



INDIAN SCENARIO ON RIGHT TO EDUCATION AS A FUNDAMENTAL RIGHT: AN OVERVIEW

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ABSTRACT:

The right to education is an essential tool for the overall development of society as well as nation. Education can promote understanding, tolerance, respect and friendship between peoples, ethical or religious groups and can help make a universal culture of human rights. In this article researcher is analyze the constitutional provisions, statutory enactment as well as international scenario on the right to education. The right to education which aimed to protect and advance the ideas of freedom, equality, fraternity among the citizens. Principles of the right to education was included in the Universal Declaration of Human Rights and national constitutions and various international and national instruments charge states with the obligation to respect, protect and fulfill all the rights to education because the fundamental right to education entitles all individuals to provide appropriate forms of behavior from their respective governments.

Keywords: Education, fundamental right, human rights.

INTRODUCTION:

At the present age of the advancement of the science and technology, the paramount prerequisite for endurance into the society, the education plays significant role for the development of human beings. The education is everyone's fundamental human right which is essential for the empowerment of an individual as well as the society at all. It is important for the exercise of all other human rights. It strengthens personal integrity and gives shapes to the society. It promotes individual freedom and empowerment and yields important development and progress in the society. It is powerful instrument to decrease poverty. India despite being a signatory to various covenants as well as international declarations containing rights of the children, funds obtained are not utilized primarily because of lack of awareness as well as lack of transparency.

The Constitution of India guarantees Cultural and Educational rights. Every citizen has a right to education' under the constitution. Education is now being missioned as a human right and an instrument of social change. The Government of India launched the Right to Education Act in 2009 making education a fundamental right and making education free and Compulsory up to 14 years of age. The Right to Education Act 2009 was passed by the Parliament of India to guarantee free and compulsory education for children between 6 and 14 years under Article 21a of the Indian Constitution. Article 45 originally mandated the state to provide free and compulsory education to children between the ages of six and fourteen years.

Constitutional Scenario on the Right to Education:

At the time of the framing the constitution of Indian right to education could not be given as a fundamental right that was under the Directive Principles of State Policy of Article 41 of the Indian constitution. At that time the education was of total responsibility of states but in the year 1976, constitutional Amendment the education became a joint responsibility. By the 86th



Constitutional Amendment Act 2002, Article 45 elevated from Directive Principles of State Policy (DPSP) up to Fundamental Right made a specific provision concerning the right to education that is the free and compulsory education to children of the age up to 6 to 14 years is a fundamental right. This right to education is fundamental right under the Article 21-A of Part III of the Indian Constitution.

The preamble is the outline of the constitution. According to the preamble, that ultimate authority and source of the Indian constitution is the people. The constitution emerges from them. The Preamble of constitution states that "we the people of India... To secure to all citizens that justice, liberty, equality & fraternity the fundamental rights always remain controversial that date.

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.

In stark contrast to the issue of education parse, education related rights in the context of minority and cultural rights has been a part of the Constitution right from its inception. Article 14 stated that the equality before law that all children get right to education equally without any discrimination.

Article 15 provides the prohibition of discrimination on the ground of religion, race, cast, sex and place of birth.

Article 15 (3) stated that the state to make the special provision for the improvement of women and children.

Article 15(4) stated that state shall make provision for advancement of social as well as educational backward classes or for SC, ST.

Article 15 (5) stated that shall make a special provision for SC, ST and other backward classes the special provision relating to admission to educational institution containing private educational institution aided or unaided by the state.

By the Indian Constitution (Eighty Sixth Amendment) Act, 2002. Article 21A deals with Right to Education as a fundamental provision. In this article stated that "The State shall provide free and compulsory education to all the children of the age of six up to fourteen years in such manner as the State may, by law, determine."

Article 28 (1) stated that no religion instruction shall be provided in the any educational institution shall be providing in educational institution.

Article 29(2) provides equal opportunity for the admission in educational institution.

