



Constitutional Dimensions of Right to Education

KEYWORDS

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ABSTRACT Provide educational opportunity, make it more accessible and qualitative one, as education develops the personality, dignity and fundamental freedoms of person and ensure constitutional guarantee 'Right to Education' as a Fundamental Right.

Introduction:

Being born is natural, being educated along the right lines is divine and great. Education has to be acquired through a continuous and conscious process called education.

From time immemorial, man has been interested in his education of his off-springs, so that they may lead a happy, contented and decent life.

In ancient India, the aim of Indian education was to enable the individual to achieve 'Mukti or salvation.

It concerned also about moral and spiritual regeneration of the individual. Education in ancient India as illumination which lightens our mind and gives correct lead in our life. This illumination leads to salvation. This brings a complete change in the person for the better. Education makes us civilized, refined and cultured. Education teaches us to be neat and clean, removes our prejudices and strengthens our moral fibre. Education also leads for physical development; it realized that 'sound mind exists in a sound body.

Education comprises of both intrinsic as well as instrumental values. It is an end in itself as well as means for the development of human and the society.

DEVELOPMENT OF EDUCATION IN INDIA:

The intrinsic value of education was acknowledged and emphasized by Bhartruhari in the "Neethishathakam" and declared that education is the special manifestation of man. (Early in 1st century B.C).

Education in god incarnates and secures honor at the hand of state. The Indian civilization has acknowledged education as one of the pious obligation of the human society. It has certain aims and, they are:

- To have a secure of piety and religiousness through spiritual values.
- To build the character through virtue, morality and values. Intellectual power is accompanied by virtue, morality and values.
- Inclusion towards civic and social duties and not self – centered.
- To develop social efficiency and happiness by eliminating prejudices.
- To develop self – confidence.
- To accept and maintain the best traditions of thought and action and transmit their heritage of the past to the future generations.

But today Indian education is radically changed. When the East India Company came into India, Anglicized the Indian education. Lord Macaulay who came into India in 1934, he included English literature along with Sanskrit and Arabic literature. He made English is to be medium of instruction of Indian education.

Constitutional perspective of Education:

After independence, education was given as important priority by the Indian government. The stress was on Indianisation of education and making more powerful and dynamic.

In a democracy the end in the individual himself. The main purpose of education is to grant the individual the maximum possible opportunities for the fullest development of his capabilities. Destiny of India in being shaped in its class room. It is the education alone which determines the level of the prosperity, well being and security of individuals.

The constitution of free India provided various Articles touch the aspect of Indian Education, they are as follows:

- Free and compulsory primary education in the country – Article 45
- Education of women, children and socially and educationally backward classes, Articles 15(3) and 15(4)
- Religious education – Article 28(2)
- Right of minorities to establish and administer their own educational institutions – Articles 29 and 30
- Education to schedule castes, tribes who are educationally backward Article - 46
- Right to work, education and to public assistance to certain cases Article – 41
- Right to education free and compulsory as a fundamental Right Article – 21 A
- Constitutional duty of parents to provide opportunity to their child/ children to get education – Article 51 A(k)
- Facilities for institutions in mother tongue be provided at primary stage – Article 350 – A
- Role of central and states Government in respect of Education comes under VII schedule of the constitution.

In respect of right to children to free and compulsory education, certain constitutional provisions secure the child rights and welfare also, they are

- Article 15(3) provides to make any special provisions

for women and children (Example right to Education Act 2009)

- Article 39(e) provides that, securing the tender age of the children are not abused.
- Article 39(f) provides that, children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against moral and material abandonment .
- Article 47 provides that, to raise the level of nutrition and the standard of living and improve public health.

The insertion of clause (4) of Article 15 by first constitutional Amendment after the two decisions:-

**1) State of Madras V/s Champakam Dovoajan.
(2) Venkataramana v/s State of Madras**

With respect to socially and educationally backward classes, identification with reference to caste, the decision given by the Supreme Court in the above two cases, held it violative of fundamental Rights under.

Article 15(1) and 29(2) and also ineligibility created by communal government order does not appear to be sanctioned by the clause (4) of Article 16 and its infringement of fundamental rights. Hence communal government order was repugnant to the provisions of Article 15 and 16 of the constitution. Hence parliament intervened and amended Article 15 by inserting Clause (4) to it.

After enactment of the First Amendment, the first case came before the Supreme Court in Balaji v/s state of Mysore where the Supreme Court enunciated the following principles.

For the purpose of Article 15(4) backwardness must be both socially and educationally and identification the persons on cast basis cannot be made the sole and dominant test.

