



## Right To Education: A Forward March Of Shadowed Lives

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### ABSTRACT

*This article is meant for the purpose of making aware the common people about the history, policies and laws on Right to Education & the Kothari commission, its need and Recommendations, Right to Education as a Fundamental Right. The author has tried to convey the mildness of every law and policies that are being passed are of importance and it usually remains unnoticed at the beginning but on implementation it turns the term "common child" to a designated one. Here the author has referred the laws and policies on children with lambent light that flickers with soft radiance and has compared the same with the shadows refereeing to the undeveloped children that turns to be a bright and developed one when enlightened.*

**KEYWORDS : Fundamental Right, Education, Children**

### History

*The hallmark of culture and advance of civilisation consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole.*

### Justice V.R. Krishna Iyer

During pre-independence days people were unaware of the educational rights. Earlier education was considered to be a privilege rather than a right. The State's obligation to provide education was recognized by the inclusion of a directive principle to this effect under Article 45 in the Indian Constitution (although directive principles were not legally enforceable like the fundamental rights). But, after the 86th Amendment to the Constitution in 2002, the Right to Education was recognised to be a Fundamental Right. The leaders of the independence movement, intellectuals and people that comprised the masses stood unitedly on providing free education to every child up to the age of 14. This concept was adopted from the British law of Free and Compulsory Education (FCE) and incorporated into Article 45 of the Constitution.

Thus, Free and Compulsory Education became a Constitutional commitment in India from 26th January 1950, when Article 45 mandated the State to universalize education within 10 years, i.e. by 1960. It would be pertinent to point out that between 1950 and 1960, Article 45 did not receive the importance that it deserved. The State and Union budgets treated education as a peripheral subject, allocating an insubstantial amount for this purpose.

### Kothari Commission

Much later, a movement towards equitable education began in 1964, when the Education Commission, Kothari Commission was appointed to look into the problems of the education system in India. In view of the important role of education in the national development and in building up a truly democratic society the Government considered it necessary to survey and examines the entire field of education in order to realize a well-balanced, integrated and adequate system of national education capable of making a powerful contribution to all aspects of national life. To achieve these objectives speedily, the Government of India in October 1964 set up an Education Commission, under Resolution of July 14, 1964.

The Commission in particular was to advise the government on the national pattern of education and on the general policies for the development of education at all stages-ranging from the primary to post-graduate stage and in all its aspects besides examining a host of educational problems in their social and economic context. The Commission was, however, not to examine legal and medical education.

The Commission in its report in 1964-66 recommended the establishment of a Common School System for all children irrespective of their class, caste, religious or linguistic background. The commission stated that in order to fulfil this purpose, neighbourhood schools should be established in all localities. It also recognized that this was the only way we can promote social harmony and equality of education. This commission given much importance to Common School System because they said that by common school system will eradicate many problems and give common platform to every individual.

### Need For Appointment of Commission

- 1) Need for a comprehensive policy of education in spite no. of education committees after independence, satisfactory progress would not be achieved.
- 2) Need for detailed study even though a good deal of expansion of education facilities took place, it was at the expense of quality.
- 3) Need to emphasize role of people in national development. To make people aware that they have a share in the national development along with the government.
- 4) Need for overview of educational development. To create more integration between various parts and consider it as a whole not as fragments.
- 5) Need for positive approach to the status of teacher. The teacher community had been neglected suffering many hardships requiring a positive approach to the problem.

### Commissions Recommended

Achieving universalization of education within two time segments.

The year 1976 was set as the deadline to provide free and compulsory education up to 5th standard, while 1986 was the deadline to do the same, up to 7th standard.

The adoption of a 'common school' system, which would help remove or minimize inequality of educational opportunities.

To maintain the 'quality and standards' of schools.

The recommendation of this commission regarding the common school system is the integral part of the programme to promote the education of the poor, reduce its dual character in which 'haves' receive one type of education and 'have-nots' another, and to create a socially cohesive and egalitarian society.

### Right to Education as a Fundamental Right

However, the Constitution of India and Supreme Court have declared that the education is now a fundamental right of the people of India, but it does not speak about millions of children who are in the age group of 0-5 years. It is needed that the Constitution should again be amended and the children of age group of 0-5 years should be

included; as by the time the child reaches the age of 6 years he/she gets in to the child labour due to the poverty. Moreover the Constitution only ensures that the state shall provide primary education to the children up to the age of 14 years, and the secondary and higher education is contingent and conditional upon the economic capacity of the state. The right to education will be meaningful only and only if the all the levels education reaches to all the sections of the people otherwise it will fail to achieve the target set out by our Founder Father to make Indian society an egalitarian society. In 1992, the Indian Supreme Court declared the right to education to be a fundamental right in the case of **Mohini Jain v. State of Karnataka**. It observed that 'Right to Life' is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. The Right to Education flows directly from Right to Life. The Right to Life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the Right to Education. The State Government was under an obligation to make an endeavour to provide educational facility at all levels to its citizens'. This was again reiterated by the Supreme Court in 1993 in the case of **J.P. Unnikrishnan v. State of Andhra Pradesh**<sup>3</sup>. It is significant that the Parliament enacted the Eighty-Sixth Amendment, 2002, to make education a fundamental right for children in the age group 6 to 14 years. It was undoubtedly a compromise on the effectiveness of education since children from birth to 6 years and 15 to 18 years stood excluded. The Right remained on paper for eight years owing to the delay in drafting a central legislation that would lay down the practical framework for its implementation.

