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A Descriptive Analysis of Right to Education in India

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ABSTRACT

Education helps the development of the society according to its ideals to mold the present generation which will have far reaching effect on the future generations. It aims at individual freedom, empowerment and self-reliance. Education is therefore considered as 'Fundamental Right' across the globe and essential for the exercise of all human rights. Since India's pre independence period there has been significant concern about the quality of education provided in the country, especially to the masses. The development of any country can never be possible without ensuring the spread of education among the masses. The dreams of the founding fathers of constitution to improve the quality of elementary education was conceptualized with the 86th Constitutional Amendment (2002) via Article 21 A (Part III) which seeks to make free and compulsory education as a fundamental right for all the children in the age group 6-14 years. The present research paper seeks to analyse the systematic development of right to education as a Fundamental Right in India and the legislative measures enacted by the Government for its effective implementation and the issues and challenges in their practical application. Further, the research paper provides probable solutions to address these issues.

Keywords: Right to Education, Constitution, Fundamental Right.

I. INTRODUCTION

In every civilization, society has validated the power of Education as a tool to sustain and thrive its culture. It is very essential that the knowledge and skills are passed on to younger generations by the older generations, so that it smoothly passes on to every generation. Education equips us to realize ourselves, visualize dreams and then set forth to accomplish them. Therefore, education is a way to prepare citizens lives a meaningful life, empower them through socio-economic mobility, reduce the inequalities both social and economic and in return trigger both the simultaneous concepts of growth and development. There is a paradigm shift to be analyzed from education as a path to knowledge and education as a cost recovery system. Education is the single most powerful tool which shapes the character, personality of an individual, thereby

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shaping the personality, character of the country in return. While analyzing the reasons which are kept in mind, while demarcating the world into developed, developing and underdeveloped, education- equity, accessibility and quality emerges as the single most crucial factor which helps any nation to sprint across to the status of a developed nation. An educated citizenry is an asset to the nation, as they contribute in a wholesome manner to the society. United Nations recognized Right to Education as a fundamental right which should be accessible to each human being on earth & as UN was establishing this fact, India was vehemently thrusting to implement Right to Education as a Fundamental Right. National Policy of Education of 1968, the first official Government of India's document which reiterated government's commitment to provide elementary education and this was further incorporated in the National Policy of Education in 1986. Ultimately when NPE 1986 was reviewed in 1990, it was recommended that Right to Education be incorporated as Fundamental Right. This served as the base on which National Policy of Education of 1992 was built upon. By the same time, India became a signatory to United Nation Convention on the Rights of the Child in 1992 and India started to work upon the legislation to introduce Right to Education as a Fundamental Right. This led to the enactment of the Constitution Amendment Act 1986 and later on The Right to Education Act 2002.

II. HISTORICAL DEVELOPMENT OF EDUCATION SYSTEM IN INDIA

Ever since its inception, the Indian education system is centred around culture and traditions of man and not merely on a technical education, so called a 'Liberal or Modern Education'. Since from the Early Vedic period, there was a tradition of learning and generally the aim of ancient education system was the formation of character, personality, preservation of ancient culture and training in the spheres of social and religious duties. In ancient India, the training centres were normally 'Gurukuls', where all were considered to be equal and Guru (teacher) and Shishya (students) lived in the same house or nearby places. The subjects of study centred on techniques of worship and sacrifice and teachers were mostly Brahmins who succeeded from the priestly class. The ultimate end of the highest education is thus expressed in Manu's Book of Laws; "To learn and to understand the Vedas, to practise pious mortifications, to acquire divine knowledge of the Law and of Philosophy, to treat with veneration his natural and his spiritual Father (The Priest) - these are the chief duties by means of which endless felicity is attained". The oldest and famous university among existing universities in India was the Banaras Hindu University and Taxila, the Buddhist learning centre was prominent for the Medicine, Law and Military Science which attracted scholars from distant parts of India. The Sarnath Monastery under Ashok's reign became famous as a centre of learning captivating large

number of Buddhist monks.

