

## A CRITICAL STUDY OF THE RIGHT TO EDUCATION IN INDIA

By Ms. Seema Modi<sup>315</sup> & Ms. Rakhi Modi<sup>316</sup>

### Introduction:-

The State is the foremost institution which has full rights and responsibilities to work in the interest of the people. Initially the State was characterized as “law and order” State as its acts extended only up to defending the country from external aggression, maintaining law and order within the country, dispensing justice to its subjects and collecting a few taxes to finance these activities. The management of social and economic life was not regarded as governmental responsibility.<sup>317</sup>

This laissez faire concept of the State did not prove to be in the favour of the subjects. It resulted in human suffering. As the situation of all the people in society was not equal, the stronger section started to exploit the weaker one. The instances may be seen in industries where management exploited the labour class. Consequently, the poor became poorer and rich richer.

On the one hand, slums, unhealthy and dangerous conditions of work, child labour, widespread poverty and exploitation of masses but, on the other hand, concentration of wealth in a few hands, became the order of the day.<sup>318</sup>

Then it was realized that the State may be the only institution which may change the picture, i.e., may make balance among the people in the society, be it socially, politically or on any other ground. Consequently, the State started to take positive step and the concept of the ‘law and order’ State gave the place to welfare State. In India, the picture changed after independence. The British rule proved to be the police State only. When they left India the social situation was totally deteriorated. Only with the enactment of the Constitution, India could adopt the form of the welfare State.

Today, the State pervades every aspect of human life. It runs buses, railways and postal services. It undertakes planning of social and economic life of the community; improve slums, plans urban and rural life looks after health etc. Among these functions, providing education is one of the key functions of the State.

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<sup>315</sup> DPM,LL.M., NET JRF, Ph.D. (Pursuing), Chaudhary Devi Lal University, Sirsa (Haryana)

<sup>316</sup> LL.M.

<sup>317</sup> M.P.Jain & S.N. Jain, Principles of Administrative Law, 2012 at p.2.

<sup>318</sup> Ibid.

## **Meaning of Education:-**

Education is as important for a country as the breast feeding is for an infant. It is an act or process of imparting or acquiring knowledge, developing the power of the reasoning and judgment and generally of preparing oneself or others intellectually for mature life.

UNESCO in its recommendations made in the year 1974, emphasizing imparting quality education for promoting international understanding, cooperation and peace and education relating to human rights and fundamental freedoms. The word 'education' for the purpose of recommendation is explained to mean "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 capacities, attitude, aptitude and knowledge. This process is not limited to any specific activities"<sup>319</sup>

## **Importance of Education:-**

Education plays a cardinal role in transforming a country into a civilized nation. It accelerates the progress of the country in every sphere of the national activities. So, it is the duty of the State to do all it can, to educate every section of the citizens who need a helping hand in marching ahead along with others.

In the case of *University of Delhi v. Ramnath*<sup>320</sup>, the Hon'ble Supreme Court has held that education seeks to build up the personality of people by assisting his physical, intellectual, moral and emotional development.

Thus education develops the personality of a man. Even the importance of education has been realized since ancient times. That's why, the concept of gurukuls and spending first 25 years of life as a Brahmachari and attaining education during that period was there. Besides it, Indian civilization recognizes imparting education as one of the pious obligation of the human society.

The importance of education has been realized by the Judiciary. The US Judiciary has, in *Brown v. Board of Education*<sup>321</sup> also stated that today, education is perhaps the most important function of the State and local governments. Compulsory school attendance laws and the great expenditure for education both demonstrate our

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<sup>319</sup>Justice Dharmadhikari, Human Values and Human Rights at p-67.

<sup>320</sup> AIR 1963 SC 1873

<sup>321</sup> 347 US 483 (1954)

recognition of the importance of education to our democratic society. It is required in the performance of the most basic responsibilities, even service in the armed forces. It is very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, in preparing him for later profession training and helping him to adjust normally in his environment.

In *Mohini Jain v. State of Karnataka*<sup>322</sup>, the Supreme Court of India has also agreed on the importance of education by stating that education is enlightenment. It is one that lends dignity to a man. The fundamental purpose of education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sub limitations of the spirit. Education is the preparation for a living and for life, here and hereafter. In the context of a democratic form of government which depends for its sustenance upon the enlightenment of the populace, education is at once a social and political necessity. Again in *Maharishi Mahesh Jogi Vedic Vishwavidyalaya v. State of Madhya Pradesh*<sup>323</sup>, while emphasizing on the importance of education, the Hon'ble Supreme Court has expressed that education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is no more than an animal. Education emancipates the human beings and leads to liberation from ignorance.

### **Right to Education at International Level:-**

The importance of education has been realized even at International level. That's why, the Conventions have been entered into and organizations to regulate and maintain this right have been established. The Universal Declaration of Human Rights, providing to everyone the right to education, states that technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit<sup>324</sup>.

The Principal global Treaty which covers this right is the International Covenant on Education, Social and Cultural Rights where Art. 13 recognizes the general right to education enunciated by the Universal Declaration of Human Rights, but then goes to add the following more specific provisions:

“(2) The State parties to the present conventions recognize that with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all.

