

## **A STUDY ON ELEMENTARY EDUCATION AS A BASIC HUMAN RIGHT OF CHILDREN IN INDIA**

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Children are the most important asset of any nation. Hence, the nation has a duty to protect its future asset. For the full and harmonious development of child's personality it is imperative that he grows up in a family environment, in an atmosphere of happiness, love and understanding. He should be given proper education. Without education he would not be in a position to assert his or her human rights. Human Right to education is necessary for the fullest development of human personality and sense of dignity. The education of the child must be directed to the development of child's personality, talents and mental and physical abilities for their fullest potential. Hence, providing education is perhaps the most important function of the State. Compulsory schooling Law and great expenditure for education demonstrate our recognition of importance of education to our democratic society. It is very foundation of good citizenship. The present paper deals with the evolution of elementary education as a basic human right from International and Indian perspective. The paper also examines the practical aspects of imparting compulsory elementary education as a matter of right of all children between the age of 6 and 14 years with reference to the problem of child labour in India.

### **Introduction**

Education leads to liberation - liberation from ignorance, which shrouds the mind; Liberation from superstition, which paralyses the effort; Liberation from prejudices, which bring the vision of the truth<sup>1</sup>. Child is the future asset of the nation. Hence, the nation has a duty to protect its future asset. Providing education is perhaps the most important function of the state. Compulsory schooling law and great expenditure for education demonstrate our recognition of the importance of education to our democratic society. It is very foundation of good citizenship. This paper is intended to study the evolution of elementary education as a basic human right and to examine the practical aspects of imparting compulsory elementary education as a matter of right of all children of 6-14 years of age with reference to the problem of Child Labour in India.

### **Education as a Basic Human Right**

Family is the fundamental group of society. For the full and harmonious development of child's personality it is imperative that he grows up in a family environment, in an atmosphere of happiness, love and understanding. He should be given proper education. Without education he would not be in a position to

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assert his or her human rights. Human right to education is necessary for the fullest development of human personality and sense of dignity. A state cannot realize the human right to development without recognizing the right to education. The education makes all persons capable to promote understanding, friendship and tolerance among different communities of the world<sup>2</sup>. The education of the child must be directed to the development of child's personality, talents and mental and physical abilities to their fullest potential. Education is necessary to acquire the real aims and objectives of human rights. A number of statutory provisions have been made to recognize the human right to education and to develop quality culture in education.

The right to education has been recognized as a basic human right and fundamental freedom in various international instruments and conventions. Article 26 of the Universal Declaration of Human Rights, 1948 Principle 7 of UN Declaration of Rights of the Child; Article 13 of the International Covenant on Economic Social and Cultural Rights, 1966; Articles 28 and 29 of the Convention on the Rights of the Child, 1989 and World Declaration on Education for All, 1990 make elaborate provisions regarding human right to education.

#### **Right to Education under the Universal Declaration of Human Rights, 1948**

Article 26 of the Universal Declaration of Human Rights, 1948 has declared the right to education as a human right. It states that everyone has the right to education. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights. The provisions of the article are as follows:

- (1) 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.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

#### **Right to Education under the UN Declaration of the Rights of Child, 1959**

United Nations Declaration of the rights of the child provides under Principle 7 that the child is entitled to receive education, which shall be free and compulsory,

at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavor to promote the enjoyment of this right.

**Right to Education under the International Covenant on Economic Social and Cultural Rights, 1966**

Article 13 of the International Covenant on Economic Social and Cultural Rights, 1966 declares right to education as a human right. It makes provision regarding primary education, secondary education and higher education. The provisions of the article run as follows:

1. The States 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 freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
  - (a) primary education shall be compulsory and available free to all;
  - (b) 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;
  - (c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
  - (d) 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;
  - (e) 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.

3. The States 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.
4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Right to Education under the UN Convention on the Rights of the Child, 1989**

Article 28 and 29 of the UN Convention on the Rights of the Child, 1989 make vast provisions for the education of the child. It casts duty upon the State Parties to recognize the right of the child to education. The provisions of the articles are as follows:

##### ***Article 28***

1. State Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
  - (a) Make primary education and available free to all;
  - (b) Encourage the development of different forms of secondary education, including general and, vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
  - (d) Make educational and vocational information and guidance available and accessible to all children;
  - (e) Take measures to encourage regular attendance at school and the reduction of drop-out rates.
2. State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. State Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination

of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

**Article 29**

1. State Parties agree that the education of the child shall be directed to:
  - (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) the development of respect for human rights and fundamental freedoms, and for the principles in the Charter of the United Nations;
  - (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
  - (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) the development of respect for the natural environment.
2. Part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject to the observance of the principles set forth in paragraph 1 of the present Article and to the requirements that the given in such institutions shall conform to such minimum standards as may be laid down by the State.