Article 30 stated that the right to establish & administer educational institutions has been guaranteed to the minorities as a fundamental right. The rights under Directive Principles of State Policy are not enforceable in the court by the citizens.



Article 45 stated that the state to provide free and compulsory education to all the children under the age of 14 years.

Article 46 stated that state shall promote with special care the education & economic interest of the weaker section of the society. It is significant to declaration that among numerous Articles enshrined in the Part IV of the Indian constitution.

Article 45 of the Indian constitution and added it from Directive Principles of State Policy up to fundamental right and even adding new clause (k) in Article 51A i.e. Article 51 A (k) (Fundamental Duty) to make the parents or guardian are responsible to providing opportunity of education to their children up to the age of 6 up to 14 years. After dithering seven years, the subsequent to the 86th constitutional Amendment Act 2002, the right to education Act 2009. The central government has made subordinate legislation, that guidelines states for executing the Act. Even numerous statutes are passed the legislation making compulsory primary education.

To guarantee this right the Central Government passed Right of Children to Free and Compulsory Education Act, 2010. The Right to Education Act promises to ensure education for all children at the age of 6 to 14 years. The question which arises is, has the government succeeded in its motive by passing the Right to Education Act or has failed in providing right to education. There are a number of challenges to access free and compulsory education in India.

The right to education is a free and compulsory education is adopted in Indian constitution through amendment Bill. As per the RTE Act, 2009, every child has the right to full-time elementary education of satisfactory and equitable with quality in a formal school that satisfies certain essential norms and standards. The need to address inadequacies in retention, residual access, particularly of un-reached children, and the questions of quality are the most compelling reasons for the addition of Article 21A in the Constitution of India.

Salient Features of the Right to Education Act –

- Act creates it incumbent on all the States to provide free and compulsory education to children in the age of 6-14 years. Private schools will have to take 25% of their class strength from the weaker section and the disadvantaged group of the society through a random selection process. Government will fund education of these children.
- No donation and capitation fee can be charged from children. Collection of capitation fee will attract a fine of up to 10 times the amount collected.
- No child can be held back, expelled from school.
- No child from disadvantaged groups to be denied free education.
- No screening test, admission test or interview either for child or parents.
- National and State Commission for protection of Child Right would monitor the effective implementation of the measures in the Act and inquire into complaints.
- Quality teachers are recruited. Norms for teachers training and qualifications are also clearly mentioned in the act. Untrained teachers would have to upgrade themselves in five years.



- All schools except private unaided schools are to be managed by School management Committees with 75% of parents out of which 50% to be women members.
- No non-teaching work can be given to teachers.
- All schools have to adhere to rules and regulations laid down in this act, failing which the school will not be allowed to function. Three years moratorium period has been provided to school to implement all that is required of them.
- Any corporal punishment is unlawful.
- Schools will maintain 1:40 teacher student ratio.

International Perspective Regarding Right to Education

Right to Education is basic Human Right. The various international Conventions are on the right to education. The international conference of UNESCO's on the education that provides quality education to all for securing better future of children as well as making them responsible citizens.

The numerous provisions of International convention which are explaining the right to education as an important right. Through such provisions of international convention their impact over the India & enacted legislation in Indian law and other countries and they are making improvement in their provisions such right to education. The right to education is internationally recognized important right. The foundation of right to education in Universal Declaration of Human Right (UDHR) 1948. It has various global human rights and treaties are on right to education. Article 30 and Article 26, Article 26 (1), Article 26(2) and Article 26 (3) of the UDHR states that every human being has right to education, it shall be free at least elementary education with compulsory. Education directed full development of individual's personality and growing respect for human rights and freedom promote understanding and co-operation friendship among the nation and maintain peace.

The main international instruments have also recognized right to education as a basic human rights. In the Article 26 of the Universal Declaration of Human Rights (UDHR) stated 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.”