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<sup>322</sup> (1992) 3 SCC 666

<sup>323</sup> (2013) 8 SCALE 541

<sup>324</sup> Art. 26 (1)

- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.
- (c) Higher education shall be made equally accessible to all, on the progressive introduction of free education.
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.
- (e) The development of system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of the teaching staff shall be continuously improved.

The status of this Article is a useful reminder of the problems inherent in any attempt to create a 'social' right of this kind for individuals against their States.<sup>325</sup>

The Convention against Discrimination in Education was entered into on Dec. 14, 1940 at Paris. Besides it, the Convention on the Right to the Child, 1989 also recognizes the right to education of the children. In addition to these Conventions, establishment of United Nations Educational, Scientific and Cultural Organization (UNESCO) United Nations Children's Fund (UNICEF) etc. are also worth referring to here.

### **The Right to Education in India:-**

Originally, the right to education was not expressly given in the Constitution as the fundamental right. The provisions were laid down only in the Directive Principles of the State Policy. The State, within the limit of its economic capacity and development is required to make effective provisions 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<sup>326</sup>. Furthermore, the State is obliged to endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all until they complete the age of fourteen years<sup>327</sup>. In *Mohini Jain v. State of Karnataka*<sup>328</sup>, the Supreme Court read these two provisions jointly and giving a new interpretation, held that (a) every child /citizen of this country has a right to free education until he attains the age of fourteen years and after it, his right to education is circumscribed by the limits of the economic capacity of the State and its development.

The point to be noted here is that the provision of Art. 45 has been substituted by the Constitution (86<sup>th</sup>

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<sup>325</sup> John Ziman, *The World of Science and The Rule of Law*, 1981 Edition at p-49.

<sup>326</sup> Art. 41 of the Constitution of India

<sup>327</sup> Art. 45 of the Constitution of India (as originally stood)

<sup>328</sup> *Supra* at 6

Amendment) Act, 2002. The original provision was dealing only with the compulsory and free education of the children upto fourteen years of age. The substituted provision is providing for early childhood care and education for all children until they complete the age of six years. So, it is a good step that now more protection has been tried to be provided to the children. It is a good sign for democracy. Even, a true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves<sup>329</sup>.

Though not expressly given in the Constitution, this right was ensured even in the Preamble itself. In *Mohini Jain v. State of Karnataka*<sup>330</sup>, the Supreme Court has recognized it by stating that the Preamble promises to secure justice-social, economic and political, for the citizens. But these three prolonged justices promised by the Preamble are only illusion to the teeming millions who are illiterate. It is only the education which equips a citizen to participate in achieving the objectives enshrined in the Preamble. Furthermore, Part III of the Constitution of India including the right to freedom of speech and other rights under Art. 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

Though the right to education was not expressly enlisted in the fundamental rights, but this right was later on started to be included in the right to life and personal liberty. This great task was done by the Judiciary by giving wider interpretation to Art. 21. In the *Capitation Fee Case*<sup>331</sup>, the Hon'ble Supreme Court held that the right to education is a fundamental right under Art 21 of the Constitution of India. Further, even the right to life under Art. 21 and the dignity of a n individual cannot be assured unless it is accompanied by the right to education.

Again in *Unnikrishnan v. State of Andhra Pradesh*<sup>332</sup>, the Supreme Court affirmed that the right to education is an integral part right to life and personal liberty

Again in *Bandhua Mukti Morcha v. Union of India*<sup>333</sup> and *Maharashtra State Board of Secondary and Higher education v. K.S.Gandhi*<sup>334</sup>, Right to education at the secondary stage was held to be a fundamental right.

Recently, in the leading case of *Ashok Kumar Thakur v. Union of India*<sup>335</sup>, the SC once again held the right to life

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<sup>329</sup> Ibid

<sup>330</sup> Ibid

<sup>331</sup> *Mohini Jain v. State of Karnataka*(1992) 3 SCC 666

<sup>332</sup> AIR 1993 SC 2178

<sup>333</sup> JT 1997 (5) SC 285

<sup>334</sup> JT 1991 (2) SC 296

<sup>335</sup> (2008) 6 SCC 1

to include right to education because education promotes good and dignified life.

Till 19<sup>th</sup> century the right to education was part of right to life only because of judicial interpretations. Only in 2002, by the Constitution (86<sup>th</sup> Amendment) Act, the right to education is added as Fundamental Right under Art 21A. Besides it, by this amendment, a new fundamental duty is added under Art. 51-A(k). By this duty the parents and guardians are obliged to provide education to children of age 6 to 14 years.

This Amendment Act required a legislation to be enacted to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill.

Moreover, from the independence, a number of Commissions and Committees gave recommendations regarding providing the education, e.g. Kothari Commission reviewed the status of education. The National Policy on Education, 1986 recommended for the 'Common School System'. Acharya Ramamurthi Committee, 1990 provided for the inclusion of fundamental right of education, like those ones, a number of other efforts were also made to review the system of education.

