



THE EVOLUTION OF RIGHT TO EDUCATION IN INDIA

By *Sadhak Sharma*

From School of Law, CHRIST (Deemed to be University)

“Education is the special manifestation of man; Education is the treasure which can be preserved without the fear of loss; Education secures material pleasure, happiness and fame; Education is the teacher of the teacher; Education is God incarnate; Education secures honor at the hands of the State, not money-A man without education is equal to animal.”¹

ABSTRACT

Education is a tool which leads to the development of both the individual and the society. It empowers the individual to achieve liberation from ignorance which leads to her advancement as well as that of the society. It invests within the person the power to reason the various situations which allows her to participate in the day-to-day affairs of their community as upright citizens. An individual equipped with education helps a society in economic terms by using the most efficient means for the optimum utilization of the scarce resources. Such an individual also ensures proper and efficient participation in the governance of the society thereby leading to its development.

This paper delves into the evolution of the right to education from a luxury provided only to the higher strata of the society to

eventually a fundamental right of each and every child aged between 6-14years of age. The responsibility in the modern era is put upon the Government to ensure for infrastructural capabilities for providing education in addition to ensuring compulsory enrolment, attendance and completion of education of the children. This paper draws a chronological timeline of events of the evolution of the right to education, starting from the pre-Constitutional era; the setup of education system in the ancient era and the growth of educational awareness in the British era. The drafting-era of the Constitution looks into the aspirations of the drafters of the Constitution to educate the Indian masses and the final decision taken upon by them after looking into various options. The role of the judiciary mentioned in the paper is the most important step which led to the recognition of right to education as an intrinsic part of the right to life under Article 21 which led to the enactment of the 86th Constitutional Amendment Act.

Keywords: Advancement, Compulsory, Development, Education, State-sponsored.

INTRODUCTION

The term education can be understood as transmission of knowledge and the process of fostering of inquiry and reasoning skills that are conducive to the development of autonomy of an individual. It is considered to be the most potent mechanism for the advancement of human beings which leads to liberation from ignorance. Education equips individuals with the skills and substantive knowledge that allows them to define and to pursue their own goals, and also allows them

¹Unni Krishnan, J.P and Ors. v. State Of Andhra Pradesh and Ors, 1993 AIR 2178; Paragraph no. 42



to participate in the life of their community as full-fledged, autonomous citizens. Education significantly influences a person's life chances in terms of labor market success, preparation for democratic citizenship, and general human flourishing. John Dewey in the opening chapter of his classic work *Democracy and Education* (1916), defined education in its broadest sense as a means of the "social continuity of life."²

In addition to the instrumental and intrinsic value of education to an individual, education is also valuable for society. A society in an economic sense can benefit from the social surplus and the quick responses to change in preferences by productive and knowledgeable workers. Whereas in terms of governance, a society can benefit from educated citizens who are capable of participating in the project of shared governance due to strong and effective correlation between educational attainment and civic participation.³

It is pertinent to understand United States Supreme Court's unanimous judgement in *Brown v. Board of Education* (1954) wherein it recognized the importance of education through the following observation: "*In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education*". The Court also observed that education is of utmost importance for the performance of the most basic public

responsibilities and it is '*the very foundation of good citizenship*.'⁴

The importance of education in the development of an individual was also observed by Chief Justice S.R. Das in the *Kerala Education Bill* case in which he expressed the following:

*"one of the most cherished objects of our Constitution is to secure to all its citizens the liberty of thought, expression, belief, faith and worship. Nothing provokes and stimulates thought and expression in people more than education. It is education that clarifies our belief and faith and helps to strengthen our spirit of worship."*⁵

SUPREMO
AMICUS



I. EVOLUTION OF THE RIGHT TO EDUCATION

The evolution of the right to education to a constitutional right in the present context can be understood through a sequence of events from the pre-constitution era. Therefore, the paper is divided into four parts namely: (i). The pre-Constitutional era, (ii). The drafting stage of the Constitution, (iii). The role of the judiciary, and (iv). The 86th Constitutional Amendment Act.

A. The pre-Constitutional Era

The Indian society which is deeply rooted in the caste division and hierarchy never recognized the need for equal educational opportunities. Not only were the Shudras, the lowest in the hierarchy totally alienated from education, the Kshatriyas and the Vaishyas,

² Philosophy of Education, Stanford Encyclopedia of Philosophy;
<https://plato.stanford.edu/entries/education-philosophy/>

³ Equality of Educational Opportunity, Stanford Encyclopedia of Philosophy;

<https://plato.stanford.edu/entries/equal-ed-opportunity/>

⁴ *Brown v. Board of Education*, 347 U.S. 483 (1954).

