

## EDUCATION IS HUMAN RIGHT: INDIAN SCENARIO

Written by *Mohammed Hussain*

*Professor of Law, School of Law, St. Augustine University of Tanzania, Mwanza, Tanzania*

---

### ABSTRACT

It is an undisputable statement that education is not an honour but it is a human right. The roots of education may be bitter but the fruits are sweet. Education comes under the concurrent subject and hence enactments are made by both State and Central governments. International Instruments provisions are incorporated into municipal laws. The importance of education is innumerable. The State within the limits of budget and domain tries to make actual provisions with respect to education, right to work, and financial assistance in cases of unemployment, old age allowances, illness, and incapacitation, and in other cases under Article 41. The author made an attempt to explain that education is a right both an educational right and a human right. Some landmark judgments are mentioned to concrete or solidify the idea of the right to both fundamental rights and human rights. It is now an undisputed fact that educational rights can be realised on a national level only through compulsory education, or better said, through free and compulsory primary education. However, due to the extensive poverty and various biases in society. Full access, quality, and equality of education have not been attained in suddenly and it is a long-time plan to reach sustainable development in elementary education in India. The author ends his research paper with a conclusion and recommendation.

**Keywords:** Right to Education, Human Rights, Importance of Education, International Instruments, India

## INTRODUCTION

Education is not only an honour but is an inalienable human right.<sup>1</sup> The roots/bark of education are bitter, but the pod is sweet. Education is a regulatory instrument by which socially and economically marginalised persons including kids can raise themselves from the low line and participate efficiently in all spheres of life actively. Education means studying in order to gain unfathomable knowledge and understanding of a variety of topics to be useful in everyday life. Education is an influential device by which economically, culturally, and socially marginalized persons can raise themselves out of low-level living. Education in India now it is on the concurrent list, which is administered by both central and state laws. Instead of giving monetary help and the government should educate the children at the cost of certain age hence, there is article 21A is inserted in Indian Constitution. The author made a maiden attempt in this research paper to highlight the nature, importance, and objective of education in a multi-facet way, the educational right is a human right and is not a privilege, goes with international instruments plus domestic enactments and goes with few classical judgments about education which is not only a human right but it is also a fundamental right under the Indian Constitution and the author sum up his research paper with conclusion and recommendations at the end.

### *Importance of Education*

Education is not only the acquisition of knowledge from the classrooms or books it can be grown through practical experience outside the school or university campus. Present-day Education is more noteworthy than ever before and has touched new summits with new understandings of what it truly involves. You question yourself or Oneself “Why education is more important?” and everyone explains or defines or says a different answer to the same questions because of their level of thinking or capacity, perception, and attitude. In contemporary culture, holding a university degree is measured to be extremely useful for a fruitful career. Education is nothing but what we have not done and doing now and hence we do use it with our brainpower educating ourselves. That is why, we say, a wise man learns from the mistakes of others and an unwise man learns from his or her own mistakes. Cleverness in schooling aims to assurance for the progress of a perfect human being. It will narrow the gender gap between boys and girls. Education should convey gender equality, and reverence for human dignity and rights. Kids are the future of our world and the vertebrae of the respective nation,

making education decisive for them. Their knowledge and wisdom both are going to keep our world in general and our nation, in particular, alive and flourishing and bring our nation to the world map.

### ***Educational Rights***

An Indian citizen has educational rights. No gender discrimination among boys and girls is given equal opportunities in learning in primary schools or elementary schools. Educational rights originate straight from the precise right to life. When there are educational rights there then only life and the dignity rights of persons are guaranteed. Importance educational goal is to safeguard the expansion of a perfect and absolute human being. Education is one of the prevailing and effective tools in serving socially, economically, and politically excluded children as well as adults because of poverty and bringing them into the mainstream of society without any discrimination.

An acceptable agenda for accepting that basic education is a honor of each and every nation irrespective of religion, affiliation, caste, creed, ethnicity or identity, colour, place of birth, culture, gender or class, ability, or disability. Education will have limited fangs for those who really would rely on it

### ***Education is an Inalienable Human Right***

The educational right is an inalienable human right and requisite for the test of other human rights. The educational right is a human right and vital for the exercise of other human rights. For the human right to work, there must be equal opportunity, universal access, enforceability, and checked worth standards of the working person and place too. The UDHR approves that education is an important human right for everyone and this right was further mentioned in the Convention against Discrimination in all fields including education. Education as a human right means: the right to education is lawfully guaranteed for all without any discrimination. States have the accountability to protect, guard and achieve the right to education. there are so many routes to hold States responsible for ruins or deficiencies of the right to education.