Ultimately, the Right of Children to Free and Compulsory Education Act 2009 was enacted by the Parliament on 4<sup>th</sup> Aug, 2009. This act came into enforcement on 1<sup>st</sup> April, 2010. With the passage of this Act, India became 135<sup>th</sup> Country to make education a fundamental right of every child.

### **Main Features of the Act of 2009 :-**

1 Every child in the age group of 6-14 years has the right to free and compulsory education in a neighbourhood school, till the completion of elementary education.<sup>336</sup>

2 Private schools have to take 25% of their class strength from the weaker section and the disadvantaged group of the society through a random selection process. Govt. will fund education of these children.<sup>337</sup>

All schools have to prescribe to the norms and standard laid down in the Act and the School that does not fulfill these standard within 3 years will be allowed to function.

3. No donation and capitation fee is allowed<sup>338</sup>.

4. No admission test or interview either for child or parents<sup>339</sup>.

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<sup>336</sup> Sec 3 (1)

<sup>337</sup> Sec 12 (1)(c)

<sup>338</sup> Sec 13 (1)

<sup>339</sup> Ibid

5. No child can be held back or expelled till the completion of elementary education<sup>340</sup>.
6. There is provision of establishment of commission to supervise the implementation of the Act<sup>341</sup>.
7. A fixed teacher and student relation is to be maintained<sup>342</sup>.
8. Provision for norms of teachers and qualification is also made in the Act<sup>343</sup>.
9. All schools except private unaided schools are to be managed by School Management Committee will be 75% of parents and guardians as members, and further 50% of member of such committee shall be women<sup>344</sup>.
10. No child can be subjected to physical punishment or mental harassment<sup>345</sup>.

### **Shortcomings of the Act :**

Though the Act is very much important as ensuring the implementation of Art. 21-A, it has its own shortcomings which creates problems in proper implementation of this right. The shortcomings of this Act may be enumerated as follows:-

1. India has accepted the international definition of a child which includes every human being upto the age of 18 years. But, the Act covers only children of 6-14 years. There is no provision regarding the children of 0-6 years and 14-18 years.
2. The teacher and student ratio is not of proper standard. There is a big shortage of teachers and a large no. of teachers is untrained.
3. There is no standard definition of teachers' qualification in the Act. Consequently, it keeps on changing continuously. There are so many standards, e.g. JBT, D.Ed., B.Ed., JBT, HTET, CTET etc.
4. Status of poor kids in the private schools is exposed to the students of standard living. So, their dignity and self-respect may be hurt when he will be in group of children of different classes of the society.
5. The Act provides for the admission of the children, but does not promise the quality of education.
6. Automatic promotion to the next class may be counterproductive as the students may become indolent and miscere towards their studies. The purpose of providing education is also challenged.
7. It has been seen that the students are not motivated to come to school in spite of free education. Because of bad atmosphere and slummy area where the people are having the only concern of their bread, the students/ children are not encouraged to come to school. That's why even the Sarva Shiksha Abhiyaan has failed.

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<sup>340</sup> Sec 16

<sup>341</sup> Sec 31(1)

<sup>342</sup> Sec 25 (1)

<sup>343</sup> Sec 23 (1)

<sup>344</sup> Sec 21 (1) proviso

<sup>345</sup> Sec 17 (1)

8. The Act ensures the admission of children in nearby schools, but the word 'nearby' is itself not defined. The area where there is no school on walking distances or near locality, how this right may be enforced. For proper implementation of this Act, riety of establishment of schools at proper distance should be maintained.

One more thing worth noting is that even after about 70 years of independence, a large no. of population is living below poverty line and bulk of the remaining population is struggling from their existence. The people living in such miserable condition prefer to keep their children on work rather them to send them to the schools. In Such situation, any policy, rule or legislation bound to be failed, however it be good.

### **Suggestions:-**

Merely finding shortcomings is not sufficient, for properly providing right to education. Some steps may be taken which are as follows:-

1. The state govt. should take prompt actions for the implementation of the RTE Act.
2. Primary schools with all minimum required infrastructure facilities should be established in the neglected areas on priority basis.
3. To meet the increasing demand of qualified and trained full time teachers, the teachers in required number must be recruited at the earliest.
4. Pupil teacher ratio must be maintained.
5. Primary schools need to be made aware of the provisions made for 25% reservations of seats for the economically and socially weaker and disadvantaged children and the role of school managing committees in this regard.
6. Teacher's performance is the most crucial input in the field of education. Well qualified and highly motivated teachers are the keys to effective implementation of the curriculum. So, top priority should be fixed for the improvement in the quality and content of teacher education programs.
7. Attention should be given to the education of persons with disability.
8. A Standard of qualification should be uniformly applicable all over India.
9. Moral Motivation for going to school should be encouraged the governments may be do so by awareness programs etc.

### **Conclusion:-**

Good input results into good output. Human resource is the best quality of India. If this human resource is competent, the development of our country will have wings. This competency can be acquired by education.



When education is so much important, the State itself should take measures to ensure it.



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