

Right to Free and Compulsory Education in India : Constitutional Perspective

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Abstract:

A Constitution is the vehicle of Nation's progress. It is legal as well as social document Indian constitutional law being the Fundamental Law, is a sacred law. The aim of the constitution makers is reflected in the Preamble and in the other provisions of the Constitution. Education as a tool is the most important mechanism for the development of Human beings. Right to education as a fundamental right is inserted in part III of the Constitution. This paper significantly aims to explain the various provisions of the Constitution related to the right to education as a fundamental right.

Key words: *Constitution, Fundamental rights, education, Human rights.*

I. Introduction

Education plays a very important role in the development of human beings. The history of the education system in India is developed in Vedic period. Education was completely under the control of Guru and not any other kings or state. After the independence of India the outline of the Educational Development of the country was laid in the year 1948 by the B.G. committee. The committee recommended the cost of the various programmes and stages of educational development. . The Government of India had taken another momentous step to appoint the Radhakrishnan Commission in 1949. It was suggested that there was a need to mould the education system in India. In 1952 Mudaliar Commission was appointed by the Government to bring changes in the present Education System and make a better Nation. various committees and commissions were appointed by the Government of India for the development of the education system in India.

Education is one of the important functions of the state. Earl Warren, CJ, of US Supreme Court emphasized that “today education is the most important function of the State and local Government. It is required in the performance of our most basic responsibility, even services in the armed force. It is the very foundation of good citizenship. Today it is the principal instrument in awaking the child to cultural values, in preparing him for later

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professional training, and in helping him to adjust normally to his environment. In these says it is doubtful any child may reasonably be expected to succeed in life if he denied the opportunity of an education.”

International Convention and right to Education

Universal declaration of Human rights provides that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be made compulsory. Technical and professional education shall be equally accessible to all on the basis of merit. Parents have prior right to choose the kind of education that shall be given to the children.

Article 18(4) of International covenant on Civil and Political Rights, 1966 provides that “the State parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conviction. The International Covenant on Economic, social and Cultural Rights, 1966, also provides right to education to everyone. Further article 14 provides two years of time to the state parties to the Covenant, to secure free and compulsory primary education in its territory and submit plan of action for the progressive implementation within reasonable number of years.

Article 28 of the Convention on Rights of Child, 1989 provides that the child has the right to education and the state has a duty to ensure that primary education should be made free and compulsory. All the above International conventions give importance to the free and compulsory education to the children.

Constitutional perspective and right to education

Part III which is titled as fundamental right is considered as a Magna Carta of Indian constitution. It recognizes various rights of citizens and non-citizen. The state has no power to abridge the fundamental rights. If any law is inconsistent with fundamental rights, the Supreme Court will declare it unconstitutional.

Initially the right to education is not included as a fundamental right in the Constitution. The Constitution framers were of view that the right to education should exist in India, but at that time the position was different so right to education was included as a directive principle under Article 45 which required the state to endeavour to provide, within a period of 10 years from the commencement of the Constitution, for free and compulsory education for all the children until they attain the age of 14 years. Many states have taken steps towards free and basic education, but they could not make it compulsory

The Right to Education is also one of the important rights guaranteed under Indian constitution, in the beginning this right was implicitly present under Article 21 of the Indian constitution, which guaranteed ‘right to life and personal liberty’. The Supreme Court in Bandhua Mukati Morcha case while interpreting the scope of the “right to life “under Article 21, held that it included “equational facilities.”

Article 21A was inserted in the constitution by the constitution (86th Amendment) Act, 2002.. Article 21 A which is a fundamental right provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the state may, by law, determine .

This amendment also modified the directive principle of state policy. The new Article 45 explains that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

A new duty of citizen is added in article 51-A(k) under this new clause ,it shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years. Article 51A(k) indicates that it is parents ,not the state, who are responsible for making sure that children wake up on time and reach school. Thus, Article 21(A) read with 51A(k) distributes an obligation amongst the state and parent .

Judicial contribution towards free and compulsory education

Judiciary plays a very vital role in providing the free and compulsory education to the children below the age 14 years. The Hon'ble Supreme Court in Lakshmi Kant Pandey v. Union of India held that children of the nation are a supremely important asset. Their nature and solicitude are our responsibility, children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up, to become robust citizens, physically fit, mentally alert, and morally healthy ,endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice In the Mohini Jain case the court observed that every citizen has a right to education under the constitution. The state is under obligation to establish educational institutions to enable the citizens to enjoy the said right .charging capitation fee in consideration of admission to education institutions ,is a patent denial of a citizen's right to education under the Indian constitution. In this case Court took an extremely expensive view of state obligation to provide education to all levels.

In Unni Krishnan Case, the court reiterated that having regard to fundamental significance of education to the life of an individual and the nation ,the right to education is implicit in, and flows from the right to life guaranteed by art.21,the parameter of this right, which is not absolute have to be determine in the light of the Directive Principle of State policy contained in arts. 41, 45 and 46. The Court limited the State obligation to provide educational facilities as follows:-

- (i) Every citizen has a right to free education until he completed the age of 14 years

(ii) Beyond that stage, the State obligation to provide education is subject to the limits of the economic capacity and development of the state.

The policy of admission should not be based on money consideration but on merit. Meritorious but poor students ought not to be excluded by unmeritorious but rich students. Merit should be considered for admission in private colleges. Accordingly the Court evolved the scheme as regards the level of fees chargeable by private educational Institutions as well as the policy for admission. In T.M.A. Pai Foundation case the court held that the scheme framed by court in Unnikrishnan and thereafter followed by the Government was an unreasonable restriction under art. 19(6) of the constitution.

Article 21 A read with article 19(1) (a) has been construed as giving all children the right to have primary education in a medium of instruction of their choice. Article 21 A has also been construed as the fundamental right of each and every child to receive education in a sound and safe building.

The Right of Children to Free and Compulsory Education Act 2009

Article 21A came into force in 2010 under the provisions of the Right of Children to Free and Compulsory Education Act, 2009. All schools, whether state schools or aided or unaided private schools will now have to provide free and compulsory education up to specified percentage of the total number of children admitted.

The term “compulsory education” means obligation on the appropriate Government to provide free and compulsory education to every child of the age of six to fourteen years. And ensure compulsory admission, attendance and completion of elementary education by every child of the age or six to fourteen years. The Act provide special provisions for children not admitted to, or who have not completed ,elementary education, then he or shall be admitted in a class appropriate to his or her age. It also put obligation on the appropriate Government for establishment of neighbourhood school.

There should not be any kind of discrimination to the child belong to weaker section or disadvantaged group and should not be prevented from pursuing and completing elementary education on any ground.

The Supreme Court in Pramati case, ruled that the RTE Act and section 12(1)(c) in particular could not be applicable to minority schools because ‘members of communities other than the minority community which has established the school cannot be forced upon a minority institution as that may destroy the basic structure of the Constitution’.

II. Conclusion:

Justice P.N. Bhagwati the then former chief Justice of India said that “The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of

physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.”

The right to Free and Compulsory Education Act 2009 must be implemented by all the states to achieve the desired objective enshrined in the Act. Every State is responsible to establish neighbourhood schools for children's. The right of a child should not be restricted only to free and compulsory education but should be extended to have quality education without any discrimination on economic social and cultural background.

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