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Evolution of Right to Education as a Fundamental Right

ROHAN MADHOK¹

ABSTRACT

The principal objective of this research paper is to trace the Evolution of the Right to Education as a Fundamental Right in India and to carefully analyse the various stages of its development. Education is the ground for development and empowerment of each and every country. It is the most powerful weapon which might be accustomed to change this world. Education is most definitely a fundamental right, essential for the empowerment and growth of a person along with the society as a whole. This paper starts with the status and importance given to education during the Vedic and Buddhist Era wherein, the important stages in the development of the individual's personality were the physical, moral, intellectual, religious and spiritual development. Further this paper talks about the status of Education during the Medieval period when the Muslims kings ruled over the country and the main objective of the Educational System under the Muslim rulers was growth in Knowledge, spread of Islamic Culture and Religion, growth of character, loyalty towards the king, knowledge about arts, development of skills, education of alphabets, etc. This paper then goes on to talk about the various educational acts passed in India during the British period. Thereafter the author talks about the demand for a law on free and compulsory education which was made during the freedom struggle and the various debates held on the topic. Further the author talks about the various Landmark judgments that led to the creation of a Right to free and compulsory education. Finally, the author has analysed The Right of Children to free and Compulsory Education Act, 2009 which is presently in-force.

Through this paper the author has come to Conclusion that the right to Education is essential in the interpretation of right to development as a human right. Similarly, the right to development is also considered to be a fundamental human right and the desire to obtain more qualification is an intrinsic human right. The Central Government enacted the Right of Children to Free and Compulsory Education Act, 2009 which is the Consequential Legislation to Article 21(A). However, it is not applicable to unaided non-minority and minority educational institutions. The Right to Education Act also fails to talk about millions of children who are in the age group below five years. Education should be

¹ Author is a student at Vivekananda School of law and legal studies, Vivekananda Institute of Professional Studies affiliated to Guru Gobind Singh Indraprastha University (GGSIPU), India.

provided free of cost. Therefore, the Parents have a significant role to make Right to Education a major success in India and it can be done only by motivating them through counselling.

Keywords: *Right to Education, Vedic era, Buddhist Era, Medieval period, British period, free and compulsory education, the Right of Children to Free and Compulsory Education Act, 2009.*

I. INTRODUCTION

Education is the ground for development and empowerment of each and every country. It is the most powerful weapon which might be accustomed to change this world. In fact, education has its functionalism in the majority of spheres of life. Its significance can never be reduced. It can create an educated society which will prepares this generation for a bright future and empower the individual to motivate the capacity of collective. As per the ancient thinkers of our country, Vidya or knowledge or learning or education is the 3rd eye of man, which provides him an insight into all affairs and shows him a way to act; it leads us to our salvation and an all-round progress and prosperity.²

Education is most definitely a fundamental right, essential for the empowerment and growth of a person along with the society as a whole. India has the highest number of illiterate people in the world. Although it is asserted by the government that literacy rate in our country is increasing rapidly, vast number of our citizens who are officially counted as a literate person are hardly so in reality. Right to Education is the primary human right of every citizen of India, whether a child born in a high profile society or one who is born far away in a not so developed village.

The Right to Education is present in International law under Article 26 of the Universal declaration of Human Rights and under article 13 and 14 of the international covenant on economic, social and cultural rights. More than 135 countries have a constitutional provision which provides for free and non-discriminatory education for all.³ India, in 1950, enacted a constitutional provision to provide free and compulsory education to all children up to the age of 14, they did this by adding a provision which provided for free and compulsory education under Article 45 of the directive principle of state policy. On 12th December 2002, with the 86th constitutional amendment Article 21A was amended by the legislature in order to

² S. Gupta, Education in Emerging India, p.no 1 (Shipra Publications, Delhi, 2nd Ed. 2008)

³ UNESCO, 'Education for all Global Monitoring Report', 2010

introduce Right to Education as a Fundamental Right under part III of the constitution.

