



A STUDY OF LEGAL EDUCATIONAL FRAMEWORK FOR CHILDREN IN INDIA

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ABSTRACT

The research study traces the educational development in India from ancient to modern period. It covers everything from the Vedic period to modern era. The role of the various traditions and the techniques are discussed elaborately. India is a land of scholars and intellectuals from ancient times - the Vedic and the Buddhist. Education in India has a history stressing back to the ancient urban centres of learning at 'Takshashila' and 'Nalanda' to western education established by British Crown. Although the ancient education system mainly served the interests of people belonging to the upper classes of the society, it also respected the social plurality and cultural diversity of the region. The right to free and compulsory education became a fundamental right in India after six decades of independence. The Constitution (Eighty-six Amendment) Act, 2002 makes elementary education a fundamental right. To enforce Article 21-A parliament has enacted the Right of Children to Free and Compulsory Education (RTE) Act, 2009, which came into force 1 April, 2010 in whole India except the State of Jammu and Kashmir. The Preamble states that the 2009 Act stands enacted inter alia to provide for free and compulsory education to all children of the age of 6 to 14 years. The RTE Act seeks not just to guarantee elementary education but also to reform the system, which has been long overdue. It bans capitation fees, bars the screening and interviews of parents and students before admission, and makes corporal punishment unlawful. It also prohibits private tuition by teachers. The Right to Education is concerned with school education which is a concurrent subject of the Constitution, a concern for

both the Centre and the States. So the smooth operation of the RTE Act depends upon a host of factors including the efficiency of the Central and State governments, district and village administration, as well as the involvement of teachers, parents and students as part of a “national endeavour”, irrespective of caste and creed, region and language. Further, in *Society for Unaided Private Schools of Rajasthan v. Union of India & Anr.* (2012), Supreme Court upheld the Constitutional validity of the Right of Children to Free and Compulsory Education (RTE) Act, 2009. In spite of several qualities, the Indian Constitution and RTE Act, 2009 has many serious lacunas, which shows that the Act is not complete or sufficient in terms of accomplishing its declared and most desirable goals of right to education of children.

KEYWORDS: Legal Educational, Children, India, educational development, fundamental right, RTE Act

INTRODUCTION

Education plays an important role in building a good society, it also promotes for good governance and transparency in a State. The growth and development of a State is primarily depending upon the quality of education given to the people. The State has the obligation to ensure elementary education to all irrespective of one's religion, race, caste and place of birth. Education seeks to build up the personality of the pupil by assigning his physical, intellectual, moral and emotional development. Education is enlightenment. It is the one that lends dignity to a man.

Education is a basic human right and is the foundation of a free and fulfilled life. A right is something, which one is entitled to and which one can claim. Having a right means that someone else has an obligation. If someone has the right to free education, then the government or school cannot demand one to pay to access education.

Education is an important part of social and cultural life. The realisation of the right to development of every human being and nation is impossible without the recognition of the right education. Education is the key to breaking the malicious circle of ignorance and exploitation and empowering weaker sections of the society including women and girls to improve their lives. Through education, the individuals learn about their rights and fundamental freedom. Education is necessary to make them aware about their political, economic and legal rights as well as the knowledge about protective mechanism in case of violation of these rights. There is a close link between poverty and lack of education and the way it affects the lives of men and women. There

is therefore no question that illiteracy has to be eradicated at all costs. It has therefore been acknowledged at a global level that life-long and sustained education improves the quality of life. Children‘ and ‘_education‘ – these two terms are suggestive of an elementary condition of human existence. Human life is determined by a continuous change of generations. Every human being comes into the world as very small children, grow up and into the world they encounters become adults, and old, and finally leave this world.

For the universal ‘_anthropological factor‘ of growing up, a classic formulation referring to the need of education is to be found with Immanuel Kant —the human being can only become human by education.¶ If children are deprived of or only insufficiently provided with education, they can barely develop and frequently not even survive. But at the very least, essential opportunities of life are withheld from them. Human beings need a ‘_right to education‘ because we grow up and because growing up goes along with being educated by others, educating ourselves along the way.

Thus, children ought not to be seen merely as holders of rights, but also as —social subjects,¶ i.e. as human beings with specific, subjective properties that, in part, differ from those of adults, but which also – depending on age and development possibilities – may be action competent players. There is one basic requirement for any cognitive, emotional, and social education of all children – physical well-being. The provision of food, clothing, a home, protection against violence and abuse as well as help when they have experienced violence or are ill, contribute to their well-being. The less this provisioning and help are possible in keeping with the child’s age, the less education will be possible. This is why the right to education fundamentally also depends on the children’s physical condition.

