

**INCLUSIVE EDUCATION IN THE FRAMEWORK OF RIGHT TO
EDUCATION: ISSUES AND CONCERNS**

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Introduction

Education opens the mind helping a person to think, analyse and design the future course of action. An educated society ushers the contemporary generation for a bright future and multiplies his potentialities for excellence. Education is fundamentally the enlightenment of life which personifies the dignity of a person. It moulds and transfigures the human personality into a pattern of perfection through a synthetic process of development of the body and upliftment of the mind which in turn supplements the emotions and illuminates the spirit.¹

Education is the special manifestation of human being which can be preserved without the fear of loss and which multiplies with sharing, securing material pleasure, happiness and fame. Education is thus the teacher of the teachers securing honour for the person and refines him from the undignified state of beasthood.²

Thus education for all the human beings is a necessity of life, a social function, a direction for growth and prosperity. Education is meant to draw out the best in the child by modifying his body, mind and spirit.³ Kothari Commission also opined that education has to be used as a powerful instrument of social, economic and political change and therefore must be linked to long term national aspiration. Education is an instrument of change⁴. Therefore education frees a person from shackles of ignorance, prejudice and unfounded belief gradually leading him to

¹ Justice Deepak Mishra, "Right to Education," 26 Nyayadeep (2002).

² Emphasis in the Nethi Shatakan by Bhartruhari as cited in Unnikrishnan v. State of Andhra Pradesh AIR 1993 SC 2178.

³ M.K Gandhi, To the Students, 1-50 (Narayan Publishing House, Ahmedabad, 1949).

⁴ Govt. of India, Report of the Education Commission (Kothari Commission) Govt. of India, New Delhi 1966.

conquer darkness. *Dr. S. Radhakrishnan* pinpointed that to lead us from the darkness to light, to free us from every kind of domination except that of a reason is the aim of education.⁵

Thus education as an interest needs to be protected and promoted which ultimately protects a person's welfare and interest. This is one of the most important characteristic of a right as put forward by the 'Interest' theorist.⁶ The right to education may even be enforced by others on behalf of the right holders, like by parents or guardians of the child. The child not being competent to make the choice in waiving or enforcing the right does not make him less eligible as a right holder. By absolving the child from the compulsion to enforce or waive the same, the right to education is also possessed by the child.⁷

Historical Background

Education has always been the focal point of importance throughout the developmental stages of human race. The transformation from informal to formal has not in any way hampered the development and importance of education. It has always been stressed that right to education at the elementary stage must be public or State supportive and encouraged. However, the study of Indian education history reveals that there was lack of social inclusiveness as far as education was concerned.⁸ The legendary story of *Eklavya* from the Indian Epic of *Mahabharata* showcases such social exclusion. Till 19th century education was largely considered a privilege restricted to persons at the higher end of the caste and class system.⁹ The people from the lower castes and the so called *sudras* in particular were denied admission into *Gurukulas* or *Ashrams*.¹⁰ A small reprieve came when the dominance of classic *vedic* education was overthrown by *Budhism* and *Jainism* and education was no longer confined to hermitages.¹¹ The Muslim rulers also did not consider education as a function of the State. It was largely perceived

⁵ Dr. S. Radhakrishnan, University Education Commission Report, 1948 Paras 29 and 31.

⁶ N.E. Simmonds, Central Issues in Jurisprudence, Justice, Law and Rights, 130 (Sweet and Maxwell London, 1986).

⁷ Id., 132.

⁸ T.N. Siqueira, The Education of India, 3 (Oxford University Press, Bombay, 1952).

⁹ J.P. Naik, Equality, Quality and Quantity-The Elusive Triangle in Indian Education, 2 (Allied Publisher, New Delhi, 1975).

¹⁰ K. Motwani, Manu Dharam Shastra, 3 (Ganesh and co. Madras, 1958).