In 2009, The Right of Children to Free and Compulsory Education Act was passed which finally came into force on 1st April 2010. The act provides for free and compulsory education to all those children who are within the age of six to fourteen years. It is now a legally enforceable duty of the government, to provide free and compulsory education to all children who are in the age group of 6 - 14 and it provides for maintenance of minimum norms in elementary schools. It also restricts all unrecognised schools from practice, and makes prohibits any donation or capitation fees and that there should be no interview of the child or parent for admission. The Act also prohibits the school from holding back or expelling any child. The act also provides for a special kind of training for school drop-outs to bring them at par with students of the same age.⁴

II. THE EVOLUTION OF RIGHT TO EDUCATION AS A FUNDAMENTAL RIGHT

History of education in India dates back to the ancient centres of learning at Taxila and Nalanda. Education frees the human beings and leads them towards liberation from ignorance. According to a great scholar “Education is a constant process of growth of intrinsic powers of a human which are natural and progressive.” Many people say that in the 21st century, ‘A country’s capability to convert knowledge into wealth and social good by using the process of innovation will determine its future’. Therefore, 21st century is termed as century of knowledge.

The rationale behind compulsory and free education

Education is commonly known as the process of learning and gaining knowledge at school. It is identified as a basic human right, the need and importance of which has been emphasized at the United Nations, through various international covenants and treaties. Education is also seen as a mechanism of social revolution and thus education leads to empowerment which is very important for a country like India, as even after 65 years of independence India has not been able to exterminate illiteracy in spite of the constitutional mandate.⁵

Education in the vedic period⁶

The history of development of education in India stretches back to the Vedic era, and the system of education developed in the form of the Vedic System of Education. Historians say that back

⁴ The Right of Children to Free and Compulsory Education Act 2009, India, available at <http://righttoeducation.in/> (last visited on April 12, 2020)

⁵ Uma, ‘Right to Education: A critical appraisal’, Department of Public Administration, Punjab University, Chandigarh, India, (2013)

⁶ Vijay M Gawas, “Right to education under constitution of India and development among the scheduled tribes: A socio-legal study” volume 4 issue 3, International journal of law 63 (2018)

then education was under the complete control of the Guru or Acharya and not under any other kings.

The important stages in the development of the individual's personality under the Vedic Education system were the physical, moral, intellectual, religious and spiritual⁷. However, in line with the norms of the Varna System, only the highest three Castes viz. Brahmans, Kshatriyas, and Vaishyas were entitled to realize knowledge. The Sudras who were among the subjugated classes were kept away from the privileges of studying the Holy Scriptures and hence they were not entitled to gain knowledge.

Therefore, education during the Vedic period was known for its lack of social inclusiveness. Up until the 19th century, education was mostly considered as a privilege confined only for persons who were at the higher end of the caste and class spectrum. Knowledge of religious content and the elite medium of instruction were the two contributing factors for such exclusion. People from the lower castes were denied admission into Gurukulas or Ashram's.

Education during the Buddhist era⁸

A small relief came when the supremacy of Vedic education was overthrown by Buddhism and Jainism; and education was no longer confined to people who were at the higher end of the caste and class spectrum. When the Buddhist Era commenced, the principle related to a religious thought which was based on the analysis of the actual problems of life was popular. The main objective of Education System during the Buddhist era was physical growth for good health, growth of knowledge, education about social behaviour and education in relation to the Buddhist Religious thought process". During the Buddhist Era there was no prohibition enforced on the downtrodden classes in relation to studying the Holy Scriptures or their entitlement to knowledge

Education in the Medieval period⁹

During the Medieval period the Muslim kings started a new Education System which was popularly known as Maktab-Madarsha System". The Muslim kings of the Indian Subcontinent never considered education as a fundamental function which is to be performed by the State. It was largely regarded as a subsidiary of religion and was assigned to theologian called Ulemas. The main objective of the Educational System under the Muslim rulers was growth in