The reservation made under clause (4) of Article 15 should be reasonable and not defeat a nullify the main rule of equality contained in clause(1) of Article 15. The reservation in a general and broad way should be less than 50%

- A provision under Article 15(4) not be made in the form of legislation , it can be made by an executive order
- The further categorization of backward classes into backward and more backward is not warranted by Article 15(4).

Further in Devadas V/s union of India said that "carry forward rule" which resulted in more than 50% reservation in a particular year is not correct and bad.

In Chitralakha V/s state of Mysore, where it was observed that identification of backward classes on the basis of occupation and income is correct without reference to caste and not offend Article 15(4) of the constitution.

In P Rajendren V/s state of Madras where the court observed that, specification of socially and educationally backward classes with reference to castes , that caste is a class of citizens and if a caste as a whole is socially and educationally backward and reservation can be made within the meaning of Article 15(4).

In state of Uttar Pradesh V/s Pradeep Tondon', the supreme court observed that neither caste nor race nor religion can be made the basis of classification for the purpose of determining social and educationally backwardness within the meaning of Article 15(4) when Article 15(1) forbids discrimination on the ground of only religion , race, caste then cast cannot be made as one of the criteria for determining social and educational backwardness. If caste or religion is recognized as a criteria of social and educational backwardness Article 15(4) will stultify Article 15(1) Hence this clause (4) of Article 15 is beneficial and general provision.

The role and concern of the Judiciary has been profound in making the right to education for children and nourish as such to grow into a useful and responsible citizen to serve the nation.

In Mohini Jain Vs State of Karnataka the court observed that, right to life under Article 21 and dignity of individual could not be assessed unless it was accompanied by the right to education, "the right to education flows directly from right to life".

Further in Unnikrishnan Vs State of Andhra Pradesh, it was observed by the Supreme Court that, 'right to free education is available only to children until they complete the age of 14 years, but after that the obligation of the state of provide education is subject to the claims of its economic capacity and development. The obligations created by Articles, 41, 45 and 46 can be discharged by State either establishing its own institutions or by aiding, recognizing or granting affiliation to provide institution. The private sector should be involved and encouraged in the field of education.

Article 21 of the constitution of India, has been interfered that every child under age of 14 years has a right of basic education. In Bandha Mukti Morcha Vs Union of India, it was observed that, it is the solemn duty of the State to provide basic education to children who are working in different industries or factories.

Further in Gaurav Jain Vs Union of India, the Supreme Court said that, state have to provide education to the children born to prostitutes and protect them from exploitation and bring them into the main stream of life by educating them.

In Modern School Vs Union of India, the Supreme Court observed that, right of education further means that a citizen has a right to call upon the state to provide educational facilities within its economic capacity.

Further in M/s Aruna Roy and others Vs Union of India, the Supreme Court observed that what is sought is to have value based education and for religion, students be given the awareness that the essence of every religion is common (Article 28 of the Constitution).

Article 51A(e) which provides to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women". And to see that universal values, such as truth, right conduct, peace, love and nonviolence be the foundation of education.

In State of Bihar and others Vs Project Uchcha Vidya, Sik-

shak Sangh and others, the Supreme Court observed that, "education as a part of human development indisputably is a human right. Hence getting higher education is a basic right but at our own cost, and State has to establish High Schools and educational institutions.

In *Ajay Goswami Vs Union of India and others*, what the Supreme Court observed that, education is most important junction of State and local government and it is the very foundation of good citizenship. It is the principal instrument in awakening the child to cultural values, in preparing the child for later professional training and in helping to adjust to his environment.

In the *Ashoka Kumar Thakur Vs Union of India*, the Supreme Court says, India has suffered in the past because of severe under investment in higher education. This has been caused partly by the thinking that looks at primary and higher education. It is very clear that large public investment is needed in both sectors.

Conclusion:

The constitutional provisions and Judiciary played a very important role. Judiciary played a very important role in the accessibility and quality education not only to children but also to those who require higher education.

It is not merely on the basis of constitutional or statutory provisions but also with great human touch and concern is possible to make education as meaningful and accessible one.

To realize the constitutional goal set for education, the government is continuously making efforts, by constituting education commission, the common school approach was recommended for the promotion of social justice and equality. In 1968 free and compulsory education was recommended by National Policy on Education. And Programme of action 1992. The Ministry of Human Resource Development, Delhi, launched the Primary Education policy under the scheme of Sarva Shiksha Abhiyan (SSA) in 2001.

The destiny of education in the constitutional perspective shaped by the judiciary through its judgments and in this regard 86th Constitutional Amendment Act is remarkable by inserting Article 21-A which gave raise for this enactment of The Right to Education Act. It is an ardent hope that every child receives the light in his life.