

Judicial Response to Right to Education in India

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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. The Beneficial Provision of Right to Education has been inserted into the Indian Constitution. In order the enactment of the Right to Education has brought several amendments in the Parliament. However, every state has duties to verify that the Right to Education policy reaches all the disadvantaged sections of the society. It is a constitutional mandate to provide free and compulsory elementary education to all Children until the age of 14.*

Keywords: compulsory education

“Education is the process to build up the character, mind strength and to sharpen the intellectual thinking, so that they can stand upon their own feet”.

-Swami Vivekananda

1. Introduction

Education is a powerful instrument to shape the children and people. For the cultural, social and economic rights, there has been a growth a growth to improvement and development is a vital part with right to Education and to live there life to their possible extent is there basic human rights. In Indian constitutional the fact of Article 21 is the basic right to life contains development of personality. This can be transmission through the importance of Right to Education. The standing of Education in India is dynamic. It's ever-changing from time to time i. e. as per the requirements and capability of nation. Today's education has across the national boundaries and bought a worldwide dimension. The national academic policy is ever-changing for meet the challenges of economic process. When framing of the Indian constitution at that time right to education couldn't be as a basic right that was beneath the the Directive Principles of State Policy under stated in 41 Article from the Indian constitution, that education was of total responsibility of states however in 1976, through constitutional modification education became a joint responsibility. The policy of education is build up fraternity, dignity and feeling brotherhood and unity of nation is above all the fundamental rights. Even in Article 15 and Article 29(2) provides equal opportunity to join in Academies otherwise institutions. Article fifteen sub clause three provides which the nation shall enact unique proviso to betterment of women and children. The right to education is a very important part of the developments and the right to education is a basic human right. The importance of education to individual, Community and national development is reflected in its recognition as a human right. Poor people have rights to education and health, to an adequate livelihood including food, water and housing, to Just and favourable conditions of work, to security and freedom from violence. Education is essential for every person to live with basic human dignity education liberates man from ignorance, exploitation and oppression. It promotes freedom, progress and equal opportunities for all citizens. Therefore, education has been looked upon as the most precious and meaningful investment for human development. In modern era education become a significant task of the Nation. It is an education system by which the discrimination from the culture can be

removed. In Karnataka *state v. Mohini Jain*, [1] Supreme Court has declared that proper to schooling has end up the one of the fundamental proper inside the Indian constitution underneath the Article 21. In Indian constitution Article-21: Life and Dignity rights for individuals which can't be guaranteed to be except with one of the scholastic rights. In *Unnikrishnan v. Andhra Pradesh State*, [2] Supreme Court has declared that right to education is mandatory for the primary schooling under the Article 21 in Indian Constitution, proper towards learning is offered solely for kids is free and mandatory till age of 14 years. This is often given that education is obligation of state however it's depend on the economic capability of that particular state. Currently education become basic requirements of human life like as a basic needs. Nowadays life is education and education is life. A well educated person is known to any or all over the globe. Education has dimensional aspect i. e. physical, mental, and emotional.

2. Aims and Objectives of Education

Assisting the students to obtain control over the means of education according to the time & ability available to gain control over greatest possible extent of social heritage. Helping the students to pay kindness to general welfare. Developing in each individual the ability to think in terms of the established norms and standards of truth. Assisting students in understanding the nature of democracy & in aiming at the progress of society as the goal of life. To develop the economic independence so that individual can became economically independent & solve his economic problems. Education Philosophers have always considered character formation as one of the most important objective of education. The educational system in ancient India laid great stress upon forming the character of the students. It is suggested that only that is education which enhances the individual's usefulness for society and provides him with a good character. Even today educationists agree that education must aims at forming the character of the individual. For that reason the comprehensiveness of time period education convinced the entire world at factor that it serves as a fundamental proper for the survival. Almost everywhere within the global there's a developing recognition about the pivotal function of schooling for the

betterment of the people. It's far universally familiar that schooling is the excellent supply of mobility, equality and empowerment both on the character and collective degrees as such; imperative for the development of society in meaningful way.

3. Legal Development relating to Education

After the independence of India the outline of the Educational Development of the country had been laid down by the B. G. Kher Committee Report of 1948. This report estimated the cost of the various programmes and stages of educational Development. It also ensured programmes for educational Development for all provinces and states.