⁷ Sheikh Mustafa, Historical Development of Teacher Education in India, Institute of Advanced Studies In Education, M.A Road Srinagar, see to www.gcoekmr.org/pdf/MED15042CR_HistoricalDevelopmentofTE, (last visited on April 12, 2020)

⁸ Vijay M Gawas, "Right to education under constitution of India and development among the scheduled tribes: A socio-legal study" volume 4 issue 3, International journal of law 64 (2018)

⁹ Ibid

Knowledge, spread of Islamic Culture and Religion, growth of character, loyalty towards the king, knowledge about arts, development of skills, education of alphabets, etc.” During the medieval period, the position of the downtrodden classes did not improve, in order to increase their educational standard. In short, in ancient and medieval India, education was a privilege available only to a chosen few.

III. EDUCATIONAL ACTS AND LAWS DURING THE BRITISH PERIOD

The British introduced the Western Education policy in our country. During the British period science and literature showed a good progression because of the English medium. The British came to India as traders and at the same time, they also established the East India Company. Subsequently, they undertook the policy to spread religion and education through the Christians Missionaries in India. During this Period the first ever policy for education development came up in India. With the help of the Britishers, the education system in India started to take shape. Several Acts and laws were made by British rulers for the development of the Education System in India.

During the British rule, when the first Hunter Commission was appointed in 1802¹⁰. The main aim of this commission was to review the condition of Primary education in India; it suggested the measures for expansion of Primary Education in India. The Commission decided that all the primary schools owned by the government should be transferred to the local bodies, Municipal Committees and District Boards. These local bodies were tasked with to set aside specific amount of funds for primary education. So that, whenever the government wants it can ask them for financial help to the extent of half or at least one third of their total expenditure on primary education.

The foundation of the education system in India was laid down by the Lord Curzon Resolution Act, 1904. He realised deeply that the state of primary education in India was in poor condition. He declared under this Act, that it is the duty of both central, as well as, the Provincial Government to pay more attention to the expansion and improvement of primary education. He also suggested simple curriculum, training for teachers, making the mother-tongue the vehicle of imparting instructions in all the primary schools and grant-in-aid on the basis of efficiency. All these things led to the increase of both students and schools.

On March 16th 1911 in the Imperial Legislative Council, the Shri Gopal Krishna Gokhale Education Bill was presented. The main objective of the bill was the promotion of compulsory

¹⁰Dr. M. Peer Basha, ‘Educational System during Pre & Post Independence India’, VOLUME 2, ISSUE 2, published on international Journal of Multidisciplinary Advanced Research Trends (2015)

education

The Central Advisory Board of Education (CABE) in 1944 popularly known as the Sargent Plan or the Sargent Report (1944), presented a scheme of Post-war Educational Development in India. It recommended Free and compulsory education for eight years (six to fourteen years' age group).

The British regime failed to take sufficient measures to help in the development of science and technology in India and instead it concentrated more on arts and humanities. By the end of the 19th century, India had fallen behind in science and technology related education. However, the establishment in India continued to encourage the development of scientific and technical education.

IV. DEMAND FOR FREE EDUCATION

The demand for a law on free and compulsory education which was made during the freedom struggle, sought to break the above-mentioned heritage of an inequitable and neglected education system. Dadabhai Naoroji and Jyothiba Phule in their evidence placed before the Education Commission (Hunter Commission) appointed in 1882, demanded free education for all children for at least 4 years which would be sponsored by the state. This demand indirectly got recognition in the Commission's recommendations on primary education. The Commission also recommended that schools should welcome people from all castes and classes.

Thereafter, the first law on compulsory education was introduced by law on compulsory education was introduced by the State of Baroda in 1906. This law made education compulsory for boys and girls within the age groups of 7 to 12 years and 7 to 10 years respectively. The Legislative Council of Bombay was the first Provinces to enforce a law on compulsory education. Slowly, other Provinces also adopted the same policy as control over school education was turned over to Indian Ministers by the Government of India Act, 1919. However, even though Provincial Legislatures had greater autonomy in enacting laws, development in universalising education was bad because of lack of control over resources.