Children’s right to education is not only a human right by itself, but is also instrumental for realising other human rights. Education opens up opportunities of access to good things of life. It brings awareness for development of one’s own personality, for excellence of character, welfare of his or her family and for better human relationship. It enables and motivates better participation in social, political and cultural life of the community. It helps to overcome exploitations and the traditional inequalities of caste, class and gender.

Education leads to ‘_liberation from ignorance which shrouds the mind, liberation from superstition which paralyses effort, liberation am prejudices which blind the Vision of the Truth.‘ Education is a preparation for living in a better way in future with an ability to participate

successfully in the modern economy and society. It is a well proved fact that with universalization of education, the community's health standards, life expectancy and leaning for harmonious life get enriched. In brief, education is a key to the civilizational standards, to the process of social transformation and strivings towards excellence. Value addition in human quality and lifestyle or vision takes place with early education.

The right to education is the most potent mechanism for the advancement of human being. It enlarges, enriches and improves the individual's images of future. Education emancipates the human being and leads to liberation from ignorance. According to Johann Heinrich Pestalozzi, education is a constant process of development of innate powers of man which are natural, harmonious and progressive. 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, accordingly 21st Century is termed as the century of knowledge.

Right to education means that these rights-holders can stand up and that something can be done. Right to education for all is one of the biggest development challenges faced by the International and National community today. Right to education is the most important part of the human development. It is the foundation of free and fulfilled life. Education plays an important role in building a good society; it also promotes good governance and transparency in a state. The growth and development of a state is primarily dependent upon the quality of education given to the people.

The right to education is also an enabling right. Education —creates the 'voice' through which right can be claimed and protected, and without education people lack the capacity to —achieve valuable functioning as part of the living. If people have access to education they can develop the skills, capacity and confidence to secure other rights. Education gives people the ability to access information detailing the range of right that they hold, and government's obligations. It supports people to develop the communication skills to demand these rights, the confidence to speak in a variety of forum, and the ability to negotiate with a wide range of government officials and power holders.

As per the separation of powers provided under the Constitution of India adopted in 1950, the subject matter of legislation for children fell in the State List of the Seventh Schedule of the Constitution. For this reason, even though, there was a crying need for a uniform countrywide legislation, but the same could not be enacted. The Constitutional scheme, thus while recognising

the importance of affairs relating to the welfare of children, however had left matters as education, administration of justice, reformation and other institutions to the prerogative of the States. As a result of the 42nd Constitution

CONSTITUTIONAL PROVISIONS WITH REGARD TO RIGHT TO EDUCATION OF CHILDREN:

15th August 1947 is a red letter day in Indian History when India got freedom. The Constitution of the country was adopted on 26 November 1949 and came into force on 26 January 1950. The Preamble of the Constitution outlines the social philosophy which should govern all our institutions including educational. Right to Education is one of the fundamental rights enshrined in the Constitution of India. The Constitution of India gives a few directions and suggestions for the development of education in the countries which are also called constitutional provisions. In India, constitutional provisions have exercised a direct as well as indirect bearing on education at different stages and indifferent aspects.

Education is the bedrock of social and economic development. It is only through education that we can hope to eradicate social evils.⁴⁹⁴ The Constitution of India, building of the Nation, the object of social and economic development and equal opportunity is unequivocally enunciated in the preamble of our Constitution promises to secure to all citizens of India - Justice, social, economic, and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of individual and the (unity and integrity of the Nation) .

In the *Golak Nath v. State of Punjab*, Justice, SubbaRao said that, the preamble to an Act sets out the main objectives which the legislation is intended to achieve. It is a sort of introduction to the statute and many a times very helpful to understand the policy and legislative intent.

In the *Keshavananda Bharati Sripadagalvaru and Others v. State of Kerala and Anr.*, in this case Supreme Court Justice Shelat, and Justice Grover, said that, the Constitution makers gave to the Preamble —the place of pride. It embodies in a solemn form all the ideals and aspirations for which the country had struggled during the British regime.