**World Declaration on Education for All, Thailand, 1990**

The participants, including 155 governments and 150 NGOs and 20 international bodies, of the world conference on Education for All Convened jointly by Unicef, United Nations Development Program, UNESCO at Jomtien, Thailand, in 1990, adopted the World Declaration on Education for All, by:

1. Recalling that education is a fundamental right for people, women and men, of all ages throughout the world;
2. Understanding that education can help ensure a safer, healthier, more prosperous and environmentally sound world, while simultaneously contributing to social, economic and cultural progress, tolerance, and international cooperation;
3. Knowing that education is indispensable key to, though not a sufficient condition for personal and social improvement;

4. Recognizing that traditional knowledge and indigenous cultural heritage have a value and validity in their own right and a capacity to both define and promote development;
5. Acknowledging that overall, the current provision of education is seriously deficient and that it must be made more relevant and qualitatively improved, and made universally available;
6. Recognizing that sound basic education is fundamental to the strengthening of higher levels of education and of scientific and technological literacy and capacity and thus to self-reliant development; and
7. Recognizing the necessity to give to present and coming generations an expanded vision of and a renewed commitment to basic education to address the scale and complexity of the challenge.

#### **Right to Education under the Constitution of India**

The Constitution of India makes elaborate provisions regarding the right to education. The members of the Constituent Assembly of India were attentive towards education in India because at that time majority of the people were illiterate and uneducated. They were poor and exploited. Education will improve the prosperity of the people and the nation. Therefore, they made elaborate provisions for education under articles 41, 45 and 46 of the Constitution.

Article 41 makes provisions regarding right to work, to education and to public assistance in certain cases. It states as follows:

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45 makes provision for free and compulsory education for children. It provides as follows:

The State shall 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<sup>3</sup>.

Under Article 46 the state is directed to promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the scheduled castes and scheduled tribes. The provisions of the article states as follows:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

It is important to note that all the provisions relating to education have been made in part IV of the Constitution. The provisions of the part IV dealing with directive

principle of state policy are not enforceable by any court. The duty is cast upon the state to fulfill the objectives laid down in this part by making laws<sup>4</sup>. In spite of the constitutional provisions, the state could not be able to provide educational facilities to the millions of children of the country. The Supreme Court in its various decisions tried to include the right to education in the chapter of fundamental rights so that it can be enforceable in a court of law.

### **Right to Education as an Essential Element of Personal Liberty**

In case of *Francis Coralie Mullin v. Administrator Union Territory of Delhi*<sup>5</sup> Bhagwati J of the Supreme Court interpreted article 21 to include the right to live with human dignity and all that goes along with it. The judge expanded the ambit and scope of Article 21 and held that right to life and personal liberty may include right to live with human dignity which includes minimum requirements of life such as adequate nutrition, reading and writing etc. The court did not declare the right to education as a fundamental right under Article 21.

In *Bandhua Mukti Morcha case*<sup>6</sup>, Bhagwati J of the Supreme Court extended the right to live with human dignity, to include the educational facilities as well. The judge slightly tried to expand the scope of the right to education and held that the right to education is implicit in and flows from the 'right to life'. He used the expression educational facilities for right to live with dignity but did not expressly recognize the right to education as a fundamental right under article 21 of the Constitution of India.

In *Bapuji Education Association v. State*<sup>7</sup>, Rama Jois J of the Karnataka High Court held that the right to education is an essential element of personal liberty. He pointed out that among various types of personal liberties which are included in the expression 'personal liberty' in article 21, education is certainly the foremost.

In *Mohini Jain v. State of Karnataka*<sup>8</sup>, the question of fundamental right to education, its scope and limitation came for consideration before the Supreme Court. The court through Kuldeep Singh .J held that 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. Kuldeep Singh J may be called as a champion in the field of right to education because earlier no judge could take such a bold step in the recognition of the right to education as a fundamental right although many judges indirectly recognized the importance of education.

