

Child Right and Right To Education: An Overview

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Abstract

Education in its general sense is a form of learning in which the knowledge, skills, and habits of a group of people are transferred from one generation to the next through teaching, training, or research. Education frequently takes place under the guidance of others, but may also be auto didactic. Any experience that has a formative effect on the way one thinks, feels, or acts may be considered educational.

Education is the most powerful tool which can shape the destiny of an individual as well as the whole nation. As we know education is the most powerful tool which can shape the destiny of an individual as well as the whole nation. If we look at the reasons responsible for demarcating the boundaries between developed and under-developed nations, education emerges as the single most vital factor spinning the wheel of progress in the developed nations. It has been established that an educated citizen not only improve the economic and social status of the nation but political scenario also.

Keywords: Education Learning ,Economic and social status ,educated Citizen.

Introduction

The Concepts of Education as given by prominent educationists are as follows. Principles of Education and School Organization; Vivekanand: "Education is the manifestation of the divine perfection, already existing in man."

Education is indispensable for everyone. It is the level of education that helps people earn respect and recognition. In my opinion, it is a requisite part of life both personally and socially. However, the unequal criterion of education is still a major problem that needs to be solved.

The significance of education is unquestionable for every single person. It goes without saying that education has a positive effect on human life. , education plays such an elementary role on our society that we cannot even imagine a life without it. It is an unwavering element for the development of human civilization. Although education has a momentous influence on life, the average education is not the same in different areas. As a result, strategies are being made to resolve the problems. Without education, life would be devastating and disadvantageous. Education help in imparting moral values which is missing in our youth and needs to be addressed carefully for creating a good society.

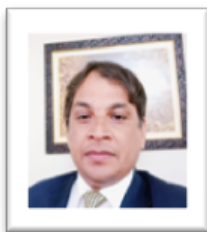
Objective of the Study

This paper focused on Indian Education System and its emerging dimension of Child Rights and right to education .

It is misfortune that our country is unsuccessful to eliminate the menace of illiteracy even after 6 decades of independence and our legislators have abandoned this prime area of human resource development for such a lengthy time. Because, It is and should be the prime duty of the state and centre governments to provide free Education and Health facilities to all the citizens of the country without any sort of prejudice. Anyway, because of the efforts made by our worthy educationists, academicians, NGOS and civil society groups who followed a rights based approach that resulted in the passing of 86th constitutional amendment by the parliament and **Article 21A** in the year of 2002 which made Right to Education a fundamental right. Subsequently, "**Right to Free and Compulsory Education Act**" was approved by the president of India on 26th August 2009 and got officially published in the gazette of India on 27th August 2009.

India became one of the 135 countries to make education a fundamental right for its citizens when the act came into force on 1st April, 2010. It put the Right to Education at par with Right to life. This act bounds all the stakeholders like parents, schools, society, states as well as central governments to play their roles in order to provide free and compulsory education to the children between the 6-14 yrs of age. All the practitioners of education welcome the intent of the Act and believe it as a momentous movement towards the universalization of elementary education though out the nation.

In 2002, through the 86th Amendment Act, Article 21(A) was incorporated. It made the right to primary education part of the right to freedom, stating that the State would provide free and compulsory education to children from six to fourteen years of age.¹



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Six years after an amendment was made in the Indian Constitution, the union cabinet cleared the Right to Education Bill in 2008.¹ The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), which was passed by the Indian parliament on 4 August 2009, describes the modalities of the provision of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. The bill was approved by the cabinet on 2 July 2009. Rajya Sabha passed the bill on 20 July 2009 and the Lok Sabha on 4 August 2009. It received Presidential assent and was notified as law on 3 Sept 2009 as The Children's Right to Free and Compulsory Education Act. The law came into effect in the whole of India except the state of Jammu and Kashmir from 1 April 2010, the first time in the history of India a law was brought into force by a speech by the Prime Minister. In his speech, Manmohan Singh, Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India."

People are not aware even about their fundamental rights. Youth is the future of the Nation and their empowerment through RTE. In ancient times youth was not compelled to study but at present times he has to study to deal with the present world as illiterate person may be deceived or may not know his right and duties towards society and family.

The Indian Constitution has recognized the importance of education for social transformation and is committed to social justice. The Preamble determines, to secure liberty of thought, expression, belief, faith and worship and equality of status and opportunity and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation. Literacy forms the foundation stone for making the provision of equality of opportunity a reality. The objective specified in the Preamble contains the basic structure of the Constitution, which cannot be amended, and the preamble may be invoked to determine the ambit of Fundamental Rights and Directive Principles of State Policy. Judicial interpretation has brought alive many an Article of the Constitution, which if read literally may seem to be a colourless Article Of relevance to literacy, for instance, is the wide interpretation given to the words 'personal; liberty'. Implementation and funding of RTE

Education in the Indian constitution is a concurrent issue and both centre and states can legislate on the issue. The Act lays down specific responsibilities for the centre, state and local bodies for its implementation. The states have been clamouring that they lack financial capacity to deliver education of appropriate standard in all the schools needed for universal education. Thus it was clear that the central government (which collects most of the revenue) will be required to subsidize the states.

In Francis Coralie Mullin v. Administrator, Union Territory of Delhi(1981), Justice Bhagwati observed:

"The fundamental right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes right to live, with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, mixing and co-mingling with fellow human beings."