¹¹ R. Thapar, A History of India, 63-68, 153-161 (Penguin Books Middlesex, 1966).

as a branch of religion and was entrusted to theologians called *ulemas*.¹² Thus right to education was recognized only for the chosen one.

The Britishers introduced modern education into India.¹³ Being largely confined to *Brahmins* and higher classes even this system of education also excluded the masses.¹⁴ *Campbell*, the then district collector observed that in many villages where formerly there were schools, there are now none.¹⁵ The missionary notice of 1856 also stated that in all other parts of the country a school, either grant or missionary is as rare as a light house on our coast, there are four schools existing among three or four millions of people.¹⁶ The importance of primary education was acknowledged by a clear cut policy of Wood's Dispatch. He visualized the need for the opening of new government schools according to some set plans.¹⁷ The demand for a law on free and compulsory education was made during the freedom struggle in order to break the heritage of an inequitable and neglected education system. *Dadabhai Naroji* and *Jyotiba Phole* demanded State sponsored free education for all children for at least four years. This demand was indirectly acknowledged in the Commission's recommendations on primary education¹⁸. In pursuance to this the first law on compulsory education was introduced by State of Boards in 1906. This law provided for compulsory education to boys and girls in the age groups of 7 to 12 years and 7 to 10 years respectively.¹⁹

The Constituent Assembly debates also reveal that an amendment was moved for the free and compulsory education.²⁰ Slowly and gradually moving from pre-independent to post independent period in India, free and compulsory education made its way into the Constitution in the form of Directive Principle of State Policy whereby States were required to ensure the provision of free and compulsory education to all children till the age of fourteen years within a period of 10 years

¹² S.M. Edwardes and H.L.O Garrett, *Mugal Rule in India*, 221, (Asia Publication services, New Delhi, 1979).

¹³ S. Nirullah and J.P. Naik, *History of Education in India*, xi (Macmillan Bombay, 1943).

¹⁴ *Id.*, 42.

¹⁵ B.B. Mishra, *The Indian Middle Classes*, 160 (Oxford University Press, New Delhi, 1961).

¹⁶ *Id.*, 161.

¹⁷ K. G. Sayidia, *Compulsory Education in India*, 19 (University Book and Stationary Co. New Delhi, 1996).

¹⁸ William Hunter Report of the Indian Education Commission, 586 (Superintendent of Govt. Printing India, Calcuta, 1883), also available at [http://: chaf. lib latrobe. edu/au/dcd](http://chaf.lib.latrobe.edu/au/dcd).

¹⁹ *Elementary and Adult Education in India, Historical Perspective (A Report of National Development Council Committee on Literacy, Planning commission, 1993).*

²⁰ Pt. Laxmi Kant Maitra, *Constitution Assembly Debates*, 1948 available at <http://: Parliament of India.nic.in is/ debates/volume 7 p.11 htm>.

of the commencement of the Constitution²¹. Thus initially it was made a non justiciable right depending upon the State to implement it at its own sweet will whereas by the significant contribution of courts in India, the right to education shifted from Directive Principles of State Policy to Fundamental Rights.

The supreme Court of India played a very pivotal role till the time it is made a justiciable right i.e. Fundamental Right. In *Mohini Jain v. State of Karnataka*²², the supreme court interpreted that right to education as such has not been guaranteed as a fundamental right under Part III of the Constitution but reading Articles cumulatively, it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens. Thus Supreme Court declared that right to free education until a child completes the age of 14 years is part of right to life under Article 21 of the Constitution.

In this respect Constitutional amendment in 2002²³ created a history by making right to education as the fundamental right²⁴. Simultaneously it also imposes fundamental duty on every parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of 6 and 14 years.²⁵ Thus education of child from 6 to 14 years is the joint responsibility of the government and the parents as per the Constitutional provisions.