During the medieval period, Sanskrit language was prominent, and the literature was mostly in the form of metaphor, imagery, adjectives and adverbs. Since it was difficult for simple people to understand, it widened the gap between the landlords and the peasants. The literature became the asset of elitist class which led to have an authoritarian trend in intellectual life. During the Mughal period education was considered to be an important asset and under Akbar's rule the mode of education (madrasas) was brought under state purview. A comprehensive education, stressing on branches of sciences along with religious learning, was prevalent. During the reign of Humayun, some schools were constructed. References also can be found for the existence of medical sciences, even though not like those of Aleppo, Egypt or Iran, but some students were sent to other countries for further studies.

British period saw a rapid progress in western science and literature through the medium of English. Various Christian missionaries along with religious teachings made remarkable contributions in the spheres of education for all, women education, and adult literacy etc. The British education reformation unified all the states and regional kingdoms removing gender and caste bias despite virtually banishing the traditional gurukul system and other religious holistic ancient schools that were prevalent in the country. After the conquest of Bengal in 1757, the history unravels, the education became a profitable venture and schools came up like mushrooms. Advertisements were given on the school curriculum, facilities and fee structure. Under these schemes, prominence was given for girls' education including new subjects like dancing skills, embroidery, stitching, etc., and boys were offered with special subjects like accountancy, mathematics along with traditional subjects. The Charter Act of 1813 rejuvenated the education system by providing financial assistance to revive and improve the literature among the intellectuals of native Indians and employed various methods to promote sciences among the inhabitants of British territories. Despite methodological drawbacks in implementation of given objects, the Charter Act of 1813 was considered to be a remarkable legislature and a great initiative of British rulers in the field of education. Subsequent developments in education reforms came from Lord Macaulay (Minutes of 1835), Wood's despatch 1854 famously known as Magna Carta of English Education in India, The Indian Education Commission of 1882, The Shimla Conference in September 1901, The Government Resolution on Educational Policy of 1913, and finally The Calcutta University commission of 1917-19 are some of the important developments in education under British India. The Montague - Chelmsford Reforms of 1919 has transferred the education department under provincial control.

III. CONSTITUTIONAL PROVISIONS ON EDUCATION

The issue of education was primordial in the minds of the framers of the Constitution and it was even discussed in the Constituent Assembly Debates during the deliberations on Part III and IV of the Constitution of India. Right to education did not find a place under the fundamental rights (Part III) of the Constitution despite strong discussions on other related issues of education like language, age of the child, minority rights etc. It was placed under article 45 (Directive Principles of State Policy) of the Indian Constitution which provided, "the State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of 14 years." Even though Article 29 of the Constitution provides, "no citizen shall be denied admission into any educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste or language", but it failed to place the right to education under the fundamental rights of the Constitution and provide guarantee to the foundational or elementary education to all irrespective of their social and economic background. Finally, the amendment to the Constitution was made to amalgamate the educational right as a fundamental right at the instance of Supreme Court's decisions. The most significant amendment to the constitution for the inclusion of education as a fundamental right was 86th amendment in the year 2002. The said amendment included Article 21A within Part III of the Constitution 'considering right to Education as a fundamental right and children aging from 6 to 14 are provided with free and compulsory education.'