Subsequently, the Government of India had taken another significant step to appoint the Radhakrishnan Commission in 1949. It was suggested that there was a need to mould the education system in India and also need for improvements and extension requirements for the present and future of the country.

After the independence of India, the Secondary Education Commission known as Mudaliar Commission 1952 was appointed by the Government of India in term of their Resolution to bring changes in the present Education System and make a better Nation. According to this commission the following major recommendations were made: organisational pattern of secondary education, organisation of secondary school curriculum, text books, method of teaching, discipline, moral and religious education, guidance and counselling, supervision and Inspection". [3] Besides, the Government of India appointed an International team of eight experts in 1954 which was known as the Ford Foundation term. The Government of India had decided in collaboration with Ford Foundation term to study in greater detail the major recommendations of Secondary Education Commission. It recommended that the teacher training institutions should include demonstration or laboratory schools where experiments are made in curriculum construction and progressive methods of teaching are used. [4]

The Piers Committee Act, 1956 had recommended that practical work should be given as much weightage as the theory portion in teacher training". Similarly, the Education Commission Act, (1964-66) also known as the Kothari Commission showed a keen interest in teachers' education. It observed that a sound programme of professional education for teachers was essential for the qualitative improvement in education at all levels of teacher education to meet the requirements of the national system of education. [5]

Thereafter, the National Policy on Education came into existence in 1968. It incorporated the recommendations made by the Education Commission (1964-66). However, the policy also emphasised all the factors which determine the quality of education and its contribution to national development. It also made recommendations regarding the service conditions of teachers stating that academic freedom of teachers and service education should be adequate and

satisfactory with respect to their qualifications and responsibilities".

The first Asian Conference on Teacher Education (1971) recommended that the programs of school education and teacher education in each country should be modified to meet the new challenges [6]. The National Commission on Teachers (1983-85) appointed by the Government of India under the chairmanship of Prof. D. P. Chattopadhyaya. It made a number of recommendations for the improvement of the educational process regarding the selection of trainees for the teaching profession. [7]

Besides this, when the Government of India announced a New Educational Policy in 1985, the National Policy on Education was produced in 1986. The important recommendation made was that teacher education is a continuous process and its pre-service and in-service components are inseparable. The Acharya Ramamurthi Review Committee (1990) recommended that in-service and refresher courses should be related to the specific needs of teachers, and that evaluation and follow-up should be part of the scheme. The Yashpal Committee (1993) provided guidelines in respect of the content and methodology of teacher education]. The National Curriculum Framework (NCF) 2005, stated that the teacher now acts as a facilitator, transforming information into knowledge/ wisdom, as a supporter in enhancing learning through multiple exposures, encouraging the learner to continuously achieve his/her educational goals" V. Similarly, the National Knowledge Commission (2007) has made considerable progress in school education since independence with reference to overall literacy, infrastructure and universal access and enrolment in schools.

Right to Education and Provisions in the Indian Constitution

Article 21A (1) states that the State shall provide free and compulsory education to all Citizens of the age of six to fourteen years" [44]. The Directive Principles of State Policy enumerated in our constitution lay down that the state shall provide free and compulsory education to all Children up to the age of 14 years. [8] 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.

-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. [9]

it has been quite different from that of the other constitutional social rights, the main reason being that Article 45 of the directive principles gave a very different promise than the other provisions within the Constitution as it imposed a time-limit of ten years to implement the right to free and compulsory primary education. Article 45 is the only article among all the articles in Part IV of the Constitution, which speaks of a time-limit within which this right should be made justifiable.

The framers of the Indian Constitution were aware that for the realization of a person's capabilities and for full protection, Right to education was an important tool. In addition to Article 45, the right to education has been referred in Articles 41 and 46 of the directive principles as well. The theory of the complementary nature of rights declared in Part III and Part IV, and the harmonious interpretation of these rights has been the foundation for the realization of primary education being declared a fundamental right today in India.