Inclusive Education under Right to Education Act

In pursuance of Constitutional requirement of Article 21-A, Parliament enacted the law namely, The Right of Children to Free and Compulsory Education Act,2009.²⁶ The Act is based on the belief that the values of equality, social justice and democracy and the creation of just and humane society can be achieved only through a provision of inclusive elementary education to all children.²⁷ Thus child has been made a fundamental right bearing unit. Keeping in view the stark realities of Indian society which dissuade children from getting education even after more

²¹ Constitution of India, 1950 Article 45(as originally enacted before amendment).

²² AIR 1992 SC 1858.

²³ 86th Constitutional Amendment Act 2002 with effect from April 1,2010 introduced Article 21-A.

²⁴ Article 21-A provides: 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.

²⁵ Article 51-A (k).

²⁶ Act 35 of 2009 came into force with effect from April 1, 2010.

²⁷ See the Statement of Object and Reasons appended to the Bill.

than 6 decades of Indian independence, the Act of 2009 lays down following provisions to make right to education meaningful and fundamental.

- (i) **Education in neighbourhood school:** Every child of the age of 6 to 14 years shall have the right to free and compulsory education in a neighbourhood school.²⁸
- (ii) **Completion of Education :** Every such child shall have the right to receive education till completion of elementary education.²⁹
- (iii) **Free from financial constraints:** No such child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.³⁰
- (iv) **Provision for Inclusive education:**
 - (a) **Disability no bar :** A child suffering from disability shall have the right to pursue free and compulsory education in accordance with the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation), Act, 1996.³¹
 - (b) **Caste and Class no bar:** To ensure that the child belonging to disadvantaged group³² and child belonging to weaker section³³ are not discriminated against and prevented from pursuing and completing elementary education on any grounds.³⁴

From the above, it can be inferred that free and compulsory education is the need of the hour for those children who suffered social exclusion i.e. deprived of the education because of caste and class prejudices, poverty, ignorance etc. In order to achieve the above mentioned objectives duty

²⁸ Right of Children to Free and Compulsory Education Act,2009, section 3(1).

²⁹ Id., Section 3(1), Section 4 provides completion of free elementary education even after 14 years .

³⁰ Id., Section 3(2).

³¹ Ibid.

³² Id Section 2(d) provides 'child belonging to disadvantaged group' means a child belonging to the Scheduled caste, the Scheduled tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate government by notification.

³³ Id.Ssection 2(e) provide 'child belonging to weaker section' means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate government by notification.

³⁴ Id. Section 9(c).

is cast upon the appropriate Govt. and local authority to establish, within such area or limits of neighborhood, as may be prescribed, a school, where it is not so established, within a period of 3 years from the commencement of this Act of 2009.³⁵

In addition to this, responsibility is cast upon three types of schools to provide free and compulsory education.

- (i) Recognised, established, State owned or State controlled schools which are required to admit all such children without any discrimination and their obligation is total in respect of such children.³⁶
- (ii) Recognised State aided private schools whose obligation to provide free and compulsory education extends to such proportion of children admitted therein as its annual recurring aid or grant so received bears to its annual recurring expenses, subject to a minimum of twenty five percent.³⁷
- (iii) Recognised unaided private schools, which are required to admit in class I to the extent of at least 25% of the strength of that class, children belonging to weaker sections, disadvantaged group in the neighborhood and provide them free and compulsory elementary education till its completion³⁸ and such school is entitled to be recompensed at certain rates in respect of expenditure incurred by it per child.³⁹

In order to enforce this obligation by private unaided schools, the Act clearly stipulates for obtaining a certificate of recognition from appropriate State authority for establishing or functioning of a school.⁴⁰ The certificate of recognition shall be issued subject to such conditions

³⁵ Id. Section 6.

³⁶ Id., Section 12(1) (b) read with Section 2(n) (i).

³⁷ Id. Section 12(1) (b) read with Section 2(n)(ii).

³⁸ Id. Section 12(1) (c) read with Section 2(n)(iv).