(A) Right To Education Act, 2009

It is an axiomatic truth that an individual obtains equal opportunities under right to education in order to develop his faculties to the fullest to become a complete human being. To accomplish the goal of right to universal education, article 21A of the constitution obligates the State to provide education to all. It says, "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." In pursuance of this article the Right of Children to Free and Compulsory Education Act, 2009 (RTE) was enacted and it came into effect from April 1, 2010. The RTE Act, 2009 is a child-centric and proposes the re-orientation of the teacher to accommodate himself to the situations of the child. It aims to provide the primary education to all children aged between 6 to 14 years as a fundamental right. The act also mandates 25 per cent reservation for disadvantaged sections of the society which include SCs and STs, Socially Backward Class, and Differently abled children. It makes provision to include drop out and other children to the classes appropriate to

their age. Sharing of the responsibilities between central and state governments towards the financial and other educational assistance to the children, prohibition of deployment of teachers for non-educational work except specified under the Act, and providing safety and security by eradicating fear, trauma and anxiety through establishing a child-friendly and child-centred learning are some of the important features of the Act.

(B) National Education Policies

The country observed several commissions like the Radha Krishnan Commission on university education (1948-49), the Kher Committee on primary education (1948), the Mudaliar Commission on secondary education (1953), and the last and the most comprehensive effort on education came in the form of the Kothari Commission (1964-66). In response to the Kothari Commission, the Government of India formulated the 'National Policy on Education 1968' (NPE). Compulsory education for the children between the age group of 6-14 years, adequate emoluments, opportunities of training and freedom to improve the teaching capacities of teachers; three language formula; equal opportunities of education irrespective of physical, social and economic background; prominence to tribal and backward areas; inclusion of local community to build national integration; importance to science, mathematics, agriculture, and technical education to improve the economy; assessment to identify the talents of students; availability of books at the reasonable rate; comprehensive examination pattern; extension of secondary education to the remote areas and importance to technical and vocational training at the secondary education level; considerable importance to university education; establishment of part time courses in large scale; special emphasis on adult education; incorporation of sports and games within the education curriculum; protection of the minority educational interests; uniform educational system throughout the country on 10+2+3 pattern; and review of policy on every 5 years interval are some of the important provisions of NPE 1968. It was the successive effort to bring changes in the education system.

Then, after a long time, the Government brought into force National Education Policy, 2020 . National Education Policy, 2020 (NEP) envisions a massive transformation in education through– “an education system rooted in Indian ethos that contributes directly to transforming India, that is Bharat, sustainably into an equitable and vibrant knowledge society, by providing high quality education to all, thereby making India a global knowledge superpower.” The Policy aims and aspires to universalize the pre-primary education and provides special emphasis on the attainment of foundational literacy/numeracy in primary school and beyond for all by 2025. It recommends plethora of reforms at all levels of school education which seek to ensure quality of schools, transformation of the curriculum including pedagogy with 5+3+3+4 design covering

children in the age group 3-18 years, reform in the current exams and assessment system, strengthening of teacher training, and restructuring the education regulatory framework. In Higher Education, NEP, 2020 provides valuable insights and recommendations on various aspects of education that include moving towards multidisciplinary and holistic education, institutional autonomy, promotion of quality research through establishment of National Research Foundation, continuous professional development of teachers, integration of technology, internationalization of higher education, restructuring of governance and regulatory architecture, multidisciplinary curricula, engaging blended, pedagogy, valid reliable and blended assessment and availability of content in Indian languages.

IV. JUDICIAL RESPONSE ON RIGHT TO EDUCATION

Originally, article referring to the right to education was incorporated under the Directive Principles of State Policy rather than placing under the Fundamental Rights. Assumptions could be made that the framers of the Constitution were intended to make the State responsible in providing quality education to its citizens without differentiating on social or economic background. When the right to education was denied, the Supreme Court time and again has interfered to assert the right in a fair way. While upholding the right to education as a fundamental right under Article 21 of the Constitution, the Supreme Court in *Mohini Jain v. State of Karnataka*, observed that a citizen cannot be denied the right to education by charging exorbitant fee in the form of capitation fee. Proceeding in this line, the Supreme Court in *Unni Krishnan v. State of TN*, reiterated the same and further held that every citizen has a right to education until the age of 14 years at free of cost and thereafter it is subjected to the economic and capacity and development of the State. Basing on these judgments, the Constitution was amended and inserted three new provisions to the Constitution; They were Articles 21A, 45 and 51A. Article 21A which says, “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”³⁶. Article 45 provides, “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”. Article 51A says, “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.” The above-mentioned articles clearly elucidate that the state along with the parents or guardians of the child have an obligation to provide education at free of cost up till the age of 14 and early childhood care of children below 6 years. While observing the responsibilities of state, the Supreme Court in *Avinash Melhrotra v. Union of India & Others* held that there is a fundamental right to get education free from the panic of safety and donation, and the educational right incorporates the provision of secure schools

