

SOCIO - ECONOMIC JUSTICE AND THE RIGHT TO EDUCATION

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“Literacy is a bridge from misery to hope. It is a tool for daily life in modern society. It is a bulwark against poverty, and a building block of development. Literacy is a platform for democratization and a vehicle for the promotion of cultural and national identity. Especially for girls and women, it is an agent of family, health and nutrition. For every one, everywhere, literacy is, along with education in general, a basic human right..... Literacy is, finally, the road to human progress and the means through which every man, woman and child can realize his or her full potential.

-Kofi Annan.

Introduction

At the time of birth, we do not find much difference between a baby of a human and a new born of other animals in the sense that human baby performs almost all actions which are performed by the new born baby of any other animal. Only education ¹ and philosophy can make a human child really human.² There are certain necessities without

¹ Mahatma Gandhi defined ‘education’ in general and inclusive sense and he said, “By education, I mean an all

round drawing out of the best in child and man-mind, body and spirit”. He gave the concept of 3 ‘H’s i.e.,

Head, Heart and Hand. Head for mental or cognitive development; Heart for spiritual/emotional development ; and

Hand for Physical or Psycho-motor or skill development. All these aspects of human personality are essential to

have a holistic development of her/his personality.

² Hon’ble Dr.Justice S.R.Nayak, cited from his Inaugural Address at the National Conference on “Right to

Education : Accessibility and Quality Dimension” organised by Karnataka Ste Law University, Hubballi,

On 27th March, 2015, reported in (2015) III *KSLUJ* at 1.

which a man cannot live a life of his own³ and education is one of the basic necessities of life⁴.

The future custodians of all the present philosophies, including Sovereignty, rule of law, justice, liberty, fraternity and international peace and security, are the children⁵. They are, indeed, future shoulders in the form of great scientists, rulers, administrators, philosophers, legislators, teachers, Judges, Engineers, technologists, industrialists, planners, workers and politicians on whom the nation rests.⁶

Definition of the term "Education"

The word "Education" comes from the Latin word *e-ducere*, mean "to lead out". It is indeed, difficult to define education. Education is a relentless process of becoming.⁷ However, there are a few definitions which are worth quoting, Mr. Will Durant defines 'education' as the "transmission of civilization". George Bernard Shaw, one of the eminent thinkers of the last century while talking about 'education' spoke thus:-

'A fool's brain digests philosophy into folly, science into superstition, and art into pedantry. Hence University education'

George Peabody has defined 'education as follows:-

"Education: a debt due from present to future generations".

³ Dr.Rattan Sing, "The Right to Free and Compulsory Education Act in India: A Transmission to Required

Education Zone, *Indian Bar Review* Vol XXXVIII(3)2011 at 89

⁴ Dr.Shallu, "Right to Education and the Constitution (Eighty Sixth Amendment) Act, 2002, *Indian Bar Review* Vol.XXXV(1 to 4) 2008 at 189

⁵ "At the Childhood, the young kid's minds are like a clean state, on which you can write whatever you want, and

It continues throughout his life. The young ones are the budding citizens of Bharat of tomorrow, and it is in

the hands of the service providers to show them the righteous path, and in turn build a value based democratic nation or destroy the nation, though, what Mahatma Gandhi, said, an *Adharmic Education*

⁶ .Srinivas Gupta , "Right of the Child to Education in India", *Indian Bar Review*,_Vol.29(2) 2002 at 75-76

⁷ V.Narayan Karan Reddy, *Man Education and Values*. 1979, B.R.Publication, New Delhi at 50

The purpose of education are manifold. It is rightly called, the beauty of learning. It has energy, prowess, animation, activation and inherent potentiality of transformation⁸

Why Education?

It is stated that 'child is the father of man'. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must assume education,⁹ gain knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be man with a mission, a man who matters so far as the Society is concerned¹⁰.