The right to education springs from right to life. The right to life under Article 21 and the dignity of the individual cannot fully be appreciated without the enjoyment of right to education. The Court observed:

- Right to life is compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life.
- It extends to the fully range of conduct which the individual is free to pursue. .... The right to life under Article 21 and the dignity of the individual cannot be assured unless it is accompanied by the right to education.
- The State Government is under an obligation to provide educational facilities at all levels to its citizens.
- In case of Unni Krishan V State of Andhra Pradesh the Supreme Court was asked to examine the decision of Mohini Jain's case. In the present case the Apex Court partly overruled given in the Mohini Jain case. The Court held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 and must be interpreted in the light of the Directive Principle of State Policy contained in Articles 41, 45 and 46.

The Supreme Court in **M.C. Mehta V State of Tamil Nadu** the Supreme Court observed that, to develop the full potential of the children they should be prohibited to do hazardous work and education should be made available to them. In this regard the Court held that, the government should formulate programme offering job oriented education so that they may get education and the timings be so adjusted so that their employment is should not be affected. **Bandhua Mukti Morcha V Union of India**, Justice K. Ramaswamy and Justice Sagir Ahmad, observed, illiteracy has many adverse effects in a democracy governed by rule of law. Educated citizens could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform.

#### Right to Education of Children and Indian Constitution

The term 'Child' is not defined in the Indian Constitution. According to Article 1 of the United Nations Convention on the Rights of the Child 1989, 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'. The legal definition of child tends to depend upon the purpose. There are number legislations in India which defines the term 'Child' depending upon the purpose:

- Under the **Indian Majority Act, 1875** the age of majority is eighteen years & in case of a minor for whose person & property a guardian is appointed or whose property is under the supervision of the Court of Wards the age of majority twenty-one years
- Under the **Child Labour (Prohibition and Regulations)**

**Act, 1986**, child means a person who has not completed his fourteenth year of age.

- Under the **Child Marriage Restraint Act, 1926**, child means a person who, if a male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age.
- Under **Juvenile Justice (Care and Protection) Act, 2000**, 'Juvenile' or 'Child' means a person who has not completed eighteenth year of age.

The Government of India by Constitutional (86th Amendment Act) Act, 2002 had added a new Article 21A which provides that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine". And further strengthened this Article 21A by adding clause (K) to Article 51-A which provides who is a parent or guardian to provide opportunities for education to his child or ward between the age of 6 and 14 years. On the basis of Constitutional mandate provided in Article 41, 45, 46, 21A and various judgments of Supreme Court the Government of India has taken several steps to eradicate illiteracy, improvement the quality of education and make children back to school who left the school for one or the reasons. Some of these programmes are National Technology Mission, District Primary Education Programme, and Nutrition Support for Primary Education, National Open School, Mid-Day Meal Scheme, Sarva Siksha Abhiyan and other state specific initiatives. Besides, this several states have enacted legislation to provide free and compulsory primary education such as- the Kerala Education Act 1959, the Punjab Primary Education Act 1960, the Gujarat Compulsory Primary Education Act 1961, U.P. Basic Education Act 1972, Rajasthan Primary Education Act 1964, etc.

#### Government of India and Its Policies on Child Education

As the demand and supply rules always present in society, after being felt, the great importance and demand of education for the development of new independent India, Government of India moved forward in this direction and made various efforts to make India educated. The Government of India has made several policies regarding the physical, mental & social development of the children of the country. The Government has also made many policies on the health & education of the children. The following are some of the important policies of the Government regarding children:

1. National Policy for Children, 1974
2. National Policy on Education, 1986
3. National Policy on Child Labour, 1987
4. National Health Policy, 2002
5. 165th Law Commission Report, 1998

#### Conclusion

The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. No civilized country can ever develop without proper health & educational development of their children. The Government must divert its policies towards the development of children. All prominent policies of the Government must contain provisions relating to children. The Constitution of India aimed at making India a Welfare State & for achieving it the development of the children of our nation is essential. Education which empowers the future generation should always be the main concern for any nation. It is now an undisputed fact that right to education can be realized on a national level only through compulsory education, or better say, through free compulsory primary education. However due to the widespread poverty and various prejudices in the society, the efforts to develop an educational system in India with full access, equality and quality of education has not been achieved. The inability to check the dropout rates among the marginalized sections of the population is another cause of worry.