

EMERGENCE OF RIGHT TO EDUCATION AS A FUNDAMENTAL RIGHT-AN ANALYTICAL STUDY

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Abstract—*“Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights”. Human rights being the birthright are therefore, inherent in the entire individual irrespective of their caste, creed, religion, sex and nationality. These rights are essential for the individual as they are consonant with their freedoms and dignity and are conducive to physical, moral, social and spiritual welfare. Because of their immense significance to human beings, human rights are also sometime referred to fundamental rights, basic rights, inherent rights and birthrights. Right to life is basic human rights. It does not simply means physical life. It is something more than a mere biological existence of human body. It means the fullest opportunity to develop one’s personality and potentiality to the high level possible in the existing stage of our civilization. In a civilized society decent life is not possible without the right to education. So, right to education is a basic human right as well as fundamental right envisaged in the Constitution of India. But, due to certain impediments this right is not enforced properly in existing scenario. The Right of Children to Free and Compulsory Education Act, 2009 in its present form needs the support of both Governments at the centre and state level as well as private bodies, and non-Government organizations to implement the Act in a smooth manner.*

Keywords—Human Right, Constitution, Fundamental Right, Education

I. INTRODUCTION

Rights being immunities denote that there is a guarantee that certain things cannot or ought not to be done to a person against his will. According to this concept, human beings, by virtue of their humanity, ought to be protected against unjust and degrading treatment. In other words, human rights are exemptions from the operation of arbitrary power. An individual can seek human rights only in an organised community, i.e., a state, or in other words, where the civil social order exists. No one can imagine to invoke them in a state of anarchy where there is hardly any just power

to which a citizen can appeal against violations of rights. Thus, the principle of the protection of human rights is derived from the concept of man as a person and his relationship with an organised society which cannot be separated from universal human nature.

Human rights are those rights which belong to an individual as a consequence of being human. They are based on elementary human needs as imperatives. Some of these human needs are elemental for sheer health. Thus human rights can be perceived and enumerated. These rights are associated with the traditional concept of natural law. It is said that in the 21st century, a nation's ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future. Education is one of the basic elements, for success of democratic system of any government. With this view, right to education is regarded as one of the important human right in order to live a dignified life in a civilised society.

II. INTERNATIONAL COMMITMENTS

The right to education has been recognised as a basic human right in various international instruments and Conventions. Geneva Declaration containing five principles stated that necessary means must be provided for physical and spiritual development of the child along with special provision that a child must be educated and protected against exploitation.

On 10th December 1948, the General Assembly of United Nation adopted Universal Declaration of Human Right (UDHR). On the Universal Declaration of Human Right, education gets a suitable place for its importance in the development of human life.

Article 26(1) of UDHR proclaims that “Everyone has the right to education. Education shall be free; at least at the elementary and fundamental stages. 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”.

Article 27 lays down as “Everyone has the right to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefit”.

The General Assembly on December 16, 1966 adopted the Covenant on Economic, Social and Cultural Rights. It is consisted of 31 articles, which are divided

into five parts. Article 13 of the Covenant is regarding right to education which states that “The state parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and fundamental freedoms”.

In 1989, U.N. Convention on Rights of Child provides that the child has the right to education and the State has a duty to ensure that primary education should be made free and compulsory. Articles 28 & 29 of the said Convention cast duty upon the State Parties to recognise the right of the child to education. Article 28 provides that State Parties with a view to achieving right to education progressively and on the basis of equal opportunity, they shall, in particular make primary education compulsory and available free to all..., take measures to encourage regular attendance at school and the reduction of drop-out rates. Likewise Article 29 provides for the development of the child’s personality, talents, mental and physical abilities to their fullest potential...India made an international commitment on 11th December, 1992 by ratifying the Convention.

Further in the year of 2000, the Millennium Summit devised some goals in the form of Millennium Development Goals (MDGs) for the signatory countries. One of the goals amongst these is providing universal primary education to all by 2015. Though achieving universal primary education is one of the Millennium Development Goals, but, it is equally true that without a feasible and authentic education system this achievement seem to be a distant dream. So there was an adequate force at International level and it was obligatory for Government of India to endeavour to foster for international law and treaty obligations.