Education is the basis for the development and empowerment for every nation. It plays a vital role in understanding and participating in day to day activities of today's world.¹¹ The most important function of education is enriching the character¹² and plays a significant role in transmitting one's culture, beliefs and values to others in Society. It helps in creating innovations and meeting the growing needs to every nation. The development of a nation is not measured through the buildings it has built, the roads it has laid down, bridges it has constructed but by the human resources, the nation has developed through a well-defined system of education. Although the physical facilities are usually important but they are perishable and valuable. In the absence of proper education, the nation can hardly develop these and maintain them. Education is therefore more crucial factor not only to equip the new generations with skills so essential for earning a livelihood but also to create among them an awareness to social and

⁸ Justice Dipak Misra, "Right to Education". *Nyaya Deep*, Vol. VIII(1), Jan 2007 at 24

⁹ Justice M.Rama Jois, "Be Immortal", *Lawyers Update*, January 2015 at 7.

¹⁰ Jai S. Singh, "Expanding Horizons of Human Right to Education: Perspective on Indian and International Vision", *Journal of Indian Law Institute*, Vol 52:1, 2010 at 34.

¹¹ *Supra* note 3 at 90

¹² Nani. A. Palkhivala, "Purpose of Education", *Lawyers Update*, April 2013 at 15

environmental realities and inculcate in them scientific temper, independence of mind and spirit which are of paramount important for them to become responsible citizens.¹³

Dr. Radhakrishnan has rightly said that: "A Civilization is not built of bricks, steel and machinery, it is built with men, their quality and character". So the true aim of education is to develop in the body and in soul all the beauty and all perfection of which they are capable¹⁴

In the words of lodge, "Life is Education and Education is Life".¹⁵

Reflections of International Instruments and Conventions

The right to education has been recognised as a basic human right and fundamental freedom in various International Instruments and Conventions. The *Universal Declaration of Human Rights, 1948*; the *International Convention on Economic Social and Cultural Rights, 1966* and the *Convention on the Rights of the Child, 1989* make elaborate provisions regarding human right to education¹⁶

The right to education is reflected at the International level in, *Article 26* of the *Universal Declaration of Human Rights 1948* (herein after referred to as UDHR) for the first time it took care of elementary education. *Article 26* is divided into three parts. It guarantees everyone the right to education. The education at the elementary and fundamental stage shall be free. At the end it provides that the elementary education shall be compulsory. The Member States are under obligation to protect every one's rights and make provisions for free and compulsory elementary education¹⁷. The parents are also given right to choose education for their children looking to their children's capacity, capability

13 P.L.Mehta and Rakhi Poonga, *Free and Compulsory Education, 1997*, Deep and Deep Publication, Delhi at 1

14 *Unni Krishnan v: State of A.P.* AIR 1993 SC 2187

15 *Supra* note 3 at 91

16 *Supra* note 10 at 91

17 The *United National International Children's Emergency Fund's Report on the State of World's Children, 2005* has reported that out of the children between the age of 5 to 14 years, 72 million have no access to basic education, a sorry state of affairs

and competency and further no particular type of education shall be imposed. The most important part of *Article 26* is sub-article (2) that specifies the purpose and object of the education which includes development of human personality and promotion of understanding, tolerance and friendship among all nations, racial, religious groups.¹⁸

According to Article 13 of the *International Covenant on Economic, Social and Cultural Rights (herein after referred to as ICESR)*, the right to education includes the right to free, compulsory primary education for all, an obligation to develop secondary education accessible to all in particular by the progressive introduction of free secondary education, as well as an obligation to develop equitable access to higher education. The right to education also includes a responsibility to provide basic education for individuals who have not completed primary education¹⁹. In addition to this access to educational provisions, the right to education encompasses also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality of education.

Education narrowly refers to formal institutional instructions. Generally International Instruments use the term in this sense and the right to education, as protected by International human rights instruments, refers primarily to education in a narrow sense. *The 1960 United Nations Educational, Scientific and Cultural Organisations (UNESCO). Convention against Discrimination in Education* defines education in Article 1 (2) as: " all types and levels of education, (including) access to education, the standard and quality of education, and the Conditions under which it is given.