### **Right to Free and Compulsory Education up to the Age of 14 Years**

The *Unni Krishnan v. State of A.P.*<sup>9</sup> decided by five judge bench of the Supreme Court is a milestone in the recognition of the right to education as a fundamental right. The court held that right to education is a fundamental right under article 21 of the Constitution as it directly flows from right to life. Taking assistance from

articles 41 and 45 the court held that every child/ citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter, his right to education is subject to the limits of economic capacity and development of the state. Thus, the court in this case tried to restrict the wide proposition of the right to education given in *Mohini Jain case*. In *Mohini Jain case*<sup>10</sup> the court declared the right to education as a fundamental right taking assistance from articles 21, 41, 45 and 46 and did not impose any limitation on the economic capacity and development of the state. In *Unni Krishnan*<sup>11</sup> the court declared the right to education as a fundamental right by interpreting articles 21, 41, 45 and 46 of the Constitution and imposed limitation that every child/ citizen has a right to free education up to the age of fourteen years and after a child/ citizen completes 14 years, his right to education will depend upon economic capacity and development of state. This decision of Supreme Court appears to be in consonance with the provisions of article 26 of the Universal Declaration of Human Rights, 1948 and article 13 of the International Covenant on Economic and Social Rights. Although the judiciary has made right to education a fundamental right yet it is for the state to secure it to all the people.

#### **The Constitution (86th Amendment) Act, 2001**

The verdict of the Supreme Court in *Unni Krishnan* case made the government to appoint the Saikia committee which recommended for an amendment of the constitution making education for children under 14 years a fundamental right. Finally the 86<sup>th</sup> amendment to the Constitution of India was passed by the government. The Constitution (Eighty-sixth Amendment) Act, 2001 may be called a milestone in the direction of children's right to education. By this amendment Parliament has added articles 21-A, 51- A (k) and substituted article 45 of the Constitution. A new article 21-A, after article 21 of the Constitution has been inserted which has made the right to education a fundamental right. It provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. Further, article 45 has been substituted by new article which deals with provision for early childhood care and education to children below the age of six years. It states that, "The State shall Endeavour to provide early childhood care and education for all children until they complete the age of six years". In article 51-A, after clause (j) a new clause (k) has been added which provides that, "who is a parent or guardian is to provide opportunities to his child or, as the, case may be, ward between the age of six and fourteen years".

#### **The Right of Children to Free and Compulsory Education Act, 2009**

To give effect to 86th Amendment, the parliament passed the Right of Children to Free and Compulsory Education Act 2009, which came into force on April 1, 2010



(hereafter called the RTE Act). The main objective of the RTE Act is to provide free and compulsory education to all children of the age of 6-14 years. Section 2(c) of the RTE Act defines the term 'child' as a male or female of the age of six to fourteen years. According to Section 2(f) the term 'elementary education' means the education from first to eighth class. Section 3 of the RTE Act provides that every child of the age of 6-14 years shall have a right to free and compulsory education in a neighborhood school till the completion of elementary education. No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education. The RTE Act provides that the appropriate government and the local authority shall establish schools as per the Rules within the period of 3 years from the commencement of this Act<sup>12</sup>. The central and state governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act<sup>13</sup>. It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward to an elementary education in the neighborhood school. No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parent or guardian to any screening test<sup>14</sup>. No child shall be subjected to physical punishment or mental harassment<sup>15</sup>. Whoever contravenes these provisions shall be liable to disciplinary action<sup>16</sup>. In a landmark judgment<sup>17</sup> the dynamic supreme court of India upheld the constitutional validity of the RTE Act which provides for 25% quota for poor students in all schools except unaided minority schools the spirit of decision is indeed laudable as it reflects the egalitarian ethos of the RTE Act.

The RTE Act is a progressive step towards achieving universal elementary education. However, there are certain bottlenecks for effective implementation of the Act, such as, shortage of funds, number of schools, trained teachers, infrastructure etc. More than the funds, co-ordinated effort on different fronts is needed for its success.