The human right law affirms that education and children are two important suggestions of an elementary condition of human beings. The International Covenant on Economic Social & Cultural Right (ICESCR), 1966, Article 2 stated that full and immediately all aspect of education and internationally prohibited grounds of discrimination. The committee on economic, social and cultural rights (ICESCR), 1966, stated that it's real of government to implement right to education all over the country without discrimination, giving priority to children who leftovers deprived of elementary education of good quality. Education as a human right that carries obligation over the government to ensure that elementary education is made accessible to all.

In the International Covenant on Economic, Social and Cultural Rights (ICESCR), containing Article 13 provides that the general right to education enumerated by the Universal



Declaration of Human Rights (UDHR). As per the 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 a compulsory as well as available free to all. Secondary education in its different forms, containing technical and vocational secondary education, shall be made generally available as well as accessible to all by every appropriate means, and in particular by the progressive introduction of free education.

It is useful to mention here that newly around 140 nations enacted right to education acts and also elementary education in their constitution. It contains rights of parents to choose quality education. Declaration of Rights of Child (1959), the child is entitled to receive education with free and compulsory at fundamental stage education on the basis of equal opportunity with to develop ability, individual judgment and sense of normal and social responsibility and to become useful member of the society. Principle 7 of refers for entitlement of child to get education. The United Nations General Assembly stated that the principle of Declaration played pivotal role for promotion of children's rights in the world and the shaping various forms of International cooperation in them. Convention against Discrimination in Education (1960). The UNESCO adopted this convention in 1960. This declaration develops the basic principal of equal opportunity without any discrimination in their norms. It promotes and protect right to education around the world, to maintain peace is main goal of UNESCO for that education is important tool. Right to education has various dimensions for basic education to lifelong learning.

Judicial Contribution towards Right to Free and Compulsory Education

The judiciary showed fervent interest in providing free and compulsory education to all children below the age of 14 years. In the year the Supreme Court of India decided two Public Interest Litigation cases such as Mohini Jain and Unni Krishnan case in which the court enforced right to education.

In the Case- Mohini Jain vs. State of Karnataka (1992), the Supreme Court passed a historic judgment declaring the „right to education“ as a fundamental right in 1992. In this case the supreme court held that the right to education is a basic fundamental right under Article 21A of the Indian constitution.

In the Case- Unnikrishnan vs. State of Andhra Pradesh (1993) in this case court held that right to education is a basic fundamental right under Article 21 of the Indian constitution, the right to education is available to all the children is free and compulsory up to the age of 6 up to 14 years.

Whereas the Supreme Court by rightly as well as amicably interpreting the provision of Part III as well as Part IV of the Indian Constitution has made right to education a basic fundamental right.

In the case of Bandhuwa Mukti Morcha vs. Union of India and others, in this case court held that it's the fervent duty of the state to provide a basic education to children also working in the different factories or industries. Court directed the government to take such steps and evolve scheme guaranteeing education to all children.



In the case of TMA Pai Foundation vs. State of Karnataka in this case court held that held that Article 19(1)(g) and Article 26 confer rights on all citizens and religious denominations respectively to establish as well as maintain educational institutions. In addition to here Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice.

In the case Islamic Academy of Education vs. State of Karnataka, in this case supreme Court 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.

the new 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.

Therefore, the 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 Indian Constitution has made right to education a basic fundamental right.

CONCLUSION:

The government of India has taken a historic step for the overall development. Right to education and education is in part III of the Indian constitution i.e. fundamental right. In present scenario right to education is a human right. Right to education plays pivotal role in development of individual as well as society. Then there can be a social change. Transparency in the education is an essential step towards improving the society. Through the Right to education we have achieving the aims & mission of developmental goals in the India.

There should be providing education to all containing women also. By education we can develop our society & economic condition of the individual as well as the nation. Even though we can eradicate poverty, inequality, racial discrimination, environment degradation, population explosion, problems of livelihood etc. So the compulsory education is essential for the overall development.

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