³⁹ Id. Section 12(2) read with Section 2 (n) (iv) provides that an unaided school shall be reimbursed expenditure so incurred by it to the extent of per-child expenditure incurred by the State, or the actual amount from the child, whichever is less, in such manner as may be prescribed. However, such reimbursement shall not exceed per-child expenditure incurred by a school specified in Section 2(n)(i) i.e. school which is established, owned or controlled by the appropriate Govt. or local authority. If the unaided school has already received any land, building, equipment or other facilities either free of cost or at a concessional rate such school shall not be entitled for reimbursement to the extent of such obligation.

⁴⁰ Id. Section 18(1).

as may be prescribed.⁴¹ On the contravention of the condition of recognition; the prescribed authority shall by order in writing withdraw recognition.⁴² And if any person who establishes or runs a school without obtaining the requisite certificate of recognition or continues to run a school after withdrawal of recognition shall be liable to fine which may extend to one lakh rupees and in case of continuing contravention, to a fine of Rs 10,000 for each day during which such contravention continues.⁴³

Hurdles in achieving the goal of Inclusive Education

Now the issue is how to fulfill the above mentioned objective of providing inclusive elementary education. The State established, owned or controlled schools are not sufficient and more so most of the schools lack even the basic infrastructure facilities like proper class rooms, blackboards, drinking water, toilets, playgrounds, other like lack of orientation of teachers to handle such students etc. Secondly State aided schools can provide education to limited extent. Thirdly private unaided schools resent and resist to share this responsibility because the society is on caste and class lines and apprehension of resentment by privileged class people and also because of commercialization of education. Therefore they challenged the constitutional validity of the Act itself in the Supreme Court.

Role of Judiciary

The Indian Supreme Court has played a pivotal role in the recognition of right to education. In *Mohini Jain v. State of Karnataka*⁴⁴ the Supreme Court held that right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by right of education. The State government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens. The court continued to observe that right to education is therefore a concomitant to the fundamental rights enshrined under part III of the Constitution and State is under a constitutional mandate to provide

⁴¹ Id. Section 18(2).

⁴² Id. Section 18(3).

⁴³ Id. Section 18(5).

⁴⁴ AIR 1992 SC 1858.

educational institutions at all levels for the benefit of the citizens.⁴⁵ Again in *Unnikrishnan v. State of Andhra Pradesh*.⁴⁶ Supreme Court held right to education as a fundamental right and State is obligated to provide education to all up to 14 years of age.

In *State of Himachal Pradesh v. HP State Recognized and Aided Schools*,⁴⁷ J.Kuldip Singh referred to Kothari Commission and held that the State is under a Constitutional obligation to provide free education to children till they complete the age of 14 years and it cannot be circumvented on the ground of lack of economic capacity or financial incapacity. In *T.M. A Pai Foundation v. State of Karnataka*⁴⁸ the Supreme Court held that minorities whether based on religion or language have a fundamental right to establish and administer educational institutions of their own choice.⁴⁹ The court conceded considerable freedom for self financing institutions and further observed that private educational institutions had personality of their own. In order to maintain their atmosphere and tradition they must have the right to choose and select students of their course of study.⁵⁰ The judgment left many things in confusion. In *P.A. Inamdar v. State of Maharashtra*⁵¹ the court stressed the need for a comprehensive Right to Education Act.

Then Constitutional 93rd Amendment Act, added clause (5) to Article 15.⁵² It enjoins the State to make special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs or STs in so far as such special provision relate to their admission to the educational institutions including private educational institutions whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30. This was challenged in the case of *Ashok Thakur v. Union of India*⁵³ where the court upheld the Constitutional validity of the amending Act and also of the Central Reservation Act, 2006. The court directed to the government that a deadline should be fixed by which time free and compulsory education should reach every child. This had to be done within 6 months of

⁴⁵ Id. 1864-1865.

⁴⁶ (1993) 1 SCC 645.

