



INDIAN CONSTITUTION AND THE RIGHT TO EDUCATION

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INTRODUCTION

Education means to acquire knowledge. Education is the basic human and Fundamental right guaranteed in our Constitution. It plays a vital role in understanding & participating in day to day activities of today's world .It builds one's character & plays a significant role in transmitting one's culture, beliefs & values to others in society. It helps in creating innovations & meeting the growing needs of every nation. It is essential for development & empowerment for every nation. In the absence of proper education, the nation can hardly develop. Education is therefore more crucial factor not only to equip the new generations with skills so essentials for earning livelihood but also create among them an awareness to social & environmental realities & inculcate in them scientific temper, independence of mind & spirit which are of paramount importance for them to become responsible citizens.

Education at International Perspective ¹-

The Universal Declaration of Human Rights states, "Everyone has the right to education." In addition, it says that it shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. The UDHR also stipulates that education should be directed towards the full development of the human personality and strengthen respect for human rights. Finally, it acknowledges that parents have a prior right to choose the kind of education that shall be given to their children.

The International Covenant on Economic, Social and Cultural Rights

Articles 13 and 14 of the ICESCR set out detailed formulations of the right to education. Article 13 contains a general statement that everyone has the right to education and that education should contribute to the full development of the human personality.

The CESCR, in its General Comment 13 - identifies four elements of the state's obligations with respect to the right to education. These are (1) availability, (2) accessibility, (3) acceptability and (4) adaptability.

¹, Center for human Rights and Global Justice working paper, Economic, Social and Cultural Series Number, 4 , 2004.

The duty to provide compulsory and free primary education is undoubtedly a prerequisite for the realization of the right to education. The second state obligation relates to accessibility. At a minimum, governments are obligated to ensure the enjoyment of the right to education through guaranteeing access to existing educational institutions by all on the basis of equality and nondiscrimination. The Special Reporters has said that "the State is obliged to ensure that all schools conform to the minimum criteria which it has developed as well as ascertaining that education is acceptable both to parents and to children." Normally, what a child learns in school should be determined by his or her future needs as an adult. However, the Convention on the Rights of the Child requires that the best interests of the child be given prominence. Thus, the education system should remain adaptable, taking into account the best interests of the child.

Convention on the Rights of the Child (CRC)

Articles 28 and 29 of the CRC deal with the right of the child to education. Article 28 is similar to the provisions contained in ICESCR. In addition, it states that school discipline should be administered in a manner consistent with a child's human dignity. Article 29 stipulates that the education of the child shall be directed towards the development of the child's personality, talents, and mental and physical abilities to their fullest potential.

RIGHT TO EDUCATION AND PROVISIONS IN THE INDIAN CONSTITUTION

Indian Constitution is highest law of land. There are various provisions in Indian constitution. Some Provisions in fundamental rights and some in directive principles. They are as follows.

By the 86th amendment in December 2002 which inserted the following articles in the Constitution-

1. Insertion of new Article 21A- After article 21 of the Constitution, the following article shall be inserted, namely
21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."
2. Article 45 of the Constitution, the following Article shall be substituted, namely: -
Provision for early childhood care and education to children below the age of six years.
3. Substitution of new Article for Article 45- For the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."
4. Amendment of Article 51A- In Article 51A of the Constitution, after clause (J), the following clause shall be added, namely:-



"(k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

RIGHT TO EDUCATION AND JUDICIAL ACTIVISM

After independence, India inherited a legacy of illiteracy at a larger scale. There was no proper provision for education for the people who were freed from British rule. This is well evident from the first census report in the year, 1951, which shows only nine percent of women and twenty seven percent of men were literate. This observation forced Government of India to make intensive and fruitful efforts in providing free and compulsory education to all children up to the age fourteen by the year 1960. Even today, this goal could not be achieved. No doubt, some progress has been made but not up to the level of satisfaction. Some studies shows that about 20% of Indian children between the ages of six to fourteen are not enrolled in the school. Attendance rates among admitted students are not encouraging. Around 26% of students enrolled in primary school drop out before the completion of class V. The situation is worse among the children who live below poverty line or who are poor. Children belonging to rural areas do not get easy access to the education. Girls in many places are not encouraged to avail education as their parents do not allow them. There are many barriers to universal primary education in a country like India. The barriers are:

