
THE RIGHT TO EDUCATION AND CONSTITUTIONAL VISION

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INTRODUCTION:

Vision of the Framers of the Constitution on Right to Education On attainment of independence on 15th August, 1947, the first task undertaken by independent India was framing of a new Constitution. As provided in the Cabinet Mission Plan the Constituent Assembly came into being in November, 1946. The task of the Constituent Assembly was to frame a Constitution to the Independent India. The important members of the Constituent Assembly were Jawaharlal Nehru, Rajendra Prasad, Sardar Patel, Maulana Azad, Gopalaswami Ayyangar, Govind Ballbh Pant, Abdul Ghaffar Khan, T.T. Krishnamachari, Alladi Krishnaswami Ayyar, H.N. Kunzru, Sri H.S.Gour, K.V. Shah, Masani, Acharya Kripalani, Dr.B.R. Ambedkar, Dr.Radha Krishnan, Dr. Jayker, Liaquat Ali Khan, Nazimuddin, Sir Feroze Khan Noon, Suhrawaedy, Sir Zafarullah Khan, Dr. Sachchidananda Sinha. Dr. Rajendra Prasad was elected as the chairman of the Constituent Assembly and Dr. B.R. Ambedkar was the Chairman of the Drafting Committee.

The new Constitution of India was adopted by the Constituent Assembly on 26th November, 1949 and the Constitution came into force on 26th January, 1950. Preamble to the Constitution

The Framers of the Indian Constitution expressed the goals of the Constitution in its preamble as follows:

- 1) India is a Sovereign Socialist Secular Democratic Republic.
- 2) India is constituted to secure to all its citizens:
 - i) Justice-- Social, economic and political;

ii) Liberty --of thought, expression, belief, faith and worship.

iii) Equality-- of status and of opportunity; and

3) To promote among them all Fraternity¹.

4) Assuring the dignity of the individual, and

5) The Unity and the Integrity of the Nation.

Fundamental Rights

Further, the Framers included a Chapter on Fundamental Rights in the Constitution of India in Part III of the Constitution. Fundamental Rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by the people to their Government.

Bhagwati. J., while speaking about the importance of fundamental rights in *Maneka Gandhi v. Union of India*,², observed: —These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights, and impose negative obligation on the State not to encroach on individual liberty in its various dimensions. These rights are regarded as fundamental because they are most essential for the attainment by the individual of his full intellectual, moral and spiritual status.

In *Maneka Gandhi s case* the Supreme Court, further held that to be a fundamental right it is not necessary that a right must be specifically mentioned in a particular Article. Even if it is not mentioned in any of the Articles specifically, it may be a fundamental right if it is an integral part of a named fundamental right or partakes of the same basic nature and character as that fundamental right.

¹ Dr. J.N. Pandey, *Constitutional Law of India* Edit. 51, p.16 64

² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 at p.619.

The fundamental rights incorporated in the Constitution of India can be classified under the following six groups:

- 1) Right to Equality³
- 2) Right to Freedom⁴
- 3) Right against Exploitation⁵
- 4) Right to Freedom of Religion⁶
- 5) Cultural and Educational rights⁷
- 6) Right to Constitutional Remedies⁸

Right to Education as a Fundamental Right

The Right to Education was not recognized as a fundamental right in 1950 Constitution of India. It only recognized and guaranteed the cultural and educational rights of minority communities under Articles 29 and 30 and provided for education only a directive to the State under Part-IV of the Constitution.

Article 45 of the Constitution provides that the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children up to the age of fourteen years³, thereby directing the State to accomplish this task by 1960. Thus, the founding fathers were very keen to end the chronic deprivation in education inflicted by colonial rule and ensure universal access to education. However, the founders of the Constitution failed to provide a due share to the children of India in general and right to education as a fundamental right in the Constitution in particular. Of late, in 2002 the Constitution was

³ Articles 14-18

⁴ Articles 19-22

⁵ Articles 23-24.

⁶ Articles 25-28.

⁷ Articles 29-30

⁸ Articles 32-35.

amended by 86th Amendment to guarantee the right to education as a fundamental right under Article 21A.