In *Re: the Berubari Union case* the Supreme Court has said that, the Preamble to the Constitution is a key to open the mind of makers, and shows the general purpose for which they

made the several provisions in the Constitution. The Preamble, which is the key to understand the Constitution, emphasises by the very opening words, the democratic nature of the Republic guaranteeing equality of status to all which the people of India had resolved to constitute by adopting, enacting and giving to themselves the Constitution. The personality of the Constitution is developed in Part III dealing with the Fundamental Rights.

Minerva Mills Ltd. and Ors. v. Union of India &Ors. In this case Supreme Court has held that Articles 14, 19 and 21 of the Constitution constitute the golden triangle which affords to the people of this country an assurance that the promise held forth by the Preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculating the rights to liberty and equality which alone can help preserve the dignity of the individual.

RIGHT TO EDUCATION BEFORE (EIGHTY-SIXTH AMENDMENT) ACT, 2002:

On the cumulative reading of the Preamble with Articles 21, 38, 39(a) and (f), 41 and 45 of the Constitution, the Court observed in *Miss. Mohini Jain v. State of*

Karnataka and Others - It is no doubt correct that ‘right to education’ as such has not been guaranteed as fundamental right under part III of the Constitution, but reading the above quoted provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens.

Constitution is the fundamental law of the country, reflecting the underlying and unifying values of society. It spells out the basic rights of each person; it serves as a framework for all other laws and policies, and cannot be easily changed. However, it can be amended and updated through a democratic process, and it is important to keep it alive, by popularising and using it, and by campaigning for its reform or amendment, if necessary. The most relevant articles are given here, but be should encourage reading the constitution in its totality. The State is the main agency in any claim to the right to education: it is the prime duty-bearer and the prime implementer; it is the guarantor; and it is the state’s signature in relation to the international norms and standards, which binds it to respect, protect and fulfil the right to education. The state must, therefore, be judged or challenged on its central text on the right to education, whether this is the constitution, the laws or the policies.

Thus, *Unnikrishnan, J.P. and Ors.v. State of Andhra Pradesh and Ors.*, in this case Supreme Court held that right to education is implicit in and flows from the right to life guaranteed by

Article 21 of the Constitution. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. The need of education has been duly and rightly stressed. Therefore court observed that, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble of the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words.

RIGHT TO EDUCATION AS A FUNDAMENTAL RIGHT UNDER ARTICLE 21-A:

The Constitution of India has also directed the State to provide elementary education to all up to the age of 14 years. The Supreme Court of India has also recognized the right to education as a fundamental right under in Article 21-A of the Indian Constitution. In view of the importance of Article 21-A, it is imperative that the education which is provided to children in the primary schools should be in the safety environment.

The right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21-A, which reads as follows, places an obligation primarily on the State: —The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Article 51-A(k), which reads as follows, places burden squarely on the parents: Fundamental duties – —it shall be the duty of every citizen of India who is the parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two Articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society.

Under Article 21-A, it is a mandatory obligation of the State to provide free and compulsory education to all children age of six to fourteen years. In order to achieve this constitutional mandate, the State has to place much greater emphasis on allocating more funds for primary and secondary education. There is no corresponding constitutional right to higher education. The

entire Nation's progress virtually depends upon the proper and effective implementation of Article 21-A.

3.3.2. RIGHT TO EDUCATION: FREE AND COMPULSORY:

The RTE, Act 2009 makes the Right of Children to Free and Compulsory Education justiciable, and envisages that each child must have access to a neighborhood school. It has been enacted keeping in mind the crucial role of Universal Elementary

Education for strengthening the social fabric of democracy through provision of equal opportunities to all. 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. The RTE, Act provides for right of children to free and compulsory admission, attendance and completion of elementary education in a neighborhood school.

The word ‘_Free’ in the long title to the RTE Act, stands for removal by the State of any financial barriers that prevents a child from completing years of schooling.

The word ‘_Compulsory’ in that title stands for compulsion on the State and the parental duty to send children to school. To protect and give effect to this right of the child to education as enshrined in Article 21 and Article 21-A of the Constitution. Article 21-A provides for free and compulsory education to all children of the age 6 to 14 years and also casts an obligation on the State to provide and ensure admission, attendance and completion of elementary education in such a manner that the State may, by law, determine.

The provisions of RTE Act are intended not only to guarantee right to free and compulsory education to children, but it also envisages imparting of quality education by providing required infrastructure and compliance of specified norms and standards in the schools. The Preamble of RTE Act enacted inter-alia to provide for free and compulsory education to all children of the age of 6 to 14 years.

