



Child Education: The Constitutional Mandate

(With Reference to the Judgments of the Supreme Court of India)

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Introduction :

The Fundamental Rights guaranteed under the Constitution of India are meant to protect persons against the State, whereas, the Directive Principles of State Policy are fundamental in the governance of the country. Thus, the State is under a constitutional mandate to create environment in which the fundamental rights guaranteed to the people could be enjoyed by all, otherwise, it is only an illusion to the teeming million who are illiterate.¹

Whether an illiterate citizen can any way enjoy the fundamental rights? obviously, no. The right to move the Supreme Court for enforcement of the fundamental rights is also guaranteed as a fundamental right under the Constitution and without having this right, which is the heart and soul of the Constitution, other rights would be meaningless.

(2) Right to Education: As Fundamental Right :

The Supreme Court in its landmark Judgment in the case of Unni Krishnan, J. P. Vs. State of Andhra Pradesh .² observed thus; "The citizens of this country have a fundamental right to education. The said right flows from Article 21. Every child/citizen of this country has a right to free education until he completes the age of fourteen years." The "right to education", therefore, is co-existing to the fundamental rights enshrined in the Constitution. Right to freedom of speech and expression and other rights under Art.19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity. The "right to education", therefore, is concomitant to the fundamental rights.³

The Supreme Court, in Unni Krishnan's case⁴ , has observed that "the right to education has been treated as one of transcendental importance in the life of an individual and has been recognized not only in this country since thousands of years, but all over the world." In year 2002, by eighty-sixth amendment to the Constitution, Article 21A has been inserted in keeping with the hope expressed by the Supreme Court of India in Unni Krishnan's ⁵ and Mohini Jain's³ judgments that conversion of State's obligation under Directive Principles of State Policy into a Fundamental Right would help to achieve the goal.

Article 21A of the Constitution rules that 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. Simultaneously, Article 45 is substituted by a new Article which made obligatory for the State to endeavour to provide early childhood care and education for all children until they complete the age of six years. Clause (k) to Article 51A, says that it shall be the fundamental duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years.

(3) RTE Act : An Overview :

Consequent upon the Eighty-sixth constitutional amendment, the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), which provides for free and compulsory education to all children of the age of 6 to 14 years, has been enacted. Every child in the age groups of 6 to 14 years, irrespective of gender and social category, will be provided 8 years of quality elementary education. India became one of 135 countries to make education a fundamental right of every child by enforcement of the RTE Act from first day of April, 2010. Normally, it is the parents' responsibility to send the children to schools but RTE Act is, perhaps, first legislation in the world that puts the responsibility of ensuring enrollment, attendance and completion on the Government.

The RTE Act envisages that each child must have access to a neighbourhood school. The said Act provides for right (entitlement) of children to free and compulsory admission, attendance and completion of elementary education in a neighbourhood school. The word "Free" in the long title to the RTE Act stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling. The word "Compulsory" in that title stands for compulsion on the State and the parental duty to send children to school.⁶ The provisions of this Act are intended not only to guarantee right to free and compulsory education to children, but it also envisages imparting of quality education by providing required infrastructure and compliance of specified norms and standards in the schools.

(4) Primary Education vis-a-vis Literacy :

Though the number of literate people in India has increased over the years but overall literacy rate is still appalling that is below 75 percent as per recent census, 2011. Most of the rural population have not access to school and a large percentage of the dropouts are still there. The main problems are socio-economic constraints which result in educational constraints. Nobel laureate Amartya Sen commented on our tardy progress in the field of basic education in his article 'The Urgency of Basic Education' (New Delhi 19.12.2007) as follows :

"India has been especially disadvantaged in basic education, and this is one of our major challenges today. When the British left their Indian empire, only 12 per cent of the India population was literate. That was terrible enough, but our progress since independence has also been quite slow. This contrasts with our rapid political development into the first developing country in the world to have a functioning democracy."

The Apex Court was of the view that "The laws have however not been implemented with the spirit with which they ought to have been. We have several national initiatives in operation such as the "Sarva Shiksha Abhiyan", "District Primary Education Programme", and the "Universal Elementary Education Programme" to name a few. However, the



statistical data shows that we are still far away from achieving the goal of full literacy."⁷ The Supreme Court in Ashoka Kumar Thakur's 6 case, made a reference to the provisions of Articles 15(3) and 21A of the Constitution, observing that without Article 21A the other fundamental rights are rendered meaningless.