- The population of the country is over one billion and a major share of the population lives in poverty.
- Physical distance is also a bottle neck for the universalisation of elementary education in a large country like India. Specifically in rural India, non- availability of schools in nearby areas hampers the initiatives to provide education to all.
- Social believe that learning in a school are not relevant to their lives. Some parents rather feel to engage their children in work to earn money.
- Existence of gender gap in the society. Among the children not enrolled in the school are girls (around 60%). This clearly indicates gender disparity. This is mainly due to the believe that education is not needed for the girls.
- Child labour is another potential barrier for the universalisation of elementary education. Many children basically from below poverty line families are sent to work for earning money to supplement family income.
- Lack of facilities in the schools like lack of infrastructure, teaching aids, class rooms, toilets, drinking water etc.
- Lack of minimum teachers in the schools discourages children to attend schools.

In case of *Mohini Jain V State of Karnataka*², the Supreme Court held that right to education is fundamental right under Article 21 of the Constitution. The right to education springs from right to life. The right to life under Article 21 and the dignity

² (1992) 3 SCC 666.

of the individual cannot fully be appreciated without the enjoyment of right to education.

The Court observed: Right to life is compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to life under Article 21 and the dignity of the individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to provide educational facilities at all levels to its citizens. *In case of Unnikrishnan v State of A P*³. Court held that the directive principles contained in Article 45 has been raised to the status of a fundamental rights. It has been held that children from the age of 6 to 14 years have fundamental right to free and compulsory education. The Supreme Court was asked to examine the decision of *Mohini Jain's case*. In the present case the Apex Court partly overruled given in the *Mohini Jain case*. The Court held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 and must be interpreted in the light of the Directive Principle of State Policy contained in Articles 41, 45 and 46.

The Apex Court, however, limited the State obligation to provide educational facilities as follows.

- (i) Every Citizen of this Country has a right to free education until he completes the age of fourteen years;
- (ii) Beyond that stage, his right to education is subject to the limits of the economic capacity of the state.

Spurred by the Unnikrishnan judgment and a public demand to enforce the right to education, successive governments from 1993 worked towards bringing a constitutional amendment to make education a fundamental right. That led to the 86th amendment in December 2002 which inserted the following articles in the Constitution⁴:

4. Insertion of new Article 21A- After article 21 of the Constitution, the following article shall be inserted, namely:-

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³ (1993) 1 SCC 645

⁴ <http://righttoeducation.in/faq>.

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1. Insertion of new article 21A- After article 21 of the Constitution, the following article shall be inserted, namely:-

"21A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

5. article 45 of the Constitution, the following article shall be substituted, namely: - .

Provision for early childhood care and education to children below the age of six years.

6. Substitution of new article for article 45- The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years."

3. Amendment of article 51A- In article 51A of the Constitution, after clause (J), the following clause shall be added, namely:-

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4. Amendment of article 51A- In article 51A of the Constitution, after clause (J), the following clause shall be added, namely:-

"(k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

In *Maneka Gandhi V Union of India*⁷. ../././Avneesh/Desktop/Right to Education.doc - _ftn2 It was held by the honorable court that we can't deviate from the Rule of law.

⁶ <http://righttoeducation.in/faq>.

⁷ AIR 1978 SC 597.

Now, right to equality is also under the preview of rule of law, which is dealt in our constitution under article 14, it contains many thing with equality. Right against any type of arbitrary action is also included in it. If we take specifically about education and educational institution then the admission procedure must be fair.

Article 45 - had been given much importance as education is the basic necessary of the democracy and if the people are denied their right to education then democracy will be paralyzed; and it was, therefore, emphasized

Article 15(5) and 93rd constitutional amendment 2006- Provision for reservation of B.C, S.C and S.T Classes including Private Educational Institutions. The Amendment has been enacted to nullify the effect of the three decisions of the supreme courts⁸. The new clause 5 provides that Nothing in the Article 15 or in Art19 (1)g shall prevent the state from making any provision, by law, for the advancement of any socially and educationally backward classes of citizens or for The scheduled caste or the Scheduled Tribes in so as. Whether aided or unaided by the State, other than the minority educational institutions referred to in Art. 30 (1). In *T. M. Pai Foundation V State Of Karnataka*⁹ It has been held that the State cannot make reservation of seats in admissions in privately run educational institutions. There the admissions can be done on the basis of common admission test conducted by the State or these institutions and on the basis of merit. This case overruled the *Unni Krishnan* and held the scheme relating to admission and the fixing of fee were not correct and to that extent they are overruled. In *Islamic Academy Of Education V/s State Of Karnataka*¹⁰ The court held that the State can fix quota for admissions to these educational institutions but it cannot fix fee and also admission can be done on the basis of common admission test and on the basis of merit. In *P. A. Inamdar V State Of Maharashtra*¹¹

The court had overruled the Islamic Academy ruling to the effect that the State could fix the quota for admissions to private professional educational institutions. Reservation in private educational institution (majority or minority) is violative of Article 30 and 19 (1) (g).