⁵ *In Re The Kerala Education Bill*, 1959 1 SCR 995; paragraph no. 11.



the second and third classes respectively in the Chatur Varna System received only some form of elementary and professional education. Thus, access to formal education in the past was determined by birth.⁶

A drastic change in the educational jurisprudence was observed during the freedom struggle to overthrow the colonial power which required the growth of national consciousness which required education of the masses. The need for 'Free and Compulsory Education' was demanded by the people from the colonial power. In the evidence placed before the *Education Commission (Hunter Commission)* appointed in 1882, Dadabhai Naoroji and Jyothiba Phule from Bombay demanded State-sponsored free education for at least four years. The demand was indirectly acknowledged in the Commission's recommendations on primary education; the Commission also recommended that schools should be open to all castes and classes.⁷

The first law on compulsory education was introduced by the State of Baroda in 1906 which provided for compulsory education for boys and girls in the age groups of 7–12 years and 7–10 years respectively.⁸ In 1917, Vithalbhai Patel moved a Bill in the Bombay Legislative Council for the introduction of compulsory education in the municipal areas of the state. The Bill was enacted as a law in

1918, popularly known as the '*Patel Act*', which was the first legislation to accept the principle of compulsory education.⁹

The next landmark development during the pre-Constitutional era in the history of demand of 'Free and Compulsory Education' was the *Post War Plan of Education Development (1944)*, also called the *Sargent Plan*. It proposed the establishment of nursery schools on a voluntary basis for children under six; while from 6-14 years of age, it recommended that education should be free and compulsory for both boys and girls which ought to be achieved in a phased program spread over 40 years (1944-1984).¹⁰

B. The Drafting Stage of the Constitution

India achieved its independence from the foreign rule and became an independent nation in 1947. The Constituent Assembly was imposed with the duty to draft the Constitution in order to pursue the long-proclaimed aims and aspirations of the people of the country. One of the most important aspiration of the people was to ensure the achievement of the 'Free and Compulsory Education' policy. Unfortunately, during the drafting stage of the Constitution, there was no unanimous view that the citizens of India should have a right to education, let alone a fundamental right.

⁶Aradhya, Dr. Niranjana. *Universalization of School Education; The Road Ahead*. Bangalore: Books for Change.

⁷Aradhya, Dr. Niranjana, and Kashyap, Aruna. *The 'Fundamentals' Right to Education in India*; <http://unesdoc.unesco.org/images/0015/001510/151010e.pdf>

⁸ Ibid.

⁹Kocchar, S.K. *Pivotal Issues in Indian Education*; page no. 60; https://books.google.co.in/books?id=iz_A45Rj61kC

&printsec=frontcover&dq=Pivotal+Issues+in+Indian+Education&hl=en&sa=X&ved=0ahUKEwjxw6_q7YnWAhXJQI8KHT6hAA8Q6AEIJTAA#v=onepage&q=Pivotal%20Issues%20in%20Indian%20Education&f=false

¹⁰Khaleduzzaman, Dr. Md. "Role of Education Commission in development of Primary Education in Bangladesh." *IOSR Journal of Research & Method in Education*; page no. 6; <http://www.iosrjournals.org/iosr-jrme/papers/Vol-4%20Issue-4/Version-1/F04413750.pdf>



The 'Provision for free primary education' was provided for in Article 36 of the 'Draft Constitution.' The Constituent Assembly Debates reveal that an amendment was moved by Pandit Lakshmi Kanta Maitra to ensure that the 'Provision for free primary education' was reduced to a non-justiciable policy in the Constitution.¹¹ He proposed to alter the part of Article 36, 'Every citizen is entitled to free primary education' by deleting the word '*entitled*' in order to bring the provision in consonance of draft articles 30-35 and Article 38 which provided for '*the policy that is to be pursued by the future governments of the country*'¹² i.e. directive principles of state policy. Further, a demand to provide such free and compulsory primary education in the respective mother tongue was also raised by Shri B. Das during the amendment discussion of draft Article 36.¹³

Therefore, it can be noticed that one of the most prominent demand during the freedom struggle of 'Free and Compulsory Education' was not upheld to be a fundamental right in the Constitution but was reduced to a non-justiciable directive principle of state policy.

Article 45 of the Constitution i.e. a directive principle of state policy provided for the duty to be imposed upon the State to endeavor "*to provide within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years.*" The following three things were

adopted and established by the Constituent Assembly:¹⁴

- i. A time frame (10 years) for implementation of the Right to free and compulsory education,
- ii. An upper age limit (14 years), and
- iii. No lower age limit because it was never an issue during that period.

Furthermore Article 45 coupled with Articles 39(e) & (f), 41, and 46 unambiguously directed the state to protect the interests of children and also to provide 'Free and Compulsory Education.'

C. The Role of the Judiciary

The right to education remained a directive principle of state policy and not a fundamental right until the decision of the Hon'ble Supreme Court in Unnikrishanan J.P. v. State of Andhra Pradesh.