pursuant to Articles 21 and 21A of the Constitution of India. No issue where a family seeks to educate its children (i.e., including private schools), the State must make sure that children suffer no damage in practicing their fundamental educational right.

V. CONCLUSION

Since India is dominated by villages, it is relevant that State imparts education to all without discrimination on the basis of social and economic backwardness of a child. Private sectors or non-state entities may provide education at the cost of high fee structure and it could hardly be accessed by poor and backward categories children. Lack of good infrastructure and qualified dedicated teachers in the remote areas fails to provide quality education to the children, even at the foundational or elementary level. Government, due to its failure to upgrade public schools and colleges with the state aid, failed to compete with the private entities with good infrastructure and dedicated team of experts to raise the standard of education. National Policy on Education 1986 provides for the Universal Elementary Education to all but the upgradation and privatisation of education sector became a road block for its implementation. Even the RTE, 2009 failed to accomplish the expected rate of growth. It is also noteworthy that quality education can only be considered if the holistic growth of a child is taken care. Literacy alone would never suffice the growth of a child but a comprehensive quality education which takes care of the development of a child is necessary. Due to lack of effective implementation of Constitutional provisions on education through National Education Policies and RTE, the education for many has become a dream especially the socially and economically backward section of the children. Being a fundamental and human right, the State is obliged to implement the right to education on a war footing to render justice to all without discriminating on the basis of socio-economic considerations.

(A) Suggestions

Taking into consideration above mentioned drawbacks, suggestions for the effective implementation of the right to education policy would be –

- Strengthening the provisions of RTE, 2009 and measures to implement it at any cost. Certain rectifications need to be brought in both willingness on the part of State to execute the Act in its entirety and to amend some provisions for the effective implementation of the said Act.
- Primarily, the State should allocate funds for the same. It should allocate a substantial amount, not less than 6 per cent of the total budget, for the cause of education and must

spend the whole allocated amount for the purpose without making any deviations. There must be a strict regulatory body to implement the same.

- Well qualified teaching faculty at all levels of education must be promoted by selecting qualified teachers and further providing avenues for them to have ongoing formation as years go by. The incentives of promotion must be given basing on their proficiency in teaching and not merely on the age factor.
- The amendments to be made to the RTE Act in the spheres of funds allocation to bear the expenditure of the 25 per cent children from disadvantaged groups who seek education under the Act. Present system of allocation would certainly bring dilemma between Centre and the States. Therefore, the responsibility must be given strictly either to State or Centre to avoid unnecessary confusions unlike the present system of sharing the responsibility between the Centre and the States.
- The entire mode of education should be directed towards the holistic growth of a child rather than rote learning. A comprehensive learning process including extracurricular activities with the academic subjects should be introduced. Technical vocational and other life-oriented subjects should be introduced to lead a child towards the mainstream of the society both in the spheres of knowledge and status.
- Commercialization of education should be brought under the strict regulatory control and all the education institutions must follow the general fee structure decided by the state authority. All the States must encourage the state-sponsored schools or aided schools in the remote and socio-economically backward areas instead of allowing the profiteering private entities.
- Parameter of discrimination should be merit oriented and not socio-economic oriented. Elementary and Secondary quality education should be provided to all without any discrimination and talented children of tribal and backward areas must be given scholarship on the basis of merit for their higher education.