The Constitutional 86th Amendment Act was passed in 2002 and inserted in the Constitution as Article 21A. This Amendment Act, 2002, made three specific provisions in the Constitution to facilitate the realization to provide free and compulsory education to children between the age of six and 14 years as a fundamental right. While adding Article 21A in Part –III of the fundamental rights and slightly modifying Article 45, it also added a new clause (k) under Article 51A of the fundamental duties and it stated that the parent or guardian is responsible for providing opportunities for education to their children between six and 14 years.

Right to Education under Article 41 of the constitution lays down that the state shall, within the limits of its economic capacity and development make effective provision for securing the right to education. Article 45 of the Constitution provides that the State shall provide early childhood care and provide compulsory education for all children until they complete the age of six years]. The obligation of the state to provide education to all children till the age of fourteen years would still depend upon the economic capacity and development of the state. Similarly, Article 46 of the Constitution requires the State to promote with special care the educational and economic interests of the weaker sections of the people, especially of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. Moreover, Articles 29 and 30 which are incorporated in the part III of the Constitution as fundamental rights, also lay down the following provision in regard to right of education. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the grounds only of religion, race, caste, language or any of them. [10]

Role of judiciary towards right to education

The Indian Constitution is known to be a document committed to social justice. The Indian Constitution has recognized education as the essence of social transformation, as is evident from its education specific Articles. The right to education up to the age of fourteen years has been raised by the decision of the Supreme Court in the *Unni Krishnan* [11] case where it was held by the court that right to education for the children of the age of 6 to 14 is a fundamental right. The Constitution (86th) Amendment Act, 2002, has added new Article 21 A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right.

The declaration of the right to education as a fundamental right has been further upheld by the eleven-judge Constitutional Bench of the Supreme Court in *T. M. A. Pai Foundation v. State of Karnataka* [12] the court held that governments and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, but state governments and universities can specify academic qualifications for students and make rules and regulations for maintaining academic standards. The same principle applies in the appointment of teachers and other staff. An unaided minority educational institution would be free to hire as it pleased as long as some essential qualifications were adhered to. Minority educational institutions would have to comply with conditions laid down by universities or boards to get recognition or affiliation.

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* [13] and *Unni Krishnan* [14] 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 v. State of Karnataka* [15], 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 v. State of Andhra Pradesh*, [16] the Supreme 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 v. Union of India and others*, [17] 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 v. State of Karnataka*, [18] 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. First time in *TMA Pai foundation's* case 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 v. State of Karnataka*, [19] 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 Supreme 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. [20]

In connection to this, the Supreme Court in the case of *State of Bihar v. Project Uchha Vidhya, Sikshak Sangh v. Union of India* [21], 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. [22] 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. [23] It is submitted that on the basis of constitutional mandate provided in Article 41, 45, 46, 21A as well as, as per the various judgments' 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. [24]

Right to Free and Compulsory Education Act, 2009

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. [25]

4. Conclusion

The right to education is indispensable in the interpretation of right to development as a human right. Similarly, the right to development is also considered to be a basic human right and the desire to acquire more qualification is an inherent human right. The Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 which is the Consequential Legislation to Article 21(A). Similarly, Article 21 casts an obligation on every state to provide free and compulsory education to children between the ages of 6 to 14 years. But it is not applicable to unaided non-minority and minority educational institutions. The rights of children to free and compulsory education is guaranteed under Article 21A and it can be enforced against the schools as defined under Section 2(n) of the Act. This Act does not bar the unaided minority and non-minority schools who are not receiving any kind of aid or grants to meet their expenses from the appropriate governments or local authorities from charging capitation fees. Similarly, the Central as well as the State Governments may set up a proper Regulatory Authority for supervision, implementation and effective functioning of the Act. However, the Right to Education Act should also set up educational institutes at the secondary level and it should not be limited to the age of 14 years. Education should be provided free of cost and on private institute patterns based on the wants and demands of the society. Therefore, the Parents have a significant role to make Right to Education a major success in India and it can be done only by motivating them through counseling. National and international agencies including all states and societies should focus on the weaker sections of the society and should give them top priority to improve efficiency to this Act.

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- [20]*Modern School v. Union of India*, AIR 2004 SC 2236.
- [21]2006 (2) SCC 545.
- [22]*Ajay Goswami v. Union of India & Others*, AIR 2007 SC 493.
- [23]Article 21-A of the Constitution of India.
- [24]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.
- [25]Supra note 7.