III. RIGHT TO EDUCATION AND CONSTITUTION OF INDIA

The various constitutional provisions regarding education in India are in accordance with our political, economic, social and cultural needs. These provisions aim at fulfilling the aspiration of the people through the medium of education. The constitution of India has provided a large number of clauses and articles, which have a direct or indirect bearing on education. These are as follows—

Education for Women and Children Article 15(3): The basic right to equality provides education for women and children. Article 15(3) is the exception to the general rule laid down in clause 1 and 2 of Article 15. It says that nothing in Article 15 shall prevent the state from making any special provision for women and children.

Women and children require special treatment on account of their very nature. Article 15 (3) empowers to make special provisions for them whether in the field of education, reservation etc.

Education for the Backward Classes Article 15(4): Clause 4 of Article 15 of the constitution provides that the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the schedule castes and schedule tribes. This provision is only an enabling provision and does not impose any obligation on the state to take any special action under it. It mere confers a discretion to act if necessary for backward classes both social and educational field.

Provision for Reservation of Backward Classes Schedule Castes and Schedule Tribes in private Educational Institutions Article 15(5) : Clause (5) of Article 15 provides that, “ Nothing in this Article or in Sub clause (g) of clause 1 of Article 19 shall prevents the state from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Schedule Castes or the Schedule Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than the minority educational institution referred to in clause (1) of Article 30.

Right to Education Article 21A: The Constitution (86th Amendment) Act, 2002 has added a new Article 21A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides that “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law determine. Therefore, this provision makes education a fundamental right.

Right to Work, Education and Public Assistance in Certain Cases Article 41: Article 41 requires that “the State, shall within the limits of its economic capacity and development, make effective provision, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”.

The principle enshrined in Article 41 read with Article 45 provides that it is not only necessary but also desirable for the performance of the State’s ultimate duty and responsibility, to provide education to all citizens. It has been held that Articles

29 and 30 relating to cultural and Educational Rights should be read in the backdrop of Articles 41 and 45.

Provision for Early Childhood Care and Education to Children below the Age of Six Years Article 45: The framing father of our constitution foresaw that, the wide spread illiteracy in our country could not be eradicated without making education free and compulsory Article 45 requires the state to endeavour to provide within a period of ten years from the commencement of this constitution for all children until they complete the age of fourteen years.

Promotion of Educational and Economic Interests of Schedule Castes and Schedule Tribes and Other Weaker Section Article 46: Article 46 obligates the state to promote with special care the educational and economic interests of the weaker section of the people, and in, particular, of the schedule castes and the schedule Tribes, and to protect them from social injustice and all forms of exploitation.

Fundamental Duty Article 51A (K): The 86th Constitution Amendment Act, 2002, inserted a sub-clause in Article 51 clause A in the nature of fundamental duties. Now Article 51 clause (A) sub-clause (K) reads as that who is parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age six and fourteen years.

Enforcement of Fundamental Rights Article 32: A right without a remedy does not have much substance. The Fundamental Rights guaranteed by the Constitution would have been worth nothing had the Constitution not provided an effective mechanism for their enforcement. Article 32 guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights in the Constitution.

IV. JUDICIAL INTERPRETATION ON RIGHT TO EDUCATION

Despite the Constitutional status provided to right to education, the harsh reality is that, the mandate of the Constitution of India remained still a dead letter. Millions of children are denied basic right to education. It is in this compulsion that the Indian Judiciary has to show its deep concern for providing free and compulsory education to all children below the age of 14 years. The Court has interpreted that right to education is a Fundamental Right included in Article 21A of the Constitution.

In **Maneka Gandhi v. Union of India AIR 1978 SC 597**, the Hon'ble Supreme Court gave a new dimension to Article 21 of the constitution. It held that "right to 'live is not merely confused to physical existence but it includes within its ambit the right to live with human dignity." A dignified life is not possible without education. Hence, in this judgment also, Hon'ble Supreme Court gave indirectly emphasis on the right to education, which is very much necessary for a dignified life.

In **Bandhua Mukti Morcha V. Union of India AIR 1984 SC 802**, the Hon'ble Supreme Court characterizing Article 21 as the heart of fundamental rights. The Court gave it an expanded interpretation – "to live with human dignity, free from exploitation. It includes protection of health and strength of workers, men and women, and of the tender age of the children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are the minimum conditions which must exist in order to enable a person to live with human dignity. No government can take any action to deprive a person of the enjoyment of these basic rights. While interpreting the scope of "right to life" under Article 21 of the constitution, the Hon'ble Supreme Court held that, it included education facilities.

