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RIGHT TO EDUCATION
FUNDAMENTAL RIGHT OF CHILD



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ABSTRACT

“Every asset can be shared by sharers, but education of the individual can not be shared as an asset. Moreover, if other assets are distributed it decreases, but, if education is distributed to others it always increase and develop”.

Introduction

Education is one of the basic elements, for the success of democratic system of any government. An educated citizen may choose better representatives, to form the government. Education provides human dignity to a person, to develop himself as well as contribute towards the development of his country.¹

Mohan J. in Unnikrishnan's case² stated that -

“Victories are gained. Peace is preserved, progress is achieved, civilization is built up, and history is made not on the battle fields, where ghostly murders are committed in the name of patriotism : not in the Counsel Chambers where insipid speeches are spun out in the name of debate not even in factories, where are manufactured novel instruments to strangle life. But in educational institutions which are the seed beds of culture where children in whose hands quiver the destinies of the future, are trained.

From their ranks will come out when it grown up, statesman and soldiers, patriots and philosophers, who will determine the progress of the land”.

Justice S.M. Quadir. J. in T.M.A. Rai Foundation case³ held that -

“Education is essentially a charitable object and imparting education in a kind of service to the community”.

R.C. Lahoti, J. In P.A. Inamdar's case asserted that³ -

“Education used to be charity or philanthropy in good old times. Gradually, it became an “occupation”. Some of the judicial dicta go on to hold it as an “Industry”. Whether to receive education is a fundamental right or not has been debated for quite. Sometimes, but it is settled that establishing and administering of an educational institution for imparting knowledge to student is an occupation, protection by Article 19(1)(g) and additionally

by Article 26-1(A), if there is no element of profit generation”.

Right to Education and International Bill of Rights

An estimated 130 million children in the world have no access to primary education. Outside of the industrialized countries, only 76% of boys and 70% of all girls attend primary school. Attendance rates are lowest in Sub-Saharan Africa, where only 60% of boys and 56% of girls are in school.⁴ In developing countries, many children are taken out of school to supplement family income. Other live in countries where war or disasters have forced school closes. Nearly 35 million children in India are missing an education as they do not have access to basic education, nearly two-third of whom are girls. Girls make up more than half of the estimated 103 million children not in primary school today (UNESCO). Education is the most crucial investment in human development, and is an instrument for developing an economically prosperous society, for ensuring equity and social justice. Despite Indian governmental efforts, half of the adult Indian population continues to be illiterate and two-third of women are illiterate. According to census 2001, the literacy rate for rural India is as a whole 54% for males it is 66% and for female only 40%. However, national level literacy rate shown significant increase from 52% in 1991 to 62% in 1997, and 66% in 2001.⁵

Universal Declaration of Human Rights 1948

Article 26 of UDHR provides that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and Professional education shall be made generally available and higher education shall be equally accessible to

all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

International Covenant on Civil and Political Rights 1966

This covenant is silent regard to free and compulsory education at any levels, but peaks about religious and moral education to their wards. Art.-18(4) of the covenant states that “The State Parties to the present covenant undertake to have respect for the liberty of presents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own their own convictions”.

International Covenant on Economic, Social and Cultural Rights, 1996.

Art.13 of the covenant provides rights to Education to everyone. It states that “the state parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedom. The states parties to the present covenant recognize that, with a view to achieving the full realization of this rights :

(i) Primary education shall be compulsory and available free to all; (ii) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (iii) Higher education shall be make equally accessible to all, on the basis of capacity by every appropriate means, and in particular by the progressive introduction of free education; (iv) Fundamental education shall be encouraged

or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (v) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. The state parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the state and to ensure the religious and moral education of their children in conformity with their own convictions". Further, Art. 14 provides two years to time to the state parties to the covenant, to secure free and compulsory primary education in its territory and submit plan of action for the progressive implementation within reasonable number of years.