Every individual, or every gender, regardless of race, ethnic origin or social origin, place of birth, nationality, colour, caste, culture, religion or political preference, infirmity, or age, is allowed to free basic education. This right has been totally recognised since the UDHR in 1948

and has since been cherished in various international conventions, national constitutions, and domestic legislation for those who are party to the convention and included in their development plans.

## **INTERNATIONAL INSTRUMENTS: EDUCATION**

“Right to education” is foreseen in Article 26 of the UDHR, and is measured as the basic necessity of every human being. Articles 13 and 14 also guarantee social and cultural rights to every individual should have prime education right. In 1960 UNESCO, the right to education again firmly specified in the convention against discernment in education. In Europe convention held on 20 March 1952 detailed that the right to education is a human right and they have access to primary education under Article 2.<sup>ii</sup>

UDHR adopted in 1941 states everyone human being has educational rights. Many other international human rights treaties. Protocol, charter, and declaration affirmed the educational rights proposed, propagated, and protected viz., the United Nations pact on the rights of the Children in 1989 under Articles 28 and 29. These international treaties wanted to give decent worth and standard of education that one should have it. India is a state party to the (CERD) International Convention on the Elimination of All Forms of Racial Discrimination Convention, the (CEDAW) Convention on the Elimination of All Forms of Discrimination against Women Convention, and the Convention on the Rights of the Child. These are all the International Instruments that may try to the extinction all types of insight against women 1981 under Article 10. Some International Organisations working for the elevation of education, UNESCO, UNICEF, Amnesty International, and other specialised agencies of UNO viz., The International Labour Organization, The World Bank, etc. Convention against discrimination on the basis of employment and bribery in 1953 under Article 3.

India is a party to a number of International Covenants (UNCRC), the Dakar declaration, the Millennium Development Goals, The South Asian Association for Regional Cooperation (SAARC), Sustainable Development Goals charter for children which is binding on its obligation to make education a validity for all children irrespective of caste, creed and place of birth or culture, etc.,<sup>iii</sup>

## CONSTITUTIONAL PROVISIONS AND EDUCATION

The Indian constitution spells out education for all its citizens. The Indian constitution considered education as a state subject in the beginning but after an amendment in 1976, it is included in the concurrent list. Article 21A inserted in the 86<sup>th</sup> Amendments Act, which brands education as a Fundamental Right for Children from the age of 6- 14 years provides free education; 1st April 2010 amended the law to provide free and compulsory education to all children in the age group of 6 to 14 year of age, was enacted by the Parliament of India on 4th August 2009. The Right to Education Act 2009 dictates for all private schools' reserve 25% of their seats for children belonging to socially deprived and economically weaker sections. This provision of the Act is aimed at enhancing social inclusion to provide for a more just and equal distribution of seats in institutions in India.

### ***Right to Education and the Directive Principles of State Policy (Part IV)***

The State within the bounds of its financial capacity and growth makes real provisions for making safe education, and public assistance in cases of joblessness, the right to work, old age, illness, and incapacitation, and in other cases of undeserved want under Article 41

Right for Early Childhood Care and Education (ECCE) to all children until they complete the age of six years under Article 45. This article is considered a directive principle of state policy. The Government of India has included ECCE as a constitutional provision through the amended Article 45.

Promotion of the economic and educational interests of the Scheduled Tribes, Scheduled Castes, and other weaker sections of the society: The State shall encourage with superior care under the educational and economic by virtue of Article 46.

The Scheduled Tribe and the Scheduled Caste and other marginalised weaker sections of societies are exploited in all spheres of their life. It is stated in Article 46 as a Directive Principle of State policy that the State should encourage with superior maintenance the educational, social, and economic interests of the weaker sections of the people and protect them from social bias and exploitation as well as manipulations. Special arrangements viz., Scholarships, hostel facilities, ashram residential schools, relaxed norms, washroom facilities for seeking admission



in relevant institutions, and reservation of seats are efforts to achieve widespread education in case of backward classes.

### ***Right to Education and Fundamental Duties (Part IVA)***

The Constitution 86<sup>th</sup> Amendment Act, 2002, added a new clause (k) under Article 51A (fundamental duties), making parents or guardians responsible for providing the opening for education to their children between six years to fourteen years old.