After nearly seven years since the 86th Constitutional Amendment Act, 2002, the Central Government introduced the Bill for the Right of Children to Free and Compulsory Education on 15th December 2008. This bill has received the assent of the President on 26th August 2009 and got officially published in the gazette of India on 27th August 2009 and came into effect from April 1st 2010.

In *Nagraj v. Union of India* case⁹ the Supreme Court held that Article 21A forms part of the basic structure of the Constitution, thereby no maneuvering could be allowed with its provisions.

A great legal break through was achieved in 1992 when the Supreme Court of India in *Mohini Jain v. State of Karnataka*¹⁰ declared that the Right to Education is concomitant to fundamental rights enshrined under Part III of the Constitution and that every citizen has a right to education under the constitution. The Supreme Court subsequently recognized the above mentioned right in the case of *Unnikrishnan v. State of Andhra Pradesh*.¹¹

The Court by majority judgment held that though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21, and must be contrived in the light of the Directive Principles of State Policy.

Demand for Free and Compulsory Education in the Pre-Constitution era

The demand for law on free and compulsory education started during the freedom struggle in India. In 1882, before the Education Commission (Hunter Commission), Dadabhai Naoroji and Jyothiba Phule 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 education.

The Commission also recommended that schools should be open to all castes and classes. In 1911, Gopal Krishna Gokhale moved a Bill for Compulsory education in the Imperial Legislative

⁹ *Nagraj v. Union of India* case, (2006) 8 SCC 212.

¹⁰ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.

¹¹ *Unnikrishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178.

Assembly. The Bill was dismissed in the midst of stiff resistance. However, the State of Baroda and the State of Bombay adopted law on compulsory education. Gradually, other provinces followed the same. The idea of compulsory education was reiterated in 1937, at the All India National Conference on Education, where Mahatma Gandhi mooted the idea of self-supporting basic education for a period of seven years through vocational and manual training.

The next landmark development in the history of free and compulsory education in India was constitution of the last Education Commission under the British in 1945, which was also called the Sargent Commission. The Sargent Plan recommended free and compulsory education for eight years, i.e. six to fourteen years age group.¹² Despite the consistent demand for free and compulsory education during the freedom struggle, at the time of drafting the Constitution, there was no unanimous view in favour of a fundamental right to education.

The Constituent Assembly Debates reveal that an amendment was moved to alter the draft Article relating to free and compulsory education. By this amendment the education was moved to directive principles of state policy from the chapter of fundamental rights and made the education a non-justiciable right. Article 45 was introduced as a directive to the State to endeavour to provide within a period of ten years from the commencement of the Constitution, free and compulsory education for all children up to age of fourteen years.

Directive Principles of State Policy dealing with “Right to Education”

As the fundamental rights are declared most essential for attainment of individual of his full intellectual, moral and spiritual status, the Framers of the Constitution incorporated certain Directive Principles in Part IV of the Constitution to impose a duty on the State to provide education to the Children of this country. However, the Framers had given discretion to the State to give effect to these directive principles and declared that the directive principles are not enforceable at the instance of citizens of this country¹³. But the Supreme Court in several cases¹⁴ held that the directive principle enshrined in the Constitution are justiciable and are enforceable.

¹² See, *The Fundamentals of the fundamental Right to Education in India*, by Dr. Niranganaradhya and Arun Kashyap. published by *Book For change*, 2006.

¹³ Article 37, the Constitution of India.

¹⁴ *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 228; *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 352; *In re Kerala Education Bill*, AIR 1957 SC 956; *Kesvananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

The State cannot neglect to give effect to these directives, as they are declared fundamental in governance of the State. See, *The Fundamentals of the fundamental Right to Education in India*, by Dr. Niranganaradhya and Arun Kashyap. published by Book For change, 2006. Article 37, the Constitution of India. *State of Madras v. Champakam Dorairajan*,

In *Re Kerala Education Bill*,¹⁵ the Supreme Court observed that though the directive principles cannot override the fundamental rights, nevertheless, in determining the scope and ambit of fundamental rights the court may not entirely ignore the directive principles but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.

In *Kesvananda Bharati v. State of Kerala*,¹⁶ the Supreme Court has said that fundamental rights and directive principles aim at the same goal of bringing about a social revolution and establishment of a Welfare State and they can be interpreted and applied together. They are supplementary and complementary to each other. It can well be said that directive principles prescribed the goals to be attained and the fundamental rights lay down the means by which that goals are to be achieved.