The wider meaning of education has been recognized in Articles 1(9) of *UNESCO's 1974 Recommendation Concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms*. The Article states that education implies:

18 Prof. C.M. Jariwala, "Right to Free and Compulsory Primary Education: Myth or Reality", *Nyaya Deep*, Vol.XIV(3) July 2013 at 9

¹⁹ *Supra* note 6 at 79

“the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge”.²⁰

For the first time a detailed specific plan in this regard has been provided. In the definition of ‘child’ it meant a child below the age of 18 years. *Article 28* particularly concentrates on School education. In this regard the State parties shall make: primary education compulsory and free. It therefore, casts duty upon the States parties to recognize the right of the child to education²¹

Achieving the right to education for all is one of the biggest challenges. The *World Education Forum*, has addressed this challenge: universalizing primary education in all countries by 2015.²²

Whether the same has been achieved? Is still a myth or a reality²³

Socio-Economic Justice v/s The Right to Education

After Independence the founding fathers of Constitution realized that the entire philosophy of Education in India must be revolutionized. In the mid of twentieth century the Indian Constitution came into existence with the goal of welfare state, to achieve the socio-economic justice for general masses in India. The Constitution framers were primarily reformists and secondary constitutionalists who fought against Britishers for their valuable human rights.

²⁰ *Supra* note 2 at 2-3

²¹ *Supra* note 18 at 11

²² This is one of the main objectives set at the *World Education Forum* (April 200), where the right to basic education for all was reaffirmed as a fundamental human right

²³ The fulfilment of the right to education can be assessed using 4‘As’ framework, which asserts that for education to be a meaningful right it must fulfil 4 ‘A’s. that is to say, it must be available, accessible, acceptable and adaptable. The 4 ‘A’ s framework was developed by the former UN special Rapporteur on the Right to Education, Katarina Tomasevski. The 4 ‘A’s framework proposes that governments, as the prime duty-bearers, have to respect, protect and fulfil the right to education by making education available, accessible, acceptable and adaptable

As realized and said by great philosopher and constituted assembly member S. Radhakrishnan for achieving the goals of socio-economic justice, two things are indispensable namely, education and freedom.²⁴ The framers of the Constitution were aware of the fact that for success of democratic government, education is one of the basic components. Education is the potent mechanism for the advancement of human being. A man without education is not more than an animal²⁵.

A welfare State denotes a concept of Government, in which the State plays a key role in the protection and promotion of the economic and social well-being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life.

It refers to "greatest good of greatest number and the benefit of all and the happiness of all".²⁶

The Indian Constitution through its Preamble emphatically declares that the Socialistic Democratic Republic of India shall be a welfare State committed to the ideal of socio-economic justice.²⁷ The preamble of the Constitution promises to secure for all its citizens justice-

"Socio-economic and political",²⁸ combining social and economic rights along with political and justifiable legal rights.²⁹

The preambulatory message of Socio-economic justice has been translated into several Articles dealing with its different facets in Part III and IV of the Constitution. The former

²⁴ Shiv Sahai Singh, *Human Right Education and the Constitution*, Human Right Education, Law and Society, Hyderabad, NALSAR University 2004.

²⁵ *Supra* note 3 at 94

²⁶ V.N.Shukla's *Constitution of India*, 12th edn, 2015, Eastern Book Company, Lucknow, at S-46.

²⁷ Dr.B.R.Sharma, *Socio-Economic Justice under Indian Constitution*, 1984, Deep and Deep Publications, New Delhi, at 20

²⁸ Niranjana Radhaya.V.P., "The Right to Education, Constitution and the common School System in India, *Supra* Note 18 at 64

²⁹ Dr.B.R.Ambedkar had used appropriate words at the time of the birth of our Constitution to put forth the goal of building a new India on the ideals and goals embodied in the Constitution- created by her own people and representing the masses, adopted to secure the ideals of social justice, equality and equity. *Ibid*, at 57

contains the fundamental rights of the citizens and the latter deals with the directive principles of state policy. Both of them have common grounding and have been rightly described as the "Conscience of the Constitution."³⁰

These ideals are applicable in all spheres and form an essential facet of development in India. Building a national system of education is not exception to this. Rather, a national system of education on the principles of Social Justice³¹ and equality creates the necessary ground for achieving the ideals embodied in the Constitution.

The Preamble of the Constitution further secures, "equality of status and of opportunities and assures dignity of the individual. Dignity of the individual cannot be assured until he gets an opportunity to receive education, though, "Right to Education was not, before the 86th Amendment expressly enshrined in the Constitution as fundamental right, but while interpreting the provisions of the Constitution, courts made the Right to Education as fundamental right while interpreting the scope of Article 21 of the Constitution. Articles 21, 41, 45 and 46 of the Constitution provides for right to education.