The policy for compulsory education was restated in 1937, at the All India National Conference on Education held at Wardha. There Gandhi introduced the idea of self-supporting 'basic education' for a period of 7 years through vocational and manual practise. This idea of self-support came up as an answer to the Government's persistent excuse of lack of resources. The next major development in the evolution of free and compulsory education in India was the Post War Plan of Education Development of 1944, also called the Sargent Plan, which recommended free and compulsory education for eight years for the age group of 6 to 14 years.

V. PRE- CONSTITUTIONAL DEBATES ON FREE AND COMPULSORY EDUCATION

During the freedom struggle, there was a consistent demand for free and compulsory education. Despite that, at the time of drafting the Constitution, there was no unanimous view in favour of a fundamental right to education. The Constituent Assembly Debates reveal that an amendment was moved to alter the draft Article relating to free and compulsory education. With this amendment, the term entitled was repealed from the draft article in order make sure that education remained a non-justiciable policy directive in the Constitution. Therefore, free and compulsory education made its way into the Constitution as a Directive Principle of State Policy under former Article 45. Whereby States were required to ensure the provision free and compulsory education to all children till the age of fourteen years within a period of ten years of the commencement of the constitution

VI. THE DEMAND FOR A FUNDAMENTAL RIGHT TO EDUCATION

The Kothari Commission of 1964–1968, analysed the status of education in India and made various recommendations. Most significant recommendation made by this commission was of a common school system. This was done with a view to eliminating inequality in educational opportunities. It also observed that a clear programme of professional education for teachers was necessary for the overall improvement in education at all levels. Teacher education should meet the requirements of the national system education”¹¹

In 1968 the National Policy on Education (NPE), was formulated. This Policy was the first ever official document which showed the Indian Government’s commitment towards school education. The policy dealt with issues of equal educational opportunities and it sought to adopt a common school system in order to promote social inclusiveness. Curiously, it required schools to provide a proportion of free studentships to restrict social segregation in schools. Even still, it kept the status of free and compulsory education as a ‘directive principle.

In 1990 the Acharya Ramamurti Committee made the first ever official recommendation for a fundamental right to education. After that, many political and policy level changes affected the fight for free and compulsory education. The government witnessed a heavy international focus on its initiatives in relation to free and compulsory education, especially after India participated in the World Conference on Education for All in 1990. Our country also ratified the United Nations Convention on Rights of the Child in 1992.

¹¹ Pradeep Kumar, ‘A Study of Right to Education act among school teachers’, Bangalore University, Karnataka, India. (2013)

VII. JUDICIAL CONTRIBUTION TOWARDS RIGHT TO FREE AND COMPULSORY EDUCATION

The courts have always shown a keen interest in making free and compulsory education to all the children below the age of 14 years as a fundamental right. The Supreme Court for the first time recognised the right to education as a fundamental right in:

1) Mohini Jain v. Union of India¹²

The Supreme Court observed in this judgment that: 'Right to life' is the concise expression all those rights which the judiciary must impose as they are basic for the dignified enjoyment of life. 'Right to life' extends to the full spectrum of conduct which the individual is free to aspire for. The right to free and compulsory education flows directly from right to life. The right to life as given under Article 21 and the respect of an individual cannot be assured unless it is accompanied by the right to free and compulsory education. The state and central Government has a duty to make an endeavour to provide educational facility at all levels to its citizens.¹³

In the present case the petitioner had challenged the constitutionality of a notification issued by the government under the Karnataka Education Institution (Prohibition of Captivation Fee) Act 1984, which was passed to control the tuition fee which was charged by the private medical colleges in the state. The division bench consisting of two judges held that the right to education is a fundamental right at all level to citizen under Article 21 of the constitution and charging captivation fee for admission in the education institutions is illegal and is considered as a denial to citizen's right to education and it is also violative of Article 14 as it is arbitrary, unfair and unjust in nature.