Right to Education in India—A large part of the creative expresses with respect to the Indian Constitution has taken place in the context of Art.21. The extended meaning of life and personal liberty has allowed the court to read in a number of unenumerated rights into Article 21. One such rights in the right to education which has now become part of the fundamental rights chapter under Article 21A. However, this right has developed largely while interpreting the extent of another right - the right to establish and administer educational institutions. The framers of our constitution realising the importance of education, imposed a duty on the state under Article 45, as one of the Directive Principles of state policy, to provide free education to all children until they complete the age of 14 years, within 10 years

from the commencement of the constitution. The object was to abolish illiteracy from the country. The Hon'ble Supreme Court held that right to free education falls in the ambit of "Right to Life" enshrined by Article 21 of the constitution. Unfortunately, that goal of the constitution imposed by Article 45, could not be achieved within 10 years but succeeded after 52 years; in the form of constitution (86th Amendment) Act 2002. By this Amendment, Article 21A was inserted in Part-III (Fundamental Rights) providing free and compulsory education to the children between the age of 6 to 14 years. Even, after the lapse of around six decades of independence, illiteracy has a high ratio in the country.

***St. Stephens College V. University of Delhi*⁶**

The decision of this case proceeds in a purely logical deductionist fashion with the judges indentifying the specific legal questions, consulting the numerous relevant precedents and then reaching a reasoned answer. It first took up Article 30(1) for consideration relied completely on past case law for the meaning of "Minority", right to "establish" and "administer". A first reading gives the impression of clarity and coherence and one would find the process as the judgement is an easy piece of reference. But a deeper analysis, keeping in mind that the ultimate aim of the law is justice, shows the infirmities in logical deduction.

***Mohini Jain V. State of Karnataka and Others*⁷**

This case, where the right to education was declared to be a fundamental right, offers a good example of how a creative decision making process can lead to a socially acceptable decision without relying excessively on logic. The primary questions before the court were

two - the constitutionality of capitation fee, and whether Rs.60,000 amounted to a capitation fee. Both these were questions that could have been decided by referring to the existing fundamental rights and the law in question.

***Unnikrishnan V. State of Andhra Pradesh*⁸**

In this case Mohan J. reached a conclusion familiar to Mohini Jain but restricted the fundamental right to include free education up to the age of 14. The court proceeded to examine whether there is a right under Article 19(1)(g) to establish an education institute. The court did make several inquiries into whether an educational institute amounts to business.

***T.M.A. Foundation and Others V. State of Karnataka and Others*⁹**

In this case the court was once again faced with the question whether there is a right to set up educational institutions available to the non-minorities. Unlike the others cases where the court referred to Indian traditions and culture that had placed education on a pedestal and prohibited commercialisation of education on a moral basis, the Supreme Court in this case recognised the practical realities of the day. Although the court did not make any detailed reference to the right to education, it conceded that education had always been considered to be only a charitable practice. At the same time the court accepted that private education was a fast growing sector fuelled by the rising demand for higher education in the country and the Government's inability to match up to this demand.

Conclusion—The reading in of unenumerated rights into Article 21 like the right to education offers an excellent example of how the judiciary can creatively adjust the law to meet changing social circumstances. However, this has been possible only because of the sufficiently wide language of Article 21. Thus, the judiciary must ensure that the interest spaces are wide enough to allow a reading in of unenumerated rights, otherwise the process would cease to be judicial creativity and would become judicial excess. After making so many efforts the right to education, is still in the words of statute only. The standard of any country (as measured by the rate of its literacy, especially of the age group of 6 to 14 years). Unfortunately, in India, after making legislation by almost all the states and providing compulsory education in some states from 1960s, we could not achieve the result. The central and state government also has made many attractive schemes to send the poor children to school. The main programmes are Sarva Shiksha Abhiyan, Mid-Day Meal, Cess Tax, Dress distribution, Scholarship etc., but so many efforts could make only little improvement. In such conditions it is found that the defect is within the system implementation, observation of the scheme etc. To make 100% literacy it is necessary that everyone of us shall play a positive role. Without any greed at political, academic or professional level. It is not only the states. Educational Institutions of local self government bodies but all of us should come together hand in hand to fight illiteracy in the country, by helping such un-helped children.

R E F E R E N C E

1. Malik and Raval; Law and Social Transformation, Allahabad Law Agency, Edition 1st (2007), p.276.
2. Unnikrishnan J.P.v. State of A.P., AIR 1993 SC 2178.
3. T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. (2002) 8 SCC 481.
4. The State Of the World's Children 1999, UNICEF.
5. Census of India, 2001.
6. St. Stephen's College v. University of Delhi (1992) 1 SCC 558.
7. Mohini Jain v State of Karnataka and Ors. (1992) 3 SCC 666.
8. Unnikrishnan J.P. and Ors. v. State of Andhra Pradesh and Ors. (1993) SCC 645.
9. T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. (2002) 8, SCC 481.