## **EDUCATION: LATEST CENTRAL LEGISLATION**

India touched on the spot of One hundred thirty-five countries to make compulsory education for children free and compulsory which came into force on 1st April 2010.

- The Act makes it the right of every child to get an education and every child is access to free basic education.
- The Act orders that even private schools should have to reserve 25% of seats for children from weaker sections.
- No school can discard admission to a student and all school teachers should be trained one. In case of schools do not have trained teachers, they will have to fulfill within three years.
- Act says that adequately trained or skilled teachers are employed, spacious classrooms are provided, playgrounds are available for the children to play games, good seating arrangements in the classroom, proper ventilation to see clearly, and aeration for good health and other infrastructure for a congenial atmosphere to learn at school level. The government will develop some Acts or policies to help marginalised schools and the management should obey the provisions of the Act.
- As Education falls under the concurrent list so the government of India has made some model rules and designs to implement for the implementation of this Act and in the same way in Union Territories and every state too.
- Within one kilometer of walking distance the state government and local authorities will create primary schools. For Class VI to VIII, students should be within the walking distance on foot of three kilometers of the place of residence.

- RTE has been a part of the DPS Policy by virtue of Article 45 and in part IV of the Constitution. For the first time in the history of India, we have made this right enforceable by it inserting in Constitution as Article 21.

## INDIAN JUDICIAL DECISION<sup>iv</sup>

In the case of *Miss Mohini Jain v. State of Karnataka*,<sup>v</sup> educational rights are for the first time recognised as a fundamental right guaranteed under Article 21 of the Constitution. The right to life provided under Article 21 and the dignity of an individual life is not being achieved unless it is tossed and coupled with the right to education. This new Article was inserted and thus becomes Article 21A now.

Education in India cannot be a product charging a capitation fee for the purpose of admission to an educational institution is a violation of a citizen's right to education under the Constitution. The right to life provided under Article 21 and the dignity of an individual life is not being achieved unless it is blended and coupled with the right to education.

The Court in *Unni Krishnan*<sup>vi</sup> uttered its disagreement with the finding in the earlier case of *Miss Mohini Jain v. State of Karnataka* that the educational rights at all planes is guaranteed by the Constitution. It means education is a Fundamental right flowing from Article 21. In the subsequent case of *M.C. Mehta v State of Tamil Nadu & Ors*,<sup>vii</sup> the Supreme Court stated that Article 45 had attained the status of a fundamental right following the Constitutional Bench's decision in *Unni Krishnan*.

“In *Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi*, the right to education at the secondary stage was held to be a fundamental right. In *J.P. Unnikrishnan v. State of Andhra Pradesh*, a constitution Bench held education up to the age of 14 years to be a fundamental right.

*Society for Un-aided Private Schools of Rajasthan v. UOI & Another*,<sup>viii</sup> held that the Supreme Court of India upheld the constitutionality of section 12 of the Right of Children to Free and Compulsory Education Act (RTE Act), which requires all schools, both state-funded and private, to adhere to 25% intake of children from disadvantaged groups.

In *Maharshi Mahesh Jogi v. State of M.P. & Others*,<sup>ix</sup> UDHR declares everyone has educational rights. Education shall be free by virtue of the Human Rights perspective, as well as constitutional rights with regard to education.

*Krishnagiri District Private v. The State of Tamil Nadu*,<sup>x</sup> children are allowed to choose their studies or profession and there is no force of parents at all. For they do so it is nothing but interference with their children's rights. Delhi High Court Directs Delhi University to modify Course Structure and Eligibility Criteria in the case of *Jayshree Rani v. University of Delhi*.<sup>xi</sup>

In *the State of Madras v. Shrimati Champakam Dorairajan*,<sup>xii</sup> the Supreme Court delivered a landmark judgment that results in the 1st Amendment of the Constitution. Here the court held that providing such contrary reservations was the reason for the violation of Article 29(2) of the Indian Constitution.

In the case of *Avinash Mehrotra v. Union of India*,<sup>xiii</sup> the Supreme Court of India construed the educational rights to include the right to the provision of a safe atmosphere in schools and forced a duty on schools to obey certain fire safety measures which were mentioned in the judgment.

In *Ashoka Kumar Thakur v. Union of India and Others*,<sup>xiv</sup> the Court decided that there is a right to seek free education without fear of safety or security and the right to education incorporates the provision of safe schools pursuant to Articles 21 and 21A of the Constitution.