Thereafter, in 1993, the Supreme Court was asked to re-examine the correctness of the judgment given by the court in Mohini Jain case, in:

2) J P Unnikrishnan vs. State of Andhra Pradesh¹⁴

A 5 judge bench by 3:2 majority, partially concurred with the Mohini Jain judgment and held that The right to free and compulsory education which is inherent in the right to life and liberty which is given under Article 21, must be interpreted in the light of the directive principles in Part IV of the Constitution. As far as the right to free and compulsory education is concerned, there are many articles in Part IV of the constitution, which expressly talks about it. In our constitution, article 41 says that the "State should, while staying within the limits of its

¹² (1992) 3 SCC 666

¹³ <https://www.scconline.com/>

¹⁴ (1993) SCC (1) 645

economic capability and development, make effective policies in order to secure the right to work, to education and to state assistance in cases of unemployment, old age, illness and disablement, and in any other cases of undeserved want"¹⁵. In our constitution, article 45 says that "the State should endeavour to provide, free and compulsory education for all children between the age group of 6 to 14". In our constitution, article 46 provides that "the State shall promote with special care the economic and educational interests of the weaker sections of the society, and especially, of the Scheduled Castes and tribes, and should protect them from social injustice"¹⁶.

These 3 Articles in our constitution, i.e. article 45, 46 and 41 are devised to achieve the said goal among others. It is under these articles that the context and framework of the right to free and compulsory education have to be determined. Right to free and compulsory education, understood in the context of Articles 45 and 41, means that: (1) every child of this country has a right to free education until he reaches the age of 14 years and (2) after a child exceeds 14 years of age, his right to education is restricted by the limits of the economic capability of the state. As regards its content the court partially overruled the Mohini Jain's judgment, and held that the right to free and compulsory education is provided only to children until they exceed the age of 14 years, but after that responsibility of the state to provide free and compulsory education is subject to the restrictions of its economic capability. The responsibility created under Article 41, 45 and 46 of the constitution can be accomplished by the State either by creating its own institutions or by aiding, or granting affiliation to private owned institutions.¹⁷

The Supreme Court, thus harmoniously construed the provision of Part III and Part IV of the Constitution in order to make the right to education a basic fundamental right.

3) In the case of *Bandhuwa Mukti Morcha vs. Union of India and others*¹⁸, it has been held that it is the solemn duty of the state to provide basic education to those children also who are working in different factories or industries. Moreover the court directed the government to take such steps and evolve scheme assuring education to all children either by the industry itself or in coordination with it.

4) In case of *Ajay Goswami vs. Union of India & Others*,¹⁹ Chief Justice of India Dr. A.K. Lakshmanan rightly observed:

¹⁵ Bare Act of Constitution of India

¹⁶ Ibid

¹⁷ <https://www.scconline.com/>

¹⁸ (1991) 4 SCC 177.

¹⁹ AIR 2007 SC 493.

“Providing education is one of the most important functions performed by state and a local government. Education is essential for the performance of our most basic responsibilities. It is the very basis of good citizenship. Nowadays, it is the primary mechanism for introducing the child to cultural values, training him for professional jobs later, and helping him adjust to his environment. In present times, it is doubtful that any child may reasonably be expected to succeed in life if he is not given the opportunity of education.”²⁰

Similar observations regarding fundamental importance of education has also been made by Justice S.B. Sinha in the case of Election Commission of India vs. Sant Merry’s School & Others²¹

5) Justice K. Ramaswamy and Justice Sagar Ahmad, has observed:²²

“Illiterate citizens have a negative effect in a democratic country governed by the rule of law. An educated citizen could rightly exercise his political rights, perform his social responsibilities completely and develop a spirit of tolerance and reform”²³

Therefore, compulsory education is one of the duties of the states for stability of democracy, social integration and to eliminate social evils. The apex court by rightly and harmoniously interpreting the provisions of Part III and IV of the Constitution has made right to free and compulsory education a basic fundamental right.