Right To Education At National Perspective

One of the essential rights of human being is their right to be educated. Right to education is a fundamental right that cannot be alienate, thus, it is an absolute right essential for humans. Since it is very essential right, other rights can not be enjoyed in the absence of this right to education.

Historical Aspect

The Right to education in India has a very long history. It is not the development of a few years. The present scenario of the education and the right to education is the outcome of the struggle of our freedom fighters, philanthropist and the great educationists who have always made a sincere efforts to ensure that the compulsory education is made available to all the children and the future of the country is safe. The demand for the right to education started way back in the end of the eighteenth century.

Constitutional provision on Right to Education

Art. 21A. 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. (EIGHTY-SIXTH AMENDMENT ACT, 2002)

Art. 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.

Art. 45. Provision for free and compulsory education for children

1. 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.
2. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. (EIGHTY-SIXTH AMENDMENT ACT, 2002)

Art. 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Art. 51A (k) who is a 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. (EIGHTY-SIXTH AMENDMENT ACT, 2002)

Provisions for Minorities

Art. 29. Protection of interests of minorities.

1. Any section of the citizens 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.
2. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Art. 30. Right of minorities to establish and administer educational institutions.

1. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
2. (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.
3. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.
4. Art. 350A. Facilities for instruction in mother-tongue at primary stage It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Judicial Approach

*In St. Stephen's College v. University of Delhi*² the Supreme Court has declared the St. Stephen's College as a minority educational institution on the ground that it was established and administered by members of the Christian Community. Thus, these were the indicia laid down by the Supreme Court for determining the status of a minority educational institution and they have also been incorporated in Section 2(g) of the Act.

Article 30(1) of the Constitution postulates that members of a religious or linguistic minority has the right to establish and administer educational institutions of their choice. It is a matter of proof through production of satisfactory evidence that the institution in question was established by the minority community claiming to administer it. The proof of the fact of the establishment of the institution is a condition precedent for claiming the right to administer the institution. The onus lies on one who asserts that an institution is a minority institution.

*In N. Ammadv.Manager, Emjay High School*³ the Supreme Court clarified that a minority educational institution would continue to be so whether the Government

declared it as such or not. When the Government declared it as a minority educational institution, it has recognized a factual position that the institution was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. The minority educational institution can claim protection under Article 30(1) even before the Government declared it as minority educational institution.

In Educational & Charitable Trust v. State of Tamil Nadu⁴ the Court held that the minority status cannot be conferred on a minority educational institution for particular period to be renewed periodically like a driving license. It is not open for the State Government to review its earlier order conferring minority status on a minority educational institution unless it is shown that the institution concerned has suppressed any material fact while passing the order of conferral of minority status or there is fundamental change of circumstances warranting cancellation of the earlier order.

In T.M.A. Pai foundation v. state of Karnataka⁵ the Hon'ble Supreme Court has declared that, admissions of students to unaided minority institutions could not be regulated at all by a state or university so long as the admission was on a transparent basis and the merit was adequately taken care of. Further, it has been held that, an aided minority educational institution would be entitled to have the right of admission of students belonging to the minority group. However, they would be required to admit a reasonable extent of non-minority students, so that the rights under Art.30 (1) are substantially maintained while the citizen's rights under Art. 29(1) are not infringed.

In P.A. Inamdar and others v. State of Maharashtra and others⁶ It was held that reservation in private educational institution (majority or minority) is violative of Art.19 (1)g and Article 30. It was further held that, neither the policy of reservation can be enforced by the State nor any quota or percentage of admissions can be carved out to be appropriated by the State in a minority or non-minority unaided educational institution. Minority institutions are free to admit students of their own choice including students of non-minority community as also members of their own community from other States, both to a limited extent only and not in a manner and to such an extent that their minority educational institution status is lost.

This judgement was an attempt to bring clarity to two previous judgements by the Supreme Court in T.M.A. Pai Foundation &Ors. vs. State of Karnataka &Ors.in 2002 and Islamic Academy of Edn. &Anr.vs. State of Karnataka &Ors (Islamic Academy of Education case) in 2003.

In Ng Komon v. State of Manipur⁷the supreme court held that shifting of school to another village would deprive school going children of the Komlathabi village of age of 6 to 14 years of their fundamental rights to have free and compulsory education in Government school and in violation of the right to education under Article 21A of the constitution and quashed the order of the Executive Authority. The court directed the applicant to approach the appropriate authority of the Government of Manipur by filing a representation for providing free and compulsory education to the children of Komla Bhabi of village of 6 to 14 years of age by establishing a Government Primary School within four weeks from the day and the authorities concerned on the receipt of the representation shall decide the same in the view of the observation made by the High Court order and also the fundamental rights of the children under Article 21, 21A and also the rights under Article 39, 41, 42 and 51A (k)Of the constitution within 4 (four) months from the receipt of the representation by passing reasoned order.

Conclusion

The Act promises free and compulsory education to any child in the age-group 6-14. The Act says that schools should be within a radius of 1-3 km from where the child lives. All government-aided schools have to reserve 25% of their seats for students from economically weak sections (EWS). Private schools that are not government-aided also have to reserve 25% of their seats in Class 1 for EWS students; the government will compensate them. All government schools will have school management committees, 75% of whose members will be parents or guardians of the children. Fifty per cent of these have to be women.⁴ State child rights commissions will monitor implementation of the RTE Act in their respective states.

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