The RTE Act is, therefore, enacted to provide for free and compulsory education to all children of the age 6 to 14 years and is anchored in 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 the children. Provision of free and compulsory education of satisfactory quality to the children from disadvantaged groups and weaker sections, it was pointed out, is not merely the responsibility of the schools run or supported by the appropriate government, but also of schools which are not dependent on government funds.

JUDICIAL TREND TOWARDS RIGHT TO EDUCATION:

Before the Constitution (Ninety-third Amendment) Act, 2001, the right to education was prescribed by Articles 41, 45 and 46 of the Constitution, all of which were Directive Principles of State Policy, but the Courts have interpreted the right to education as a fundamental right by incorporating it within the fundamental rights in Article 21. The trend has been hold that the right to life under Article 21 and the dignity of individual cannot be assured unless it is accompanied by the right to education and that the provisions in part III and IV of the Constitution are supplementary and complementary to each other.

The judiciary showed keen interest and played active role in the interpretation of Article 21 and Article 21-A, and providing free and compulsory education to all children below the age of 14 years. This part gives an account of judicial efforts in the area of right to education and emerging issues related to right to free and compulsory education. In this way discusses judicial decisions before the Constitution (Eighty-sixth Amendment) Act, 2002 and the situation after the passing of Constitution (Eighty-sixth Amendment) Act, 2002 and Article 51-A(k). Therefore Article should be amended immediately to insert the word ‘_her’ in this Article or any other gender related word inclusive of all children.

The original Article 45 of the Directive Principles of State Policy in part IV of the Constitution had used the term up to 14 years provision for free and compulsory education for children, that —The State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.¶ (Art. 45 before 86th Amendment, 2002). Unni Krishnan, J.P. and Ors.v. State of Andhra Pradesh and Ors.(1993), Court has declared, all children up to the age of 14 years have a fundamental right to education. The Supreme Court contended that ‘_right to life’ under Article 21 of the Constitution should be read in ‘_harmonious construction’ with the directive in the Article 45 to provide free and compulsory education to every child up to the age of 14 years, including those below six year of age. Thus, Article 21-A restricted the age group from 0-6 years of children.

Researcher discusses various educational policies and programmes related to right to education of children. The analysis covers major shifts in a primary area of education law and policy and includes detailed analyses of legislative and judicial decisions marking our understanding of long term developments that have fundamentally shaped how schools and school systems are run. It

investigates the goals underlying major legal and policy reforms. Finally, it attempts to provide a strong foundation for crafting future of education law and policy reforms not simply in response to problems that have emerged with the most recent reform effort but with knowledge of some of the broader issues that persistently underlie such problems.

In the earlier post - independence period, the Radhakrishnan Commission (1948-49) emphasized that —education is a universal right, not a class privilege. The Kothari Commission (1964-66) regarded attainment of equality as one of the objectives of education. It highlighted the role of education in bringing about social change – —if this change on a grand scale is to be achieved without violent revolution there is one instrument, and one instrument only that can be used: education. Following the Commission’s recommendations, the National Policy on Education, 1968 devoted one Section (4.1) on the ‘equalization of educational opportunity’ and called for, among others, the adoption of the Common School System as recommended by it. The NPE 1986 (modified in 1992) stated, ‘the new Policy will lay special emphasis on the removal of disparities and to equalize educational opportunity by attending to the specific needs of those who have been denied equality so far. However, the Common School System was never a part of the strategy for ensuring the equalization of opportunity in education, and the agenda under this head included ‘specific needs’ of the disadvantaged groups, women, Scheduled Castes and Scheduled Tribes, minorities and the handicapped.

Even in recent years, the discourse on education at the school level has remained confined to rights, and the equal opportunity and social justice as applied to education are yet to receive attention from educationists and social activists, except perhaps in the shape of demands for reservations for admissions in higher academic institutions. Some examples are offered to affirm that rights with equal opportunity and social justice have not received much of space in the educational politics and policy making in this country. These are (a) emergence of non-formal education, for the poor and the disadvantaged, parallel to formal schooling; (b) growth of fee-charging private schools, for upper middle and privileged class, at the cost of government schools and (c) promotion of segregated schools in non-inclusive environment, for scheduled castes and scheduled tribes, and minorities, child labour and children with disabilities, (d) definition of child in Article 21A of the Indian Constitution, and Right of Children to Free and Compulsory Education Act, 2009.