The 86th amendment to the Constitution made in 2002, established article 21A making the right to education a fundamental right. This was the first time in independent India’s history that a fundamental right had been created and added to the Constitution. Right to education was different from the other fundamental rights as it required an enabling legislation to become effective. The Right to Education Act (RTE) Act is this enabling legislation. The Right to Education Act (RTE) Act came into force on April 1, 2010.²⁴

Therefore, on the basis of a constitutional mandate provided in Article 41, 45, 46, 21A as well as, as per the various judgments’ of the apex court, the Government of India has taken various steps to eliminate illiteracy, and improve the quality of education and make the children go back to school who left the schools earlier for one or the other reasons.²⁵

²⁰ <https://www.sconline.com/>

²¹ AIR 2008 SC 655

²² See *Bandhua Mukti Morcha vs. Union of India*.

²³ <https://www.sconline.com/>

²⁴ Mahendra pal Singh, V.N. Shukla’s Constitution of India, p.no 233,(Eastern book company, Lucknow 13th edition 2017)

²⁵ Ibid

VIII. ENACTMENT OF THE RIGHT TO FREE AND COMPULSORY EDUCATION ACT, 2009

As of right now, the provision of free and compulsory education to children was added as a fundamental right, by the Constitution (86th Amendment) Act, 2002 and Article 21-A was included under part III. The Right of Children to free and Compulsory Education Act or Right to Education Act (RTE) was passed by the Indian legislature on 4th August 2009. This act, in reality is a landmark for India which provides for institutional instructions so that education as a fundamental right spreads to every child between the age group of 6-14 years. The Act provides complete basic education to every child in a formal school, which fulfils certain essential norms and standards²⁶.

Privately owned educational institutions have to reserve 25% seats beginning from Class I. It also provides a strict criterion for the qualification of teachers. The act provides for a strict teacher student ratio of 1:30 at each of these educational institutes that. It also requires that schools needs to have certain minimum facilities like adequate teachers, playground and infrastructure etc.

The act has also devised the concept of neighbourhood schools. This provision states that the state government and local authorities will set up primary schools within walking distance of the neighbourhood. Moreover, privately owned schools should ensure that children from weaker sections face any trouble.

Downtrodden and children belonging to weaker groups shall not be not segregated from the other children in the classrooms nor shall their classes be held at places and timings different.

Right to Education Act 2009, does have certain limitations like, children below the age group of six are not covered by the act; the act failed to provide a common school system; there is a lack of provisions for children with disabilities; financial assistance; provision regarding reimbursement to the private school; there is a lack of clear cut provision for competent authorities to take action for assuring that quality standards are maintained or for taking action in case of negligence in services by the government authorities etc.

IX. CONCLUSION AND SUGGESTION

The right to Education is essential in the interpretation of right to development as a human right. Similarly, the right to development is also considered to be a fundamental human right

²⁶Dr Sanjay Sindhu, "Fundamental Right to Education in India: An Overview" 3 Global journal of interdisciplinary social sciences 94 (2014)

and the desire to obtain more qualification is an intrinsic human right. The Central Government enacted the Right of Children to Free and Compulsory Education Act, 2009 which is the Consequential Legislation to Article 21(A). Similarly, Article 21 casts an obligation on every state to provide free and compulsory education to children between the ages of 6 to 14 years. But it is not applicable to unaided non-minority and minority educational institutions.

However, the Right to Education Act should also set up educational institutes at the secondary level and it should not be limited to the age of 14 years, The Right to Education Act also fails to talk about millions of children who are in the age group below five years. Education should be provided free of cost. Therefore, the Parents have a significant role to make Right to Education a major success in India and it can be done only by motivating them through counselling.

Similarly, the state should make the provision for severe punishment regarding the abuse of this Act. It also places responsibility on the state government, central government, parents, teachers and administrators, owners of the school to keep a proper check on the functioning of the Act. Also, the existing monitoring system should be restructured and a comprehensive monitoring system that effectively monitors academics and administration should be designed to accomplish the desired objectives. Most importantly, the enforcement of the Right to Compulsory and Free Education Act 2009 must be accomplished in letter and spirit to achieve the desired objectives.

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