### **The RTE Act, 2009 v. The Child Labour (Prohibition and Regulation) Act, 1986**

Child labour and illiteracy go hand in hand as one tends to breed the other. Numerous studies<sup>18</sup> have examined the impact of education on the incidence of child labour. Most of the child labour are either illiterate or partially literate. The parents of child labour are also more often than not, illiterate. No study has ever found a child labour coming from an educated family. Child Labour is the enemy of child education. Every non-school going child is a child labourer. There are as many as 100 million children in India directly or indirectly involved in economic activity. However, no law totally prohibits child labour in India. Article 24 of the Indian constitution prohibits the employment of children below the age of 14 years in mines, factories and in other hazardous occupations. The Child Labour (Prohibition

and Regulation) Act 1986 prohibits child labour only in some hazardous industries which are listed in the Schedule of the Act and permits child labour in other fields with some regulations<sup>19</sup>. The national law proved to be a miserable failure as the problem of child labour increased multifold making India in general and Andhra Pradesh in particular, the largest producer of child labour and illiterates in the world<sup>20</sup>.

It may be observed that prohibition of child labour in certain occupations, and regulating their working conditions, relying on the wordings of article 24 of the Constitution, may not be the correct approach. In any case the Constitution does not empower the state to legitimize the employment of children just for the reason that they are poor children, and by reason of their poverty, have to work to sustain themselves and their families. Therefore, the very concept of hazardous and non-hazardous employment itself needs to be looked at a new. What is considered as non-hazardous employment today may become hazardous employment tomorrow. The fact that many additions had to be made in the schedule to the Child Labour Act shows that the concept of hazardous/non-hazardous is relative. In fact, any employment whether hazardous or non-hazardous which deprives the children of their educational opportunities is to be prohibited as that seems to be the constitutional spirit and intent. Provisions in the Constitution cannot be read in isolation to justify the employment of children on practical considerations. Pragmatism, as far as child labour is concerned, is not in the welfare of the toiling millions of children. What is required in their case is giving them their childhood by providing them with proper educational facilities and welfare measures for growing up in a healthy environment.

### **Conclusion**

The constitution of India had envisaged common school system in consonance with the principles of equality and social justice enshrined as fundamental rights. Any program that provided education of varying quality to different sections of society and denied education of equitable quality is unacceptable to the constitution. In this context, the government has to launch a common school system for all across the country.

By virtue of the RTE Act, 2009, the children of India have a right to receive at least eight years of education. Here the question is whether it will remain on paper or become a reality. One needs to remember that this right is different from the other enshrined in the constitution, because in this, the beneficiary is a six year old child, who cannot demand it nor can she or he fight a legal battle when the right is denied or violated. In view of Art 21(A) and the RTE Act, it is imperative that the concept of child labour is to be revisited. If the state is committed to implement the RTE Act, there should be a complete ban on child labour and the Child Labour (Prohibition & Regulation) Act, 1986 must be amended immediately so as to prohibit

the employment of children absolutely in all occupations without any exceptions and rename the Act as The Child Labour (Prohibition and Rehabilitation) Act.

*Notes & References*

1. An old adage.
2. M.C. Mehta v. State of Tamilnadu, AIR 1993 SC 2178.
3. Article 45 shall stand substituted by the Constitution (Eighty-sixth Amendment) Act 2002 as “the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.
4. Article 37 of the Constitution of India.
5. Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746.
6. Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
7. Bapuji Education Association v. State, AIR 1986 Kant 119.
8. Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.
9. Unnikrishnan v. State of Andhra Pradesh, AIR 1993 SC 2178.
10. Supra note 7.
11. Supra note 8.
12. Section 6 of the Right of Children to Free and Compulsory Education Act, 2009.
13. *Ibid.* Section 7.
14. *Ibid.* Section 13.
15. *Ibid.* Section 17(1).
16. *Ibid.* Section 17(2).
17. Krishna kumar,” Let a hundred children blossom”, Hyderabad, The Hindu, April 20<sup>th</sup>, 2012.
18. For example: Parveen Nangia,(1987) “Child Labour-cause,effect and syndrome”,New Delhi,Janak publishers; Kulshrestha (1988),”Child Labour in India”,New Delhi,Ashish Publishing House; Vishnu Priya,(2011),”Human Rights of Child Labour in India”, Chennai, Ambedkar Law University Journal, Vol.11, p. 150-174.
19. Section 3 of the Child Labour (Prohibition & Regulation) Act, 1986.
20. World Labour Report, International Labour Organization (1992) 13; “Children and work: Current Status”, Annual Report, Ministry of Labour, Govt. of India. (1996) 11-13.