The right to education being covered under Part IV of the Constitution was non-justiciable; but the principles laid down in Part IV are nevertheless fundamental in the governance of the country and therefore the duty to implement these principles in the course of making laws is imposed upon the State.¹⁵ Furthermore, the various verdicts given by the Supreme Court from time to time unequivocally established the organic and inseparable link between the provisions of the Directive Principles in Part IV and the Fundamental Rights in Part III of the Constitution of India.

The question of right to education being a fundamental right arose for the first time

¹¹ Constituent Assembly of India- Volume VII; Tuesday, the 23rd November, 1948; <http://parliamentofindia.nic.in/ls/debates/vol7p11.htm>

¹² Ibid.

¹³ Ibid.

¹⁴ Historical Development of Free and Compulsory Education in India During Pre - Independence and Post- Independence Era, Shodhganga; http://shodhganga.inflibnet.ac.in/bitstream/10603/102629/13/13_chapter%205.pdf

¹⁵ Article 37 of The Constitution of India.



before a Division Bench of the Supreme Court in *Mohini Jain v. State of Karnataka*¹⁶. The Court accepted that right to education was not expressly guaranteed in the Constitution but importance was given to right to education in lieu of Article 21 read with Articles 38, 39(a), 41 and 45. The Court opined that in lieu of such constitutional provisions, “it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens.” The Court argued that without realizing the right to education mentioned in Article 41, the illiterate people would not be able to realize the fundamental rights guaranteed to them by the Constitution. The Court ruled that “the right to education flows directly from right to life” and that right to education being concomitant to the fundamental rights, “the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens.” It was also held that the charge of capitation fee for the admission of students amounts to discrimination on a class basis thereby in violation to Article 14 of the Constitution and charging of such amounts to contravention of the constitutional scheme. The criticism to the judgment was that the Court took an extremely expansive view of providing education to everyone at all levels by the State. The obligation upon the State to provide education at all levels through various educational institutions from a practical view seemed hardly viable, feasible and tenable for a Government which itself was under a huge fiscal debt.

The landmark case which recognized the right to education as a fundamental right under right to life i.e. Article 21 was the Constitutional Bench in *Unni Krishnan J.P. v. State of Andhra Pradesh*. The Court observed that “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.” Therefore the importance of education was recognized for not only the development of the individual but also the country. The Court observed that if education is not provided to the citizens, the objectives set forth in the Preamble to the Constitution cannot be achieved.

The Bench also relied upon the United States Supreme Court judgments in *Brown v. Board of Education* and *Wisconsin v. Yoder*. From the former, the Supreme Court observed the utmost importance of education whereas the Court from the latter, observed the duty of the State of ‘providing public schools ranks at the very apex of the function of a State.’

The decision of the Supreme Court in *Bandhua Mukti Morcha v. Union of India*¹⁷ was also taken into consideration by the Bench wherein it was observed that the right to life guaranteed by Article 21 does take in ‘educational facilities.’

The Court held that that the right to education ‘flows from right to life’¹⁸; even though Article 21 is negative in character but an affirmative dimension was given to Article 21 in consonance to the directive principles of state policy namely Articles 41, 45 and 46 which provides for imposition of a positive duty upon the State. Regarding Part III and

¹⁶ AIR 1992 SC 1858.

¹⁷ (1984) 3 SCC 161

¹⁸ Right to Education under Article 21, Indian Constitutional Law, M.P. Jain, Lexis Nexis (Seventh Edition)



Part IV of the Constitution to be both supplementary and complementary to each other, the Supreme Court placed harmony between right to life and other directive principles providing for right to education. The Court referred to Justice Bhagwati's observation in *Bandhua Mukti Morcha v. Union of India*, where he stated that "*the right to life with human dignity enshrined in Article 21 derives its life from the Directive Principles of State Policy.*"¹⁹

The Court observed the right to education as a fundamental right in light of the importance given to education by the founding fathers of the Constitution in various constitutional provisions such as Articles 41, 45, 46 i.e. the directive principles of state policy and even Articles 29 and 30 i.e. the fundamental rights.

Therefore the Supreme Court held every citizen has a right to free education until he/she completes the age of 14 years. But the Court also held that such right to education is not absolute and its parameters must be determined in light of Article 45 and Article 41. This meant that the obligation of the State to provide education is subject to the limits of its economic capacity and development. Therefore the Bench harmonized the criticism leveled against it in *Mohini Jain* case that it did not look over the economic capacity of the State by including only primary education under the realm of right to education as a fundamental right. The Court also observed that the obligation to provide free education to all citizens below 14 years of age can be fulfilled not only through the State schools but can also be fulfilled by the State by permitting, recognizing and aiding non-governmental organizations with their

consent. The Bench also observed the role which can be played by unaided private schools to further the constitutional ideal of right to education.

