

Right to Education of Children Vis-A-Vis Judiciary

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Abstract

Education is the most potent mechanism for the advancement and all round development of the human being. It enlarges, enriches and improves the individual's image of the future. It is old saying that a human being without education is no less than an animal. The importance of education cannot be underestimated by any country in the world. There is another important saying that children of today are tomorrow's citizen. The full and potential growth of children is indispensable for any nation. The child attains his or her full growth only by way of education. In our country there is no universal definition is available for the age of child, even constitution does not define who can be treated as a child. . Basically we can come to conclusion that a child means a male or female in age of 6 to 14 years. The same is mentioned in the Right of Children to Free and Compulsory Education Act 2009.

The Constitution is a paramount document to any democratic set up and same is to our country. The Constitution embodies ideals to be accomplished by the State and one of such is right to education of children and in the international level also there are number of conventions which speak about the right to education of children. My paper deals with national, international scenario on right to education of children, the constitutional and judicial perspectives and important judgments on children education by the apex court of the land. My paper also deals with some of the important matters enumerated in the Right of Free and Compulsory Education Act 2009 and in the end I have mentioned suggestions for more strengthening of the Education Act 2009.

Keywords: Education, Children, Conventions, Scenario, Globalization, Liberalization, Privitisation, Endeavour, Denouncing, Ceiling, Indispensable, Enumeration.

Introduction

"That mother and that father are enemies who don't give education to their children"¹

"Education is the most powerful weapon which can change the world"²

Education is the most potent mechanism for the advancement and all round development of the human being. It enlarges, enriches and improves the individual's image of the future. It is old saying that a human being without education is no less than an animal. The importance of education cannot be underestimated by any country in the world. There is another important saying that children of today are tomorrow's citizen. The full and potential growth of children is indispensable for any nation. The child attains his or her full growth only by way of education.

In our country there is no universal definition is available for the age of child, even constitution does not define who can be treated as a child. . Basically we can come to conclusion that a child means a male or female in age of 6 to 14 years. The same is mentioned in the Right of Children to Free and Compulsory Education Act 2009. In a civilized society the importance of child care and welfare cannot be under estimated because the welfare of child is welfare of the community.³ The former Secretary General of the United Nations Mr. Kofi Annan observed that "there is no trust more sacred than one of the world holds with children".

International Scenario

The right of children is integral part of fundamental and human right. The beginning of the movement for the rights of the child can be traced back to mid 19th century by publication of an article in 1852 by Slatuouk titled 'the Rights of Children'. Till recently majority of countries in

the world have not given much importance to rights of children and their education. Due to change and passage of time as many as 134 countries in the world have enacted special legislations guaranting right to education for children.

In the international arena for the first time regarding concern of the child is dealt by a non governmental organization in way back 1923. Later the League of Nations passed a resolution in 1924 in Geneva recognizing rights of children over education. In 1948 the United Nations General Assembly approved expanded version of rights of children over education and again another resolution was adopted in 1958 and ultimately in 1989 the countries have adopted the Rights of Child in recognising the educations is a basic right of the children around the world.

The Universal Declaration of Human Rights of 1948 under Article 25(2) also declares that "motherhood and childhood are entitled to special care and assistance. Article 26 (1) of U.D.H.R. goes on to say that "everyone should have right to education". The same is repeated in the International Covenant on Economic, Social and Cultural Rights which mandated that the state parties should recognize everyone has right to education. The United Nations Scientific and Cultural Organisation in 1962 affirmed that there should not be any discrimination with regard to children education. In 2000 the World Education Forum its convention held in Senegal held that everybody has right to receive education. In the regional level grouping like the European Convention adopted that the children of its territory has right to education as one of the basic right..

National Scenario

According to the Census Commission of India report, our country has four hundred million child population which are equal to that of entire population of North America. Among which twenty per cent of children aged six to fourteen are still not enrolled for education.

In our country the awakening over the education is gained simultaneously with freedom movement. The great leaders such as Raja Ram Mohan Roy, Ishwar Chand Vidhya Sagar, Lala Lajpat Rai, Rabindranath Tagore, Madan Mohan Malviya, have recognized the importance education for bring social change and equilibrium in the society. Later when the constitution was under preparation, the importance of education is recognized by the Constituent Assembly. The Constituent Assembly though wanted to place the education as fundamental right but due to paucity of resources forced it to place it in the fourth part of the constitution under articles 38, 39 (a), 41 and 45 to avoid enforceability of them.