In *Unnikrishnan v. State of A.P.*,¹⁷ the Supreme Court has reiterated the same principle that the fundamental rights and directive principles are supplementary and complementary to each other and the provisions in Part III should be interpreted having regard to the Preamble and Directive Principle of State Policy.

The Constitution of India in Part IV, Articles 39, 41, 45, and 46 contains the directive principles which deal with the Right to Education. In *Unnikrishnan case*,¹⁸ the Supreme Court held that the fundamental right to education flows from the Article 21, but the parameters of this right have to be determined in the light of directive principle contained in Articles 45 and 41. On insertion of Article 21A in Part III of the Constitution providing for free and compulsory education to the children up to the age of 14 years, the directive principles are further strengthened and the responsibility of the State to provide education to children became more concrete. Further, the

¹⁵ *In Re Kerala Education Bill*, AIR 1957 SC 956.

¹⁶ *Kesvananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

¹⁷ *Unnikrishnan v. State of A.P.*, (1993) 1 SCC 645.

¹⁸ *Ibid.*

obligation of the State to provide free and compulsory education to the children of this Country has become more mandatory by enactment of The Right of Children to Free and Compulsory Education Act, 2009 which provided for free and compulsory education for all children of the age 6 to 14 years.

Fundamental Duty to Provide Education

The Part IV-A of the Constitution of India consists only one Article 51-A which was added to the Constitution by the 42nd Amendment Act, 1976. This Article specifies a code of ten fundamental duties for citizens of this Country.¹¹⁷

The Constitution (86th Amendment) Act, 2002 has added a new clause (k) to Article 51-A which provides —Who is parent or guardian to provide opportunity for education to his child or as the case be, ward between the age of six and fourteen years¹¹⁸. Thus, Article 51-A (k) imposes a fundamental duty on parents and guardians of children to provide opportunity for education to his child or ward.

Fundamental Duties as Part of Education

The Constitution contains, under Article 51-A, a provision for Fundamental Duties. Following fundamental duties relates to the type of education imparted in the educational institutions:

To abide by Constitution and respect its ideal and institution, the National Flag and National Anthem.

ii) To cherish and follow the noble ideals which inspired our national struggle for freedom.

iii) To uphold and protect the sovereignty, unity and integrity of India.

iv) To render social service when called upon to do so.

v) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional and sectional diversities, and to denounce practices

derogatory to the dignity of women.

vi) To value and preserve the rich heritage of our composite culture.¹⁹

vii) To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures, and

viii) To safeguard public property and to abjure violence.

ix) To develop scientific temper, humanism and spirit of inquiry and reform. It would be for the educational institutions to impress on the minds of the taught the significance of these fundamental duties so that later in life they may work in a manner consistent with these duties.²⁰

Constitutional Provisions Dealing with Right to Education

The following are the provisions incorporated in the Constitution of India to deal with the subject of Right to Education.

Article 21-A: Right to Education:- 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.

Article 19(1) (g): Freedom of trade and profession:- It guarantees that all citizens shall have the right 'to practice any profession, or carry on any occupation, trade or business.

Article 29(1): _Protection of interest of Minorities:- This Article guarantees to any section of citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

Article 29(2): Right to admission into educational institution:- According to this clause 'no citizen shall be denied admission into any educational institution maintained by the State or receiving aid

¹⁹ See, Article 51-A (a) to (j) and (k).

²⁰ T.K. Tope, Ms. Sulabha Panadika Memorial Lecture, 1989 on Constitutional provisions relating to education

out of State funds on grounds only of religion, race, caste, language or any of them.

Article 30(1): Right to establish and administer educational institutions:- All minorities, whether based on religion or language shall have the right to establish and administer educational institutions of their choice.

Article 30(2): Granting aid to educational institutions:- This clause prohibits the State in granting aid to educational institutions from discriminating against any educational on the ground that it is under the management whether based on religion or language.

Article 41: Right to work, to education and to public assistance in certain cases: - 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.

Article 45: Provision for early childhood care and education:- Article 45 requires the State to endeavour to provide within a period of ten years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of 14 years.