In **Mohini Jain V. State of Karnataka (1992) 3 SCC 802**, 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 of India which cannot be denied to a citizen by charging higher fee known as the capitation fee. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured it is accompanied by the right to education.

In **Unni Krishnan v. State of A.P. (1993) 1 SCC 645**, the Supreme Court was asked to examine the correctness of the decision given by the court in **Mohini Jain's** case. The petitioners running Medical and Engineering colleges in the state of Andhra Pradesh, Karnataka, Maharashtra, and Tamil Nadu contended that if Mohini Jain decision is correct and followed by the respective state government they will have to close down their colleges. The five Judge bench by 3-2 majority party 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 that the obligation of the state to provide education is subject to the limits of its economic capacity and development. The obligation created by Articles 41, 45 and 46 can be discharged by the state either establishing its own institutions or aiding, recognizing or granting affiliation to private institutions.

The state shall endeavor to provide within a period of 10 years from the commencement of the constitution for free and compulsory education until they complete the age of 14 years, was taken to be a part of Fundamental Right construing this right in the right of the Directive Principles, the Court held that, every child or citizen of this nation had an right to free education until he completes the age of 14 years. Thereafter, his right to education would be subject to limits of economic capacity and development of the state.

Safety measures in school and right to education as a Fundamental Right are very much correlated. Hence, it is essential to provide adequate safety measures to educational institutions.

In **Avinash Mehrota v. Union of India (2009) 6 SCC 398**, two judges Bench of the Hon'ble Supreme Court consisting of Mr. Justice Dalveer Bhandari and Mr. Justice Lokeswar Pant, held that, it is imperative "that, the education which is provided to children in the primary schools should be in the environment of safety." The Bench held that, "each school must follow the bare minimum safety standards, in addition to the compliance of the National Building Code of India, 2005, in particular Part IV – Fair and Life Safety and the code of practice of Fair Safety in Educational Institutions (IS 14435: 1997) of the Bureau of India standards." Thereafter the Bench directed that –

- 1) Before granting recognition or affiliation, the concerned state Governments and Union Territories shall ensure that, the buildings are safe and secured from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.
- 2) All existing government and private schools shall install fire extinguishing equipments within a period of six months.
- 3) The schools building are kept free from inflammable and toxic materials. If storage is inevitable, they should be stored safely.
- 4) Evolution of structure aspect of the school may be carried out periodically and the concerned engineers and officers must strictly follow National Building Code. The safety certificate is issued only after proper inspection. Dereliction

in duty must attract immediate disciplinary action against the concerned official and,

- 5) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009 was challenged before the Supreme Court of India by the private schools owners on the ground of violation of their fundamental right under Article 19(1) (g), which gives all the citizens a right to practice any profession, or to carry on any occupation, trade or business. In the case of **Society of Unaided Private Schools of Rajasthan v. Union of India (2012) 6 SCC 1** the Supreme Court discussed the constitutional validity of the Act.

The Supreme Court is of the view that the word 'Free' in the long title to the 2009 Act stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling. The word 'Compulsory' in that title stands for compulsion on the State and the parental duty to send children to school. Supreme Court of India held that the RTE Act, 2009 could only apply to day scholars. It cannot be extended to boarders.

V. RECOMMENDATIONS GIVEN BY LAW COMMISSION OF INDIA

The Law Commission of India took up the matter suo motu concerning provision of free and compulsory education to all children up to the age of fourteen years, a cherished goal set in the Constitution of India observed that education has an acculturating role whereby it defines sensitivities and perceptions that contribute to National cohesion, scientific temper and independence of mind and spirit-thus furthering various goals set out in our Constitution. The Commission emphasized the need for immediate Central legislation to give effect to the Right to Education without waiting for the Constitutional Amendment to through in Parliament. The Right of Children to Free and Compulsory Education Act, 2009 is based largely on recommendations made by the Commission.

VI. LEGISLATIVE PROVISIONS

In essence a citizen is only free when he can make a meaningful challenge to his fellow citizens or Government's attempt to curtail his natural freedom. For this to

happen he needs a certain degree of education. Without it, a citizen may never come to know of his other right; nor would he have the resource to adequately enforce them.

For strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of the State policy enumerated in our Constitution lays down that the state shall provide free and compulsory education to all children up to the age of fourteen years. With the insertion of Article 21A in the Constitution by the Constitution (Eighty – sixth Amendment) Act, 2002 wherein it is provided that 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, by law, provides, it become imperative to enact a law to implement the provision of Article 21A of the constitution therefore India become one of 135 countries to make education a fundamental right of every child when the Act came into force on 1st April, 2010.

The salient features of the Right of Children to Free and Compulsory Education Act may be summarized as follows—

- (i) The right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
- (ii) It clarifies that compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admonition, attendance and completion of elementary education to every child in the six to fourteen age group.
- (iii) Free means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- (iv) It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- (v) It specifies that financial burden will be shared between state and central government in providing free and compulsory education.
- (vi) It lays down the norms and standards relating inter alia to Pupil Teacher Ratios, buildings and infrastructure, school-working days, teacher-working hours.
- (vii) It provides that teacher will not be deputed for other duties except provided by the Act.

- (viii) It provides for appointment of appropriately trained teachers, i.e., teachers with the requisite entry and academic qualifications.
- (ix) It prohibits physical punishment and mental harassment, screening procedures for admissions by teachers and running of schools without recognition.
- (x) It provides for 25 percent reservation for economically disadvantaged communities in admission to class one in all private schools.

Merits of the RTE Act, 2009: One must view Act from the perspective of children. It mandates children's right to Education that is free from fear, stress and anxiety. There are several provisions of the Act, including provisions prohibiting corporal punishment, detention and expulsion.

The right to education goes beyond free and compulsory education to include quality education for all. Quality is an integral part of right to education. If the education process lacks quality, children are being unable to demand their rights.

Under the right of Children to Free and compulsory Education Act or RTE, education is a free entitlement for all children. Solutions must be found to end the cycle of poverty so that disadvantaged families don't have to rely on their children's earnings to survive.

Education for all was unanimously agreed upon as a target for reaching the goal of elimination of child labour.

Right to education or RTE is a powerful tool to make sure that children are not working and are in school, where they belong. It is also essential to achieve the goal of the elimination of child labour from the country.

Demerits of the RTE Act, 2009: The Right to education (RTE) Act fails on many aspects. These are some of them which are as follows:

- (a) Experience tells us that no government school is likely to function well unless children of the rich and powerful also attend such schools. Further, it is a myth that private-defacto commercial-schools provide better training than, say a central school of the government of India or trust run schools which are truly not-for-profit.
- (b) The Act places no restriction on the fees that may be charged by unaided private schools ostensibly set up as a society or trust. If they are truly set up

not to make any profit they should not be charging any fees, and the fees paid by the children should be reimbursed by the government. They could then function as a part of the common school system in which children of the neighbourhood would have to go irrespective of their class or status.

- (c) No method is prescribed for selecting the 25 percent poor students for admission into unaided private schools. In the absence of a specific provision the private unaided school can choose the 25 per cent poor children in a way that the choice would benefit the school.
- (d) There is nothing in the Act that will prevent unaided private schools from charging student for activities that are not mentioned in the Act. Examples would be laboratory fee, computer fee, building fee, sports fee, for extra-curricular activities such as music, painting, and so as.
- (e) Norms for building, the number of working days, teacher workload, library and extra-curricular activities are prescribed only for unaided schools, and not for other schools only on obligation teacher student ratio is prescribed both for government and unaided schools.

By inserting various provisions we may have won the battle but still we need to fight a war in order to implement The Right to Education (RTE) Act in letter and spirit. Though this right has become the Fundamental Right but the question is whether are we in a position to enforce this Fundamental Right in the existing scenario where problems like absence of appropriate number of schools & teachers, qualitative education, lack of infrastructure, complex curriculum, etc. are found at every corner. This Act in its present form needs the support of both Governments at the centre and state level as well as private bodies, big co-operate houses and non-Government organizations to implement the Act in a smooth manner.

Therefore, it can be rightly stated that the defect is within the scheme, implementation, observation of the scheme, etc. to make cent per cent literacy, it is necessary that every one of us shall play a positive role, without any greed at political, academic or professional level. It is not only the states, educational institution, or local self-government bodies, but all of us should come together, hand in hand to fight with illiteracy in the country, by helping such unprivileged children.

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