Constitutional and Judicial Perspectives

In the post emergency period the apex court of the land, the Supreme Court of India embarked on liberal, in depth and wide interpretation of the Article 21. The article 21 which deals with life and personal liberties and it has become fully strengthened on account of decision rendered by it in Maneka Gandhi v. Union of India⁴ In this case, the highest court has expounded that for survival of the human being the life and personal liberty must to be guaranteed by the

State under all circumstances and it is utmost positive duty of the state to protect it at any cost.

In the continuation of the above stand, the Supreme Court has implied that the "Right to Education" as a fundamental right from the Article 21. The word "life" has been including 'education' as the education is major factor for promoting goodness and dignity in the life of any individual. In our country for the first time whether education is fundamental right or not aroused before two judge bench of the Supreme Court in Mohini Jain v. State of Karnataka.⁵

The apex court of the land accepted that the Constitution of India does not expressly guarantee the right to education as such, as a fundamental right but reading cumulatively the Article 21 along with the Directive Principles of State Policy contained in articles 38, 39 (a), 41 and 45 the court opined that "it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens"⁶

The apex court further stated that without making the right to education under Article 41 a reality, the Fundamental Rights would remain beyond the reach of large majority of citizens.

The apex court clearly remarked that

"We hold that every citizen has a 'right to education' under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State owned or State recognized educational institutions..... Charging capitation fee in consideration of admission to educational institutions is a patent denial of a citizen's right to education under the Constitution".

The apex court by above judgment has taken very rigid and absolutic view and castigated burden upon the state to provide education at all levels. It is pertinent to mention that it is highly improbable to country like India where natural resources are abundant but their exploitation is very meager and state has to provide education free of cost at every level it nothing but sailing upon the impossible task.. The above judgment may sound to be good theoretically but it is very difficult to implement in present day globalization, liberalization and privitisation and other post World Trade Organization existence.

It is pertinent mention that in the post globalization, liberalization and privitisation period, the apex court subsequently has taken reverse turn of above judgment in Unni Krishnan v. State of Andhra Pradesh.⁷

The court has reiterated the proposition that having regard to the 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 Article 21, further the Court remarked that the parameters of this right is not absolute, have to be judged by taking into consideration of the Directive Principles of State Policy contained in Articles 41, 45, and 46. By embarking on new swift the apex Court has considerably lessened burdened of the State in providing educational facilities as follows

1. Every Citizen has right to free education until he/she completes the age of 14 years.
2. Beyond that, the State has obligation to provide education is subject to the "limits of the economic capacity and development" of the State.⁸

The obligations created by Articles 41,45 and 46 can be discharged by the State either by establishing institutions of its own, or by aiding, recognizing and or granting affiliations to private educational institutions. The court while taking note of the inadequate outlay on education on education and limited economic capacity of the State to finance education, it has ruled that private educational institutions, both aided and unaided are a necessity in India, but "commercialization of educational cannot and should not be permitted" under any circumstances.⁹

While denouncing the levy of "capitation fee" by certain professional colleges, the Court has however accepted that unaided private educational institutions can charge higher tuition fee: they "have to and are entitled to charge the higher fee, but not exceeding the ceiling fixed" by the state and state has every power to interfere in fixing the fees. In the same judgment the court opined that even the State has power to fix ceiling for charging of the fees by the private institutions.

By rendering the above judgment the court has indirectly accepted and recognized the fundamental right of every child for free and compulsory elementary education up to the age of fourteen years as provided in the Article 45. Mean while to ensure sufficient and effective realization of this a right as well as to reassert national will and commitment in this regard Article 21-A was inserted by eighty-sixth Constitutional Amendment in 2002. Though the amendment was brought way back in 2002 until 2009 the succeeding governments have failed to enact any specific law for implementing given fundamental right of education. The United Progressive government as it promised in its manifest to has brought the constitutional amendment in and added article 21 A in which the right to education is recognised as the fundamental right and now this article 21 A provides that up to 14 years of age the State must provide education at free of cost and if the citizens have denied of this right they have right to enforce by approaching the apex court under articles 32 and various High courts under article 226 of the constitution. Though the Right to education became a fundamental right in 2002 but we suffered with dearth of specific law up to 2009 when the Indian Parliament has passed much delayed and needed enactment in 2009 which is called as the Right of Children for Free and Compulsory Education Act in 2009 and which came into operation from 27th of August, 2009.

