

International Multidisciplinary
Research Journal

*Indian Streams
Research Journal*

Executive Editor
Ashok Yakkaldevi

Editor-in-Chief
H.N.Jagtap

Welcome to ISRJ

RNI MAHMUL/2011/38595

ISSN No.2230-7850

Indian Streams Research Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial board. Readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

International Advisory Board

Flávio de São Pedro Filho
Federal University of Rondonia, Brazil

Kamani Perera
Regional Center For Strategic Studies, Sri Lanka

Janaki Sinnasamy
Librarian, University of Malaya

Romona Mihaila
Spiru Haret University, Romania

Delia Serbescu
Spiru Haret University, Bucharest, Romania

Anurag Misra
DBS College, Kanpur

Titus PopPhD, Partium Christian
University, Oradea, Romania

Mohammad Hailat
Dept. of Mathematical Sciences,
University of South Carolina Aiken

Abdullah Sabbagh
Engineering Studies, Sydney

Ecaterina Patrascu
Spiru Haret University, Bucharest

Loredana Bosca
Spiru Haret University, Romania

Fabricio Moraes de Almeida
Federal University of Rondonia, Brazil

George - Calin SERITAN
Faculty of Philosophy and Socio-Political
Sciences Al. I. Cuza University, Iasi

Hasan Baktir
English Language and Literature
Department, Kayseri

Ghayoor Abbas Chotana
Dept of Chemistry, Lahore University of
Management Sciences[PK]

Anna Maria Constantinovici
AL. I. Cuza University, Romania

Ilie Pinteau,
Spiru Haret University, Romania

Xiaohua Yang
PhD, USA

.....More

Editorial Board

Pratap Vyamktrao Naikwade
ASP College Devrukh, Ratnagiri, MS India Ex - VC. Solapur University, Solapur

R. R. Patil
Head Geology Department Solapur
University, Solapur

Rama Bhosale
Prin. and Jt. Director Higher Education,
Panvel

Salve R. N.
Department of Sociology, Shivaji
University, Kolhapur

Govind P. Shinde
Bharati Vidyapeeth School of Distance
Education Center, Navi Mumbai

Chakane Sanjay Dnyaneshwar
Arts, Science & Commerce College,
Indapur, Pune

Awadhesh Kumar Shirottriya
Secretary, Play India Play, Meerut (U.P.)

Iresh Swami
Ex - VC. Solapur University, Solapur

N.S. Dhaygude
Ex. Prin. Dayanand College, Solapur

Narendra Kadu
Jt. Director Higher Education, Pune

K. M. Bhandarkar
Praful Patel College of Education, Gondia

Sonal Singh
Vikram University, Ujjain

G. P. Patankar
S. D. M. Degree College, Honavar, Karnataka

Maj. S. Bakhtiar Choudhary
Director, Hyderabad AP India.

S. Parvathi Devi
Ph.D.-University of Allahabad

Sonal Singh,
Vikram University, Ujjain

Rajendra Shendge
Director, B.C.U.D. Solapur University,
Solapur

R. R. Yaliker
Director Management Institute, Solapur

Umesh Rajderkar
Head Humanities & Social Science
YCMOU, Nashik

S. R. Pandya
Head Education Dept. Mumbai University,
Mumbai

Alka Darshan Shrivastava
Shaskiya Snatkottar Mahavidyalaya, Dhar

Rahul Shriram Sudke
Devi Ahilya Vishwavidyalaya, Indore

S. KANNAN
Annamalai University, TN

Satish Kumar Kalhotra
Maulana Azad National Urdu University

**PROBLEMS AND PERSPECTIVES OF RIGHT TO EDUCATION
AND JUDICIAL RESPONSE**



M. Sreeramulu

Assistant Professor, Department of Law, S.K. University, Anantapuramu.

Short Profile

M. Sreeramulu is working as a Assistant Professor at Department of Law in S.K. University, Anantapuramu.

Co - Author Details :

K.V.Chamundeswaramma² and Syed Ussain Saheb³

²Lecturer in Zoology, Govt.Degree College ,Anantapuramu.

³Research Scholar, Department of Law, S.K.University,Ananthapuramu.



ABSTRACT:

Life is not merely an animate existence. It is something more than just physical survival. It is supported with valuable rights to make it possible and meaningful. So right to life includes right to live with human dignity and all that goes with bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing

ourselves in divers forms.