The right to study university education has not been spelled out as a fundamental right in Part III of the Constitution, it bears emphasis that access to specialized education is not a governmental charity. Instead, the State has a positive obligation to enable access to education, in all spheres observed in the case of *Fatima Batool v. Union of India*.<sup>xv</sup>

## CONCLUSION

Every generation may look to the other generation to see how much improvement in education has emerged and whether they would be a need or change in educational policy is needed or not. It is now an undoubted fact that the importance of education can be realised at the national level only through compulsory education, or better said, through free and compulsory primary



education. However, due to the extensive poverty and various biases and indiscriminations in society. The plans to increase educational planning and system in India with full access, equality, and quality of education have not been attained in sudden basic but it is a long-time plan to reach sustainable development in elementary education in India.

- There is no doubt that education has a key role to play and to protect or shield and promotion of human rights.
- Educational rights to be a human being is considered one of the main tools to stop violations of human rights. Education should be conveyed to each and, everyone so that they comprehend the importance of human rights. Equality shall be the primary thought in actions concerning children, as India is a member to the Convention on child right and domesticated the norms in domestic laws.
- Education in their own mother linguistics or mother tongue about human rights will make the learners more prompt about their values and ways to use them in their day-to-day life. For the integration of human rights, the relevant subjects at the primary stage are different languages, flora, and fauna. Songs, short stories, and poems, concerning human rights values will have to be selected. Education should not make discrimination in terms of gender, colour equity, equality, and educational value are respected thus there would be respect for human life and dignity.

In this paper, the author enlightens both the International and domestic legal framework that governs the day-to-day tasks every school management or administration is facing and not forgetting the constitutional Articles with few landmark cases. To sum up, there is an utmost need for realizing that provision for worldwide access to quality school education is the groundwork of development and an essential condition in the process of creating India as a knowledge society, in general, in the world in particular in India.

## **RECOMMENDATION**

The author after going through the primary and secondary sources and personal knowledge and study has observed the following points.

- There are so many dropouts from school because of various challenges to name them few like no proper drinking water facility, no separate toilet facility, especially for the girl students, no proper ventilation and aeration in the classroom, no hygienic environment around the school, no safety of going and returning, long-distance walking on foot, and no proper transportation.
- To ensure the quality of education, regular and trained teachers should be recruited in place of untrained and Para teachers. Para teachers recruited so far should be trained and regularised.
- The right to education starts from the primary to the university level. The existing laws for the protection of child rights should be enforced and implemented strictly for the total annihilation of the peril of child servitude, child labour including bonded labour, and child trafficking, and all children of the age group of 0-18 years are admitted in schools.
- Provisions should be made in the above-said legislation for a quality education system with quantifiable indicators so that parents and the community can monitor the quality of education of their children at different levels.
- All forms of privatisation should be stopped and a government-educational system should be introduced. In case a private system of education is also there but it would be under strict control by the respective government or regulating bodies.

Last but not least author would like to end his research paper with Aristotle's quotation "The roots of education are bitter, but the fruit is sweet."

## ENDNOTES

---

<sup>i</sup> The right to education is legally guaranteed for all without any and different treatment in states that have the obligation to protect, respect, and fulfill the right to education. There are ways to hold states responsible for violations or deprivations of the right to education.

<sup>ii</sup> Supra Note.1.

<sup>iii</sup> [https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session13/IN/JS6\\_UPR\\_IND\\_S13\\_2012\\_JointSubmission6\\_E.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session13/IN/JS6_UPR_IND_S13_2012_JointSubmission6_E.pdf) (Accessed on 19<sup>th</sup> January 2023)

<sup>iv</sup> It is not exhaustive list of case only selected landmark judgment are only inserted in this paper.

<sup>v</sup> (1992) 3 SCC 666.

<sup>vi</sup> *Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors.* 1993 AIR 217.

<sup>vii</sup> AIR 1997 SC 699,

---

viii Civil Original Jurisdiction Writ Petition (C) No. 95 of 2010. SC

ix AIR 2002 MP 196.

x Civil Appeal No.6736 of 2004.

xi 51 (1993) DLT 34.

xii 1951 AIR 226.

xiii (2009) 6 SCC 398.

xiv (2008) 6 SCC 1.

xv Writ Petition (Civil) No. 364 of 2021. SC.