Right of Free and Compulsory Education Act 2009

This is another landmark enactment in post globalisation, liberalisation and privatisation period in our country. The act encompasses into thirty eight sections in seven chapters. The main features of the act are the state has to provide free and compulsory education to all children in the six to 14 age group, no child shall be held back, expelled, or required to pass a board examination until completion of elementary

education, a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age, provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed, provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years of age. For the purposes of admission to elementary education the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births and Deaths Registration Act, 1856 or on the basis of such other document, as may be prescribed.

The Act further enshrines that no child shall be denied admission in a school for lack of age proof, a child who completes elementary education shall be awarded a certificate. The Act mandates that the ratio of student-teacher has to be fixed in reasonable manner and creating of 25 percent reservation for economically disadvantaged communities in admission to class one in all private schools. The Act mandates in improvement in quality of education, school teachers will need adequate professional degree within five years or else they will their lose jobs, school infrastructure (where there is problem) to be improved in three years, else the authorities shall cancel recognition to such erring schools, the financial burden relating to improvement of infrastructure will be shared between state and central governments. The act further provides that disputes regarding the educational matters have to be litigated in specially constituted educational tribunals.¹⁰

The Right of Children for Free and Compulsory Education Act 2009 is another kind of welfare legislation enacted by the parliament in post privatisation, liberalisation and globalisation period and which enumerating far reaching provisions.

Constitutional validity of Right to Education Act 2009

After coming into force of the Act number of litigations have been filed by different persons and organization challenging the Act stating that it infringing their fundamental rights which have been provided under Article 19(1) (g) which deals with freedom of profession, occupation, trade or business and under Article 30, which deals with rights of minorities to establish and manage educational institutions. In Indian Society for Unaided Private Schools of Rajasthan v. Union of India and another¹¹, the three judge bench of the apex court by majority held that 2009 Act is constitutionally valid but Act 2009 is not applicable to unaided minority schools protected under Article 30(1) of the Constitution. In the aforesaid case, however, the three-Judge Bench did not go into the question whether clause (5) of Article 15 or Article 21A of the Constitution is valid and stated that these articles does not violate the basic structure of the Constitution.¹²

Again the full constitutional bench of apex court comprising of then Chief Justice R.M. Lodha

and Justices A.K. Patnaik, Dipak Misra, S.J. Mukhopadhaya and Ibrahim Kalifulla, in *Pramati Educational and Cultural Trust v. Union of India and another*¹³ reiterated its earlier stand that the RTE Act does not apply to unaided minority schools so they are not compelled to provide free and compulsory education to children belonging to weaker sections. In the judgment the Supreme Court further held that the RTE Act 2009 does not apply to even unaided minority schools. The above judgments have become a great set back to the Right to Education Act 2009 as the minority aided and unaided educational institutions have been completely excluded from purview of the Act. By these judgments the poor children are denied of 25% share in admission in minority educational institutions. It is also well known fact that in our country the much of quality education is offered by such minority institutions in every nook and corner of the country.

Conclusion and Suggestions

This RTE Act 2009 large extent is protecting the educational rights of the children but it is still not free from following lacunas.

1. The definition and meaning of education is not at all mentioned in the Act. Because of this there is no clear cut explanation of education which is resulting into confusions.
2. The Act only speaks about 25% seats reserved in private schools for poor students, but no provision about intake of poor students in the government or government aided schools.
3. The Act mentions about children above the age of 6 years but does not cover children who are below the age of 6 years.
4. There is no provision in the Act with regard to mental disorder or disabled students' education.
5. The Act only speaks about elementary or basic education but no provision about secondary or higher education.
6. The Act does not prescribe about the development of infrastructural facilities in the schools and there is no provision which regard

to who has to bear for such development of infrastructural facilities.

7. The Act also silence about fair salaries to be made available for teachers working in the private management schools.
8. The Act only mention that the central and state governments should accord sufficient budgetary provisions for meeting the requirements of the education but nowhere stated that how much budgetary allotments should be made.
9. The government also take steps of bringing back of minority institution under the fold of the Right to Education Act otherwise we are denying the poor of their right to receive quality education from minority educational institutions.

As already mentioned the Act is one of the landmark enactment it should be strengthened to achieve rapid national development, as only education will throw away all social evils or dogmas facing by our country. It is high time that the Government should bring suitable amendments to the Right to Education Act to meet emerging challenges in years to come.

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