Though the percentage of literacy has gone up after independence, but still we are far away from achieving full literacy and from the goal of providing quality education and facilities at the primary level. There is a serious problem of children dropping out from the primary schools. There are wide ranging factors which affect the education of the children at a tender age, such as absence of trained teachers having the proper understanding of child psychology, ill-health, and mal-nutrition. The infrastructural facilities are often very inadequate. Large number of children are cramped into small classrooms and there is absence of any playground attached with the school. This requires adequate spaces for the primary schools.⁸

The policy framework behind education in India is anchored in the belief that the values of quality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all . The Supreme Court in K. Shyam Sunder's 8 case, held as thus; "The right of a child should not be restricted only to free and compulsory education but should be extended to have quality education without any discrimination on economic, social and cultural grounds".

(5) Free and Compulsory Education: Removal of Road Blocks:

Poverty is a major cause for keeping children away from school. Today, education is perhaps the most important function of State. Law providing for compulsory school education and the sufficient expenditures for education both demonstrate our recognition of the importance of education to our democratic society. A number of provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the RTE Act. In the 1990s, the World Bank funded a number of measures to set up schools within easy reach of rural communities. This effort was consolidated in the "Sarva Shiksha Abhiyan" model in the 1990s.

The Supreme Court, vide its Judgment dated 12.4.2012 in Society for Unaided Private Schools of Rajasthan v. Union of India and another,⁹ upheld the constitutional validity of the RTE Act and issued various directions. The Supreme Court has passed several interim orders and issued directions to the States and the Union Territories to provide the basic infrastructure facilities like toilet facility, drinking water, class rooms, appointment of teachers and all other facilities so that children can study in a clean and healthy environment .¹⁰

The Apex Court opined that "When we talk of education, it means not only learning how to write and read alphabets or get mere information but it means to acquire knowledge and wisdom so that he may lead a better life and become a better citizen to serve the nation in a better way." The Supreme Court has given emphasis not only on free and compulsory education but also on quality education".¹¹



(6) Conclusion :

An old Sanskrit adage states: "That is Education which leads to liberation" - liberation from ignorance which shrouds the mind; liberation from superstition which paralyzes effort, liberation from prejudices which blind the Vision of the Truth."

Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Therefore, education which empowers the future generation should always be the main concern for any nation.¹² Today, education is the principal instrument in awakening the child to cultural values and attitudes necessary to become responsible and active citizens. Of course, the constitutional amendments and the enactment of RTE Act are one step, that awaited since India became republic, taken towards providing opportunity to children particularly those who are socially and economically dilatory. But the matter could not be left to the government alone. We all being a part of the society should have to join hands and work together to build a movement to ensure that every child of this country is in school and enables them to get at least basic education.

References :

- (1) Constitution of India, by: V. N. Shukla, Tenth Edition, page 19.
- (2) (1993) 1 SCC, page 645.
- (3) Mohini Jain v. State of Karnataka, AIR 1992 Supreme Court, page 1858.
- (4) Society for Un-Aided P. School v. U. O. I., AIR 2012 Supreme Court, page 3445.
- (5) Girish Vyas v. State of Maharashtra, AIR 2012 Supreme Court, page 2043.
- (6) Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC page 1.
- (7) Bhartiya Seva Samaj Trust Tr. Pres. v. Yogeshbhai Ambalal Patel, AIR 2012 Supreme Court, page 3285.
- (8) State of Tamil Nadu V. K. Shyam Sunder and Ors. (2011) 8 SCC, page 737.
- (9) (2012) 6 SCC, page 1. (10) E C P Foundation v. Delhi Administration, AIR 2013
- (11) Bhartiya Seva Samaj Trust Tr. Pres. Supreme Court, page 1111. V. Yogeshbhai Ambalal Patel, AIR 2012 Supreme Court, page 3285.
- (12) State of Tamil Nadu v. K. Shyam Sunder and Ors., 2011 AIR SCW, page 5014.