A few case laws are worth mentioning here.

In *Mohini Jain v. State of Karnataka*.³² The Supreme Court expounded upon the import of 'Right to Education'³³ by holding: It is no doubt correct that right to education as such has not been guaranteed as a fundamental right under Part III of the Constitution but reading the provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens. The right to

³⁰ Glanville Austin, *Indian Constitution: Cornerstone of Nation*, 1966, at 50

³¹ The purpose of Rule of Law is (a) to protect the Fundamental Rights of the individual and (b) to establish social justice, so that an individual citizen can attain his legitimate aspirations and dignity of man may be assured. Cited from, P.C.Pati, "Rule of Law and Social change: Indian Experience", *Indian Bar Review*, Vol.19 (3 and 4) 1992 at 32.

³² AIR 1992 SC,1858

³³ See also *Brown v Board of Education*, 1953, 98 Law Ed., US, 873, Earl Warren, C.J, U.S. Supreme Court explained the Significance of Education in these following words; "It is the very foundation of good citizenship. Today it is principle instrument in awakening the child to cultural values, in preparing him for later professional training and in helping him to adjust normally to environment. Citizen are the future of our nation. The quality of education will determine the quality of education".

education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education:

Further, the Constitutional bench of the Supreme Court in, *Unni Krishnan v. State of A.P.*,³⁴ held that , the citizens of this country have a fundamental right to education.³⁵

By virtue of the above said decision the 165th Report of the Law Commission of India and The recommendations made by the Standing Committee of Parliament, *Eighty-Sixth Amendment Act, 2002* was made which inserted Articles 21-A and 51-A(K) in the Constitution to resolve the educational problems in the country.

Article 21-A³⁶ is a landmark development for free and compulsory education to all the Children. Further the 86th Amendment, has substituted a new language for Article 45³⁷ of the Constitution, providing for early childhood care and education to children below the age of six years. Apart from the above, Article 51-A (K)³⁸ was added in the Constitution providing for a fundamental duty. In order to strength the Constitution, Parliament took a very encouraging step by giving: *Right of Children to Free and Compulsory Education Act, 2009 to India. (RTE)*

³⁴ AIR 1993 SC 2178, See also, *Francis C.Mullin v Administrator, Union Territory of Delhi*, AIR 1981 SC 746; *University of Delhi v.Shri Anand Vardhan Chandal*, AIR 1998(5)

³⁵ Also refer to Articles 41, 45 and 46 of the Constitution of India. They speak about the right to education. See also *Law Commission of India's 165th Report on Free and Compulsory Education for Children* , at 1-10

³⁶ Article 21-A, "The State shall provide free and compulsory education to all Children of age of six to fourteen years in such manner as the State may be law, determine. The Supreme Court in *Avinash Mehrotara v. Union of India*, (2009) 6 SCC 398, observed that implicit in Article 21-A is a reciprocal agreement between the State and family, which places burden on all participants of civil society. Unlike other fundamental rights, the right to education places burden not only on the State but also on the parents/guardian. Chanakya more than 2300 years back had said: "That mother and that father are enemies, who do not give education to their children".

³⁷ Article 45: "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years".

³⁸ Article 51-A (k) "who is a parent or guardian of a child is under a duty to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

With this India has joined the elite league of few countries where education is the fundamental right for every child. While declaring the good cause, Karin Hulshof, UNICEF representative in India said that RTE will prop India to even greater heights of prosperity and productivity for all guaranteeing children their right to quality education and a higher future.³⁹

Conclusion

Though Right to Education has been expressly made a fundamental right by incorporating Article 21-A of the Constitution, a lot of efforts are require to make this right a reality. There is a fear that the much- heralded Right to Education may prove to be a mirage, politically only a populist gesture. However, through the Amendments and the enactment of the *RTE Act*, India has sent a powerful message to the world at large that our Country has irrevocably become conscious of the importance of education, the key to success, inspite of the various barriers to this endeavour, namely, financial constraints, uphill task of execution, wide prevalence of corruption , etc. This is a welcome move and Government deserves a salute, a major step towards achieving the Socio-Economic Justice, enshrined in the Constitution of India.

³⁹ *The Tribune*, April 1, 2010, at 1