Article 46: Promotion of educational and economic interest of weaker section:-

Article 46 enjoins the State to promote with special care the educational and economic interest of the weaker section of the people and, in particular of the Scheduled castes and the Scheduled tribes and shall protect them from social injustice and all forms exploitation.

Article 39(f): Securing economic justice:- The State shall direct its policy towards securing, that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Special Provisions for Weaker Sections

It is a constitutional obligation of the State to promote educational and economic interest of the weaker sections of the people and in particular of the Scheduled casts and the Scheduled Tribes.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

2) Nothing in this article shall prevent the State from making any special provision for women and children.

Article 15(3) empowers the State to make special provision for the protection of Women and Children.

Article 15(4) was added by the Constitution (1st Amendment) Act 1951, which enabled the State to make special provisions for the protection of the interest of the Backward Classes of citizens. Clause (4) was added to article 15 as a result of the decision in *State of Madras v. Champakam Dorairajan*,²¹ nothing in this article or in clause (2) of Art.29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 15(5) was added by the Constitution (93rd amendment) Act 2006 which provides that nothing in Art.15 or in sub-clause(g) of clause(1) of Art.19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally Backward Classes or the Schedules Castes and Scheduled Tribes in so far as such special provision relate to admission to educational institutions including private educations institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

Article 16: Equality of opportunity in matters of public employment

1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office

²¹ *State of Madras v. Champakam Dorairajan*, AIR 1984 SC 803.

under the State.

3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

Remedial Provisions for Protection of “Right to Education”

(1) Writ Jurisdiction

(2) Article 32- Writ Jurisdiction of the Supreme Court:

(3) Article 32 (1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights conferred by Part III of the Constitution.

(4) Article 32 (2) confers power on the Supreme Court to issue appropriate directions or orders or writs, for the enforcement of any of the rights conferred by Part III of the Constitution.

Article 226- Writ Jurisdiction of the High Court:

(5) Article 226 empowers all the High Courts to issue the writs for enforcement of fundamental rights.

(2) Public Interest Litigation

The Supreme Court of India had relaxed the rule of locus standi and permitted public interest litigations or social interest litigations at the instance of public spirited citizens for the enforcement of Constitutional and other legal rights of any person or group of persons who because of poverty or socially or economically disadvantaged position are unable to approach the Court for relief.

In *Bandhu Mukti Morcha v. Union of India*²² Bhagwati, J., speaking for majority held that Art.32 does not merely confer power on the Court to issue a direction, order or writ for the enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental right of the people and for that purpose this Court has all incidental and ancillary powers including to forge new remedies and fashion new strategies designed to enforce fundamental right. It is in realization of this constitutional obligation that this Court has innovated new methods of and strategies particularly for enforcing the fundamental rights of the poor and disadvantaged who are denied their human rights and to whom freedom and liberty have no meaning.

Central and State Powers under Article 246 and Seventh Schedule

Article 246 distributes the law making power between the Central and State Governments. The subject-matters on which the governments can make law are divided in three Lists—the Union List, the State List and the Concurrent List, and are placed in the Seventh Schedule of the Constitution.

Education was a State subject in Entry 11 placed in List II State List. By the Constitution (42nd Amendment) Act, 1976, the above said Entry was deleted and a new Entry 25 was inserted in List III Concurrent List.³⁴ Entry 25 incorporates education, including technical education, medical education and universities, subject to the provisions of Entries, 63, 64, 65 and 66 of List I; vocational and technical training of labour. This arrangement was made on the reason that education is subject of prime importance to country's rapid progress towards achievement of socio-economic goals.

Conclusion:

Education is a key component of human development that is an essential tool for country's growth. Education is recognized as a purposeful commitment on the part of each state, ensuring innovative, low price and effective education even beneath conditions of nice deficiency & discouraging economic condition. Education has been recognized as an elementary right of every child. It is

²² *Bandhu Mukti Morcha v. Union of India*, AIR 1984 SC 803.

needed along as a finish in themselves to permit persons to guide a genteel furthermore as a lot of satisfying life as a way for developing human capabilities for earning higher financial gain. The progressive method of educational achievements intensively impacts upon other indicators of human development like birth, death, morbidity and acquisition rate.