Thus, problem can be traced that, Indian policy makers have recognized the right to education at least in theory, but the question of equality of opportunity and social justice in the realm of education is yet to figure prominently and effectively on their Agenda. In the meantime, the parallel streams of schooling that have emerged in the recent years have put a huge question mark on the prospect of the realization of the objective of equality of opportunity and of putting in place an inclusive school education system. Does the Common School System provide a way out of this impasse? The Commission is categorically of the view that it does, by virtue of the obligation that it imposes on all schools in the system to comply with a set of minimum norms for providing education of equitable quality to all children. Article 21-A of the Constitution provides right to education as a fundamental right of every child and Directive Principles of State Policy under Articles 41, 45, 46, 39(e) and (f) provides the provision related to education of children and various judgments of Supreme Court and High Courts have significant role in developing educational standards in the country and recognize the human rights and right to education.

The Kothari Commission (1964-66) in particular was to advise the Government on the national pattern of education and on the national policies for the development of education at all stages-ranging from the primary to post-graduate stage and in all its aspects besides examining a host of educational problems in their social and economic context. The Commission was, however, not to examine legal and medical education.

Right to Education was recognized by the United Nations as fundamental to man – indeed as the United Nations was established. India has argued passionately in favour of education as a fundamental right. The National Policies on Education adopted in, 1968, and 1986 as modified-1992 contained provisions regarding Universal Elementary Education. The National Policy on Education, 1986 had aimed to achieve Universal Elementary Education by 1995, the time frame for which was extended by another five years in its 1992 version as – —the new educational policy gave the highest priority to solve the problem of children dropping out of school and will adopt an array of meticulously formulated strategies based on micro-planning, and applied at the grassroots level all over the country, to ensure children’s retention at school. This effort has fully coordinated with the network of non-formal education. It had ensured that free and compulsory education of satisfactory quality is provided to all children up to fourteen years of age before we enter the 21st century. A national mission has launched for the achievement of this goal.¶ The

National Policies on Education of 1968, and 1986 as modified-1992 in India recognized education as a precondition for development and set out three critical issues in both policies as – equity, accessibility and quality. However, targeted of universal elementary education as envisaged in the policy of 1992 could not be achieved even by the end of the century.

The current legal enactment, educational policies and constitutional framework of right to education of children in India does not place enough emphasis on the rights of children. The right of children to free and compulsory education in India thus depends on earlier educational policies and schemes created and run by the Central and State Governments.

CONCLUSION

The Right to free and compulsory education is the responsibility of the Central and State Governments. RTE, Act needs to apply first to the all government schools. The Act clearly states that the State Government is responsible for ensuring adequate number of schools and the infrastructure. The RTE is an effective tool that the government has to use to improve enrolment and quality of education in fully government aided schools first. The Right to Education is now a Fundamental Right for all children in the age group of six to fourteen years. In simple word, it means that the Government will be responsible for providing elementary education to every child up to the eight standards, free of cost, irrespective of class and gender. Part III of the Constitution of India gives all force to every child to get free and compulsory education through Article 21, and insertion of Article 21-A by the Constitution (Eighty-sixth Amendment) Act, 2002 is also a landmark in this respect. Right to free and compulsory education in Article 21-A of the Constitution should be divided into three parts as– first, The State shall provide free and compulsory education to all children of the age of six to fourteen years, and second, The Right to Free and Compulsory Education referred to in part first shall be enforced in such manner as the State may, by law, determine. Part third; The State shall make any law, for free and compulsory education under part second, in relation to aided and un-aided educational institutions.

The problem can be traced to the Constitution (Eighty-sixth Amendment) Act, 2002 and Article 21-A, of the Constitution, which seeks to make free and compulsory education as a fundamental right only for the children in the age of 6 to 14 years and not for the children in the age of 0–6 years. The provision of Article 21-A is directory in nature. It is difficult to understand that up to 6 year of age right to education has not been given the status of fundamental right rather it is in the shape of directive principles of state policy and word acquire the status of a fundamental

right only after the child attains the age of 6 year; whereas the fact is that the fundamental rights, if they are really fundamental rights, are acquired by birth, and not subsequently. Thus, Constitution (Eighty-sixth Amendment) Act, 2002 and Article 21-A of the Constitution has promoted this huge mistake by not recognise the importance of the early years. Whenever, early years of childhood, are the most important period for the rapid growth and development, during this period of age the foundations of cognitive, physical and socio-emotional development, language and personality develop properly. The brain development is most rapid during this phase - 90% of brain growth takes place before the age of 5 years.

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