⁴⁷ (1995) 4 SCC 507.

⁴⁸ (2002) 8 SCC 481.

⁴⁹ Id. 535.

⁵⁰ Id. 548.

⁵¹ AIR 2005 SC3226.

⁵² Article 15 (5) neutralized the impact of T.M.A.Pai Foundation Case.

⁵³ (2008)6 SCC 1.

the passage of the judgment. The court considered the right to education as the most important of all the fundamental rights as without education it becomes extremely difficult to exercise other fundamental rights.

In *State of Tamil Nadu v. Shyam Sunder*,⁵⁴ the court held that right of a child should not be restricted only to free and compulsory education but should include to have quality education without any discrimination on the ground of their economic, social and cultural background. Thus inclusive education was emphasized in this case. Again in *Society for Unaided Private Schools of Rajasthan v. Union of India*⁵⁵ the majority held that provisions making it mandatory for an unaided non minority school to admit in class I certain percentage of children belonging to weaker sections and disadvantaged groups in the neighborhood and provide free and compulsory elementary education are perfectly Constitutional and do not violate Article 19 (i)(g) read with Article 19(6) of the Constitution .⁵⁶ But same is not Constitutionally justified in respect of an unaided minority educational institution in view of Article 30(1) of the Constitution, which gives an unqualified right to all minorities to establish and administer educational institutions of their choice .⁵⁷ Thus Court made distinction between unaided minority and non minority educational institutions and exempted the former from mandatory admission of students in class I. It would have been better if secular character of education was given preference rather than minority status.

Conclusion and Suggestions :

Education is the process which is fundamental for every society in general and individuals in particular. It is basic human right which is fundamental for growth and development of society and its citizens. Education is necessary for enjoying other fundamental human rights like right to privacy, right to live with human dignity, right to development etc. At the global level this was recognized as human right in the Universal Declaration of Human Rights,1948 and International Covenant on Economic, Social and Cultural Rights,1966. But in India right to free and

⁵⁴ (2011) 8 SCC 737.

⁵⁵ (2012) 6 SCC 1.

⁵⁶ Id at 45 (para 64 (iv)).

⁵⁷ Id at 45 (65).

compulsory education was made fundamental right only in the year 2002 to be given effect by law to be enacted for this specific purpose. The Right to Free and Compulsory Education Act,2009 was enacted to give effect to this fundamental right. The Act inter-alia provides that every child of the age of 6 to 14 years has the right to free and compulsory education in the neighborhood school i.e right to receive and complete elementary education without any financial constraint. The most important feature is that this Act provides for inclusive education which means disability, caste and class of the child cannot be grounds for preventing him/her from pursuing and completing elementary education. Even before the enactment of this Act and Constitutional amendment the apex court of the country has played a pivotal role in recognizing this right as the fundamental right thus underlining the significance of this right.

Now the issue is how to provide inclusive education in a country where society is divided on caste and class lines and education is considered as any other commercial activity having profit as main motive. Schools run exclusively by government cannot provide free and compulsory education to these socially and economically disadvantaged/excluded children because of number of factors like lack of adequate schools, infrastructure, teachers, properly trained teachers to ensure inclusive education aspect etc. Thus government requires the cooperation of private sector to achieve this purpose but they avoid this on one or other pretext. Keeping in view these issues which impede provision of inclusive elementary education, the researcher submits following suggestions:

- The secular character of education is to be given preference.
- State recognition rather than State aid or grant is to be given preference for achieving the goal of inclusive education.
- Orientation and training of teachers to impart inclusive education in the right perspective.
- Accountability of authorities is to be fixed.
- Slackness and administrative inertia should be removed to make inclusive education a success.
- Implementation of provisions for training of teachers, research and evaluation for assessing the strengths and weaknesses of the educational practices is important to move towards the goal of achieving quality in education .

- The above mentioned suggestions, if implemented in right earnest can go a long way in achieving the goal of inclusive elementary education.