Compulsory Education Act, 2009: Some Observations

Presently, as a fundamental right, the provision of free and compulsory education to children was added by the Constitution (Eighty Sixth Amendment) Act, 2002 and Article 21-A is inserted. The Right of Children to free and Compulsory Education Act or Right to Education Act (RTE) passed by the Indian Parliamentary on 4th August 2009. In reality, this Act is a milestone which provides for institutional instructions so that education as a fundamental right spreads to all children between the age group of 6-14 years. The Act intends to provide full time elementary education to every child in a formal school, which satisfies certain essential norms and standards. Private education institutions have to reserve 25% of their seats starting from Class I. Strict criteria for the qualification of teachers is also one of the important provisions. There is a requirement of a teacher student ratio of 1:30 at each of these schools that ought to be met within a given time frame. The school needs to have certain minimum facilities like adequate teachers, playground and infrastructure etc. The Government will evolve some mechanism to help marginalized schools comply with the provisions of the Act.

Moreover, the concept of neighborhood schools that has been devised. This would imply that the state government and local authorities will establish primary schools within walking distance of one kilometer of the neighborhood. In case of children for class VI to VIII, the school should be within a walking distance of three kilometers of the neighborhood. Moreover, unaided and private schools shall ensure that children from weaker sections and disadvantaged groups shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different.

While highlighting the main aspects of the Right to Education Act 2009, there are certain limitations like, children below the age group of six are not covered; Act failed to promote a common school system; lack of provisions for children with disabilities; criteria for reservations of seats; financial assistance; provision regarding reimbursement to the private school; lack of clear cut provision for competent authority; assuring quality standards; action against government authorities in case of negligence in services etc.

Sum Up

Above all, the implementation of the Right to Compulsory and Free Education Act 2009 must be implemented in letter and spirit to fulfill the desired objectives. The Right to Education Act also doesn't speak about millions of children who are in the age group below five years. There must be appropriate provisions for penalties for those flouting norms. Families and communities need to play a vital role to make the Right of Children to Free and Compulsory Education Act, 2009 a major success in India. Mental disorder children also need basic facilities or necessary training and mental development scheme to be at once launched. As per the Act, existing schools were also required to make basic infrastructures available within three years of enforcement of the Act. But unfortunately, five years have already been going to pass after the enforcement of RTE Act, still majority of schools are lacking requisite infrastructures in India. The government should immediately taken action to ensure all the basic facilities in the school like proper food, drinking water, sanitation, library, playground etc. Besides these basic necessities the schools must also provide proper teaching by way of visual aids, globes, charts, pictures, through projects etc. They must also ensure co-curricular activities, excursions, paintings, games, dance, music, quizzes to attract the students and help them in their personality development.

At the government level, allocation of funds required for effective implementation of free and compulsory education as per the RTE Act 2009 should be estimated by the department. The allocation must be planned in different phases. There is a great need for coordinating with various government departments for effective implementation of government programmes and avoid duplication of beneficiaries, fund utilizations etc. At last but not the least, existing monitoring system may be streamlined and a comprehensive monitoring system that looks into academics and administration should be designed to achieve the desired objectives.

¹ Thus, the purpose of education is manifold. Someone has rightly called it the utility of learning. It has energy, prowess, animation, activation and inherent potentiality of transformation.

² S. Gupta, *Education in Emerging India*, 2nd Ed. (2008), Shipra Publications, Delhi, p.1.

³ Emile Durkhem, *Education et. Sociologie* (1992) T.B. Bottomore, Society (1986) p. 262.

⁴ See *Badhua Mukti Morcha vs. Union of India*, AIR 1984 SC 802; *Mohini Jain vs. State of Karnataka*, Air 1992 SC 1858. The court observed that right to life was a compendious expression and the dignity of an individual could

not be assured unless it was accompanied by the right to education. The court declared that right to education flows directly from right to life.

5 In fact, this was adopted and proclaimed by General Assembly Resolution 217 (III) of 10 December 1948.

6 For more details see Article 13 of International Covenant on Economic, Social and Cultural Rights, (Adopted and opened for signature, ratification and accessions by General Assembly Resolution 2200A (XXI) of 16 December 1966 and applicable w.e.f. 03.01.1976.

7 See, Constitution of Bangladesh, Article 17.

8 See, Constitution of Canada, Article 23.

9 See, Constitution of China, Article 19.

10 See, Constitution of Germany, Article 07.

11 See, Constitution of India, Article 21-A.

12 See, Constitution of Japan, Article 26.

13 See, Constitution of Nepal, Article 18.

14 See, Constitution of Pakistan, Article 22.

15 See, Constitution of Singapore, Article 16.

16 See, Constitution of South Africa, Article 29.

17 See, Constitution of Switzerland, Article 19.

18 See, Constitution of United Kingdom, Article 28.

19 See, Constitution of USA, Article 05.

20 (1992) 3 SCC 666.

21 (1993) 1 SCC 6.

22 (1991) 4 SCC 177.

23 AIR 2003 SC 355; (2002 AIR SCW 4957).

24 (2003) 6 SCC 697; AIR 2003 SC 3724.

25 Modern School vs. Union of India, AIR 2004 SC 2236.

26 2006 (2) SCC 545.

27 Ajay Goswami vs. Union of India & Others, AIR 2007 SC 493.

28 *Ibid.*

29 AIR 2008 SC 655.

30 2010 (4) SCR 1.

31 See Bandhua Mukti Morcha vs. Union of India.

32 *Ibid.*

33 See, Constitution of India, 1950, Article 21-A.

34 Some of these programmes are National Technology Mission, District Primary Education Programme and Nutrition Support for Primary Education, National Open School, Mid Day Meal Scheme, Sarva Siksha Abhiyan and other state specific initiatives.