D. The 86th Constitutional Amendment Act

Subsequent to the decision of the Supreme Court in *UnniKrishnan* case, the Constitution (Eighty-Six Amendment) Act, 2002 was enacted which inserted Article 21A into the Constitution. The right to education was now inserted into Part III explicitly which requires the State to provide free and compulsory education to all children aged 6 years to 14 years. The Fundamental Duties under Article 51A were also amended with addition of clause (f) to impose a duty upon "*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.*" Article 45 was also amended to provide for

A pertinent point to be noted is that the Karnataka High Court in *Associated Managements of Primary and Secondary Schools in Karnataka v. The State of Karnataka by its Secretary, Department of Education and Ors*²⁰ has accepted the demand of Shri B. Das during the discussion of 'Provision for free primary education' in the Constituent Assembly of providing primary education in the respective mother tongue in relation by reading Article 21A with Article 19 (1)(a).

Justice Dalveer Bhandari in *Ashoka Kumar Thakur v. Union of India*²¹ directed the Union of India to set a deadline to completely implement Article 21A and therefore a need

¹⁹1984 AIR 802, Headnote no. 2

²⁰ ILR 2008 KAR 2895.

²¹ (2008) 6 SCC 1.



to enact a legislation to achieve the same was felt.

Therefore, the Union Parliament in 2009 enacted *The Right of Children to Free and Compulsory Education Act* which *inter alia* provides admission of every child above 6 years of age to be compulsorily educated free of cost in a neighborhood school.²²

*“The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government.”*²³ - World Bank Education Specialist for India, Sam Carlson.

The Act imposes a time bound duty upon the respective State Governments and the respective local authorities to establish neighborhood schools in areas where such schools are not so established within a period of three years of the commencement of the Act.²⁴ The duty is imposed upon all schools whether state schools, aided or even unaided schools to provide free and compulsory education to a fixed percentage of children of the total number of children admitted.²⁵ The Act mandates all private schools to reserve 25% of the seats for students from Economically Weaker Sections (EWS) which is to be reimbursed by the State as part of public-private partnership.²⁶ The Act also provides for a duty imposed upon the parent or guardian to admit or cause to admit his/her child or ward to elementary education in a neighborhood school.²⁷ The Act lays down the norms and standards *inter alia* relating to

the Pupil Teacher Ratios (PTRs), infrastructural requirements, school-working days, teacher-working hours.

II. CONCLUSION

It is often said that ‘the pen is mightier than the sword’, but the driving force behind the pen is always neglected and often only the advantaged classes get to use the pen. The driving force behind the pen is education which in the words of Nelson Mandela is the most powerful weapon which one can use to change the world. It not only holds an important place in the social and economic development of an individual but also of the society as a whole. Education shapes the future of not only the individual but also of the country which he/she serves as it equips the individual with the latest developments in every sphere of life and societal order. Education invests within the individual the quality of making a rational choice which is very important for the functioning of a democracy where the power structure and social setup of such a State is dependent on such rational choices and decisions of its citizens. Therefore, education also trains its citizens to not only represent his/her interests but also that of the society of which he/her is a part of by allowing him/her to be elected to the decision making authorities of the State due to his/her educational and cogent qualities. The right to education as a fundamental right therefore ensures the

²² Section 3, *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 Of 2009)*.

²³ About, Right to Education; <http://righttoeducation.in/know-your-rte/about>

²⁴ Section 6, *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 Of 2009)*.

²⁵ Section 12, *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 Of 2009)*.

²⁶ Public Private Partnership (PPP) in education in India, NCE India; <http://www.nceindia.org.in/2012/08/public-private-partnership-ppp-in-education-in-india/>

²⁷ Section 10, *The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 Of 2009)*.



holistic development of an individual thereby equipping him/her with the knowledge to live a life with dignity and also ensures the development and growth of the country he/she serves.

The evolution of the right to education in India is one which flows through various stages; the right to education grew from the right granted only to the higher classes in ancient India to grant of such a right to only a few states during the British rule, to non-justiciable and non-enforceable directive principles and finally to an enforceable fundamental right. The most significant feature of such an evolution was how a luxury which earlier was only enjoyed by the higher classes of a society is now an enforceable right granted to each and every citizen of the country from six years to fourteen years of age. The recognition of the right to education under the right to life by the Supreme Court and subsequently the inclusion of Article 21A into the Constitution with an effective mechanism to ensure the implementation of the right to education setup by 'The Right of Children to Free and Compulsory Education Act' ensures that favorable conditions to ensure that the power to use the pen is granted to each and every citizen. But the question still arises whether rural India which lacks infrastructural facilities will ever be able to ensure that fundamental goal of providing education is achieved?