Education plays one among for most important roles in the method of socialization which cause higher acculturation & incorporation of norms. The quality of education plays a major role in imparting knowledge that's unbiased, relevant as well as capable of making the recipient lead a successful life despite formidable odds in today's competitive world. This is often the human right primarily based approach to the new plan of Right to Education of every kid in modern society. Here, RTE is preserved during vary of global Covenant. Thus, establishment of United Nations in 1945 and its emphasis on human rights ushered in new opportunities to deal with the Right to Education to every child of the world. The United Nations, through its numerous Declarations, Covenants, Conventions and Resolutions have been instrumental in bringing attention to equal Right to Education around the globe.

Consequently, U D H R, 1948, I C E S C R, 1966, Covenant Against Discrimination in Education, Covenant of Elimination of All forms of Discrimination Against women (CEDAW, 1979) & the lot of recently, (CRC, 1989) have given a long way in impressing member nations of the urgent need of social and economic justice to youngsters by creating their rights to quality education accessible to them on equal basis. While the United Nations will be thought of as a pioneer in bringing attention to Right to Education round the world, it cannot guarantee action which rests alone with the several Governments of its Sovereign Member States. Beyond the formal obligations undertaken by Governments in ratifying these Human Rights 5 Treaties, a number of International Conferences have professed the right to Education.

The Education for All Goals were established at Jomtien (Thailand) in 1990 and reaffirmed at the World Education Forum in Dakar (Senegal) in 2000. Whereby International Committee committed to realize universal access to free and compulsory quality based education by 2015. The World's Governments further reaffirmed their faith within the Millennium Development Goals, expressed in Millennium Declaration which create them committed to ensure that each one woman and boys complete a full course of Primary Education and the gender

inequality is removed at all levels of education by the same year. Whereas the right to learning has generally recognized, approach such has implemented on nationwide levels defers considerably. That means such even though each child hold stated Right to education despite some Municipal Bylaw, means of safeguarding that privileges varies significantly as of state toward state. For instance into certain nations R T E may possibly lawfully enforceable over and done through Nationwide Legislations, even though another might looking toward Worldwide Laws and values. India's historical background evidences an inherent tradition of education. Since ancient period, education played a vital role in social upliftment. There are several literary sources that offer references about education of Ancient Indian Societies. The "Mahabharata", the "Upnishads" are the principal works dealing with the system of education in earliest Bharat. Thus, learning into earliest Bharat originated with Gurukul System and four Ashramas – Brahmacharya, Grahasta, Vanprastha and Sanyasa. By the Upnayana Ceremony the initiation of a child into the literacy and spiritual education was made obligatory for all the Aryan s both males and females. Every Aryan i.e. every Brahmin, Kshatriya and Vaishya required elementary literacy and religious education. These four Ashramas and the Upnayana Ceremony can be described as a system of position in ancient India.

In the medieval time the system of education was consisting of Maktabas, Madrasas, Mosque and Khanqahs that were also instrumental in catering the needs of growing Islamic administration. The medieval system of education developed two main types of Schools- Maktabas and Madrasas providing lower and higher education respectively. Teaching in Maktabas had been imparted the directions of the 3 R s (reading, recitation and understanding of some elements of Quran, necessary for prayers) to any child desirous of such learning. However, in both the traditional and the medieval periods, the concept of universal education was not taken care of and somehow appeared weak. Land amount was a breakthrough within the development of education in Asian nation. The formal organized system of school education at each Primary and Secondary levels and the University System of higher Education came up with the efforts of British rule in India, backed by outstanding private charity and donations. Thus, like the other developing countries, the modern education In India attracts help western origins. In India the normal component of learning was cryptic plus hypothetical, they extent had restricted specifically toward the higher caste along with that's association had inscriptive.

Fashionable learning, upon that opposite indicator, has lucid and technical in addition receptive wholly clusters upon foundation of advantage. Learning is understood like greatest persuasive mediator of transformation in Asian country. The muse of contemporary education in Asian country was laid by the Britishers. Charter Act of 1813; Macaulay's Minute, 1835; Charles Wood's Despatch, 1854; Hunter Commission, 1882; Gokhale's Bill, 1912; Hartog Committee, 1929; Wardha scheme for Education, 1932 & the report of the painter Commission on Post-War Education Development had foremost historic developments. Thus, edifying system or education so as to arise bit by bit was categorized among Prime, high school, middle school with Academy /Academia Learning.