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT 2009: SALIENT FEATURES -

The right to education is a universal entitlement to education, recognized in the International Covenant on Economic, Social and Cultural Rights as a human right that includes the right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all, in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education, ideally by the progressive introduction of free higher education.

The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education. In addition to these access to

⁸ The Constitution of India, Dr. J. N. Pandey, 47th Edition,.

⁹ AIR 2003 SC 355.

¹⁰ AIR 2003 SC 3724.

¹¹ AIR 2005 SC 3226.



education provisions, the right to education encompasses the obligation to rule out discrimination at all levels of the educational system, to set minimum standards and to improve quality of education.

The Right of Children to Free and Compulsory Education Act (File referring to external site opens in a new window) finally came into force on 1st April 2010. The Act provides for free and compulsory education to all children in the age group of six to fourteen years. It is now a legally enforceable duty of the Centre and the states, to provide free and compulsory education.

The Act is very comprehensive and touches upon every aspect of education. The broad features include:

- 1) The RTE Act 2009 envisages quality and compulsory education to every child in the age group of 6-14 years in neighborhood school till the completion of elementary education.
- 2) No child is liable to pay any kind of fee or charges or expenses which may prevent the child from pursuing and completing elementary education.
- 3) The Act also makes provisions for a non- admitted child to be admitted to an appropriate class.
- 4) Action on the part of the government and local authority to establish a school within the limits of the neighborhood, within a period of three years from the

Commencement of this Act: also to ensure and monitor admission, attendance and completion of elementary education by every child.

- 5) With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate government may make necessary arrangement for providing free pre- school education for such children.
- 6) It stipulates that no school should refuse admission to any child on any grounds.
- 7) Any school or person, while admitting a child shall not collect any capitation fee and subject either the child or his/her parents to any kind of screening procedure.
- 8) The Act also provides for adequate number of qualified and trained teachers.
- 9) All the schools to ensure proper infrastructure.
- 10) Maintenance of teacher-student ratio as per prescribed norms, provision of necessary facilities in the schools, student friendly education etc.
- 11) With an aim to promote inclusive growth, the Act also provides for 25% reservation for children belonging to marginalized sections of society.
- 12) There are also provisions in the Act like prohibiting corporal punishment, detention and expulsion till the completion of elementary education.
- 13) The Act provides for the development of curriculum in consonance with the values enshrined in the Constitution and for all round development of the child.
- 14) The curriculum should provide for learning through exploration; building up child's knowledge, talent and potentialities; development of physical and mental abilities to the



fullest extent; learning through activities, discovery and exploration in a child- friendly and child- centered manner; making the child free of trauma, fear and anxiety and helping the child to express views freely; comprehensive and continuous evaluation of child's understanding of knowledge.

15) Making it a duty of parents/guardians to admit their child, in the neighborhood school.

However, the Act also has several shortcomings and there are some who will say that it is wholly inadequate. Like many other acts and laws, the intentions of the RTE Act are very noble but the key issues are around challenges in policy as well as implementation and enforcement issues.

CONCLUSION

The growth of society is not possible without education. Education is the pillar on which the entire fabric of nation resides. The growth and development of state is primarily depending upon the quality of education that gives children. The Indian elementary education system has been successful to some extent in achieving higher levels of funding, access, enrolment and infrastructure. However, high drop-out rates, low attendance, universal, equitable and quality elementary education for all continue to be a challenge.

Illiteracy creates many problems in the society, so society is required to be literate. The Fundamental purpose of education is to transfigure the human personality into a pattern of perfection. So it is first & our foremost duty to provide free & compulsory education to all children of the age of six to fourteen years. The RTE Act is a path breaking Act in the history of India Education towards providing quality elementary education to all.