Knowledge is acquired at two levels: 1) Infrastructural level 2) Super structural level. Every citizen must possess the infrastructural knowledge. Infrastructural knowledge implies that literacy level is only confined to an individual's ability to read write and learn i.e. primary education. Knowledge at super structural level is acquiring higher knowledge which will help one to gain skills, expertise, academic distinctions etc., i.e. Higher Education. Indian civilization has recognized education as one of the pious obligations of the human society. In this paper an attempt is made to trace the judicial response to right to education and its impact upon the State in implementation of such right.

KEYWORDS

Right To Education , Judicial Response , physical survival , human society.

INTRODUCTION :

The Constitution of India (86 th Amendment) Act, 2002 has added a new Article 21A after Article 21 and has education for all children of the age of 6 to 14 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”.

It is well known that education is a basic human right. For the success of democratic system of government, education is one of the basic elements. An educated citizen has to choose the representations who form the government. Education gives a person human dignity who develops himself as well as contributes to the development of his country. The framers of the Constitution realising the importance of education have imposed a duty on the state under Art.45 as one of the Directive Principles of State Policy to provide free and compulsory 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. It was expected that the educated governments of the country would honestly implement this directive.

But it is unfortunate that even after the lapse of 60 years from the commencement of the Constitution they did not take any concrete steps to implement this directive and 40% population of the country is still illiterate. The framers perhaps were of the view that in view of the financial condition of a new state it was not feasible to make it a fundamental right under part III of the Constitution, but included it in chapter IV as one of the Directive Principles of State Policy.

In the meantime, the Supreme Court in Unnikrishnan case declared that the right to education for the children of the age of 6 to 14 is a fundamental right. Even after this, there was no improvement was envisaged. A demand was being raised from all corners to make education a fundamental right. Consequently, the government enacted Constitution (86 th Amendment) Act, 2002 which would make education a fundamental right. The question arises as to how this gigantic project would be implemented. The population of the country has considerably increased and the no. of children of age from 6 to 14 years is in crores.

The government does not have money, at present, to run its own educational institutions. In the area of education it is emphasizing on privatization. Majority of higher secondary schools are run by private persons where there is no provision for free education. They charge high fee. Only rich persons can afford to send their children to these schools. When right to education becomes a fundamental right, a citizen would go to the court for enforcement of his right and the court would be obligated to give an order for its enforcement. But, if there are no schools, how would the government implement it? Making education compulsory would not solve the problem. The only alternative is to encourage non-governmental organizations to come forward and participate in it to fulfil the mandate of the Constitution. Of course, the government must help them and see that teachers and employees working in these private educational institutions get minimum salary to survive and make the scheme successful.

In the absence of these initiatives, it is doubtful that the constitutional mandate to provide free education to all children in order to become able citizens of the country would be successful. Private

public schools have from day to day become centers for exploitation.

SAILENT FEATURES OF RIGHT TO EDUCATION ACT, 2009:

- (a) Free and compulsory education to all children of India in the six to fourteen age group;
- (b) No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;
- (c) A child who completes elementary education (Up to Class VIII) shall be awarded a certificate;
- (d) Calls for a fixed student-teacher ratio;
- (e) Mandates improvement in quality of education;
- (f) School teachers will need adequate professional degree within five years or else will lose job;
- (g) School infrastructure (Where there is problem) to be improved in three years, else recognition cancelled;
- (h) Provides for 25 percent reservation for economically disadvantaged communities in admission to class one in all private schools;
- (i) All schools except private unaided schools are to be managed by school Management Committees with 75 percent parents and guardians as members;
- (j) Financial burden will be shared between the State and the Central Governments;
- (k) That each privately run school, however small it may be, would be required to obtain a certificate of recognition from a certifying authority of the Government;

“Such schools would have to meet the minimum infrastructure and teacher-student ratio specified in the RTE Act, and the teacher qualification requirements, in order to be considered for recognition by the certifying authority.

- (i) “Child” means a male or female child of the age of six to fourteen years;
- (ii) “Child belonging to weaker section” means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;
- (iii) “Elementary education” means the education from first class to eighth class;
- (iv) “Capitation fee” means any kind of donation or contribution or payment other than the fee notified by the school;
- (v) “Screening procedure” means the method of selection for admission of a child, in preference over another, other than a random method;
- (vi) “Specified category” in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School having a distinct character which may be specified, by notification, by the appropriate Government.

Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

Right to Education and Legislative Framework:

The Convention on the Rights of the Child adopted by the General Assembly of the UN was ratified by India in 1992 which asks State parties to recognize the right of the child to education make primary education compulsory and is available free to all. The Constitution under Art. 45 imposes a duty on the State to provide free and compulsory education to all children until they complete the age of 14 years with the object to abolish illiteracy from the country. Though the Directive Principles of State

Policies are not enforceable by the Courts, yet these principles have been declared to be fundamental in the governance of the country.

Art. 21-A which was inserted through Constitutional 86th (Amendment) Act, 2002 provides that the "State shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the State may by law, determine". There is a corresponding duty which is incorporated under Art. 51-A (k) through 86th Constitutional (Amendment), a duty of a parent or guardian to provide opportunities for education to his child or ward as the case may be, between age of 6 and 14 years.

Judicial Response:

The Courts in a series of cases declared that right to education is an integral part of right to personal liberty embodied in Art.21 of the Indian Constitution³. These judicial mandates clearly demonstrate that right to education is necessary for flowering of man, his mind and personality. Hence, right to education is one of the facets of right to personal liberty.

The A.P High Court in its decision in Muralikrishna Public School case⁴ pronounced that right to education to Dalits is a fundamental right and it is the mandatory duty of the State to provide educational opportunities to advance their economic and educational interests by establishing schools. The Court took a liberal attitude and pragmatic view of Art.45 and 46 of the Constitution⁵. It is submitted that the judicial process has taken a lead to read the Directive Principles into fundamental rights.

The Supreme Court observed in Mohini Jain⁶ case that the Directive Principles, which are fundamental in the governance of the country, cannot be isolated from the fundamental rights guaranteed under part III of the Constitution. The two are supplementary to each other. Therefore the Court observed that the right to education is a fundamental right even at higher education level. The Question is whether higher education can be made an enforceable fundamental right especially in an developing country like India the economic capacity of which is very limited.

However, the Supreme Court in a far reaching judgment in Unni Krishnan's case⁷ has correctly maintained that the right to free education up to the age of fourteen years is a fundamental right. Thereafter this right is subject to the limits of economic capacity and development of the State. In order to give effect to this decision made by the Supreme Court, the Parliament has incorporated Art.21-A to the Constitution by way of Amendment, which provides that the Right to Education, is a fundamental right up to 14 years of age. In view of this, Primary education now has become a fundamental right.

Financial implications of the proposed Amendment

The financial Memorandum had stated that the estimated financial expenditure to implement

the obligation of making elementary education a fundamental right was Rs 40,000 crores. The estimated annual expenditure was projected as Rs.8,000 crores⁸. In this context, it is necessary to take note of the fact that a great deal of statistics regarding enrolment and literacy figures as also school attendance and dropout rates are highly suspected. In reality the number of children not in schools is much larger than what is estimated so far. Further, children belonging to several disadvantaged sections such as pavement dwellers and migratory labourers are often excluded from coverage. The over whelming presence of child labour particularly in rural and semi-urban areas, has a direct correlation with school attendance. It is submitted that the problem of child labour and the rate of illiteracy among children is interlinked.

The question arises how this project would be implemented by the Government? The population of the country has considerably increased and the number of children between 6 and 14 years of age are in crores. The Government has miserably failed to implement such right as fundamental right. The Government does not have financial resources at present to run its own educational institutions. At this juncture if education becomes a fundamental right a citizen would go to the Court for enforcement of his right and Court would be obliged to give an order for its enforcement. But, if there are less numbers of schools run by the Government how would the government implement it? It will be useful to some extent that if the subsidy element is to be brought in the expenditure on elementary education. Therefore making education compulsory would not solve the problem. The only alternative is to encourage non-governmental organizations to come forward and participate in it to fulfill the mandate of the Constitution.

Responsibilities-Duties of the Government/Parents:

For carrying out the provisions of this Act, the respective Government and the local authority shall establish, within such area or limits of neighborhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act. The central Government and the state Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

The Central Government Shall:

- (a) develop a framework of national curriculum with the help of academic authority specified U/s. 29;
- (b) develop and enforce standards for training of teachers;
- (c) provide technical support and resources to the state Government for promoting innovations, researches, planning and capacity building.

The appropriate Government shall:

- (a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents

or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child such other school.

(b) ensure admission of children of migrant families;

(c) It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighborhood school.

(d) with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

Rights of the Children under the Act: The Implementation of Act shall involve;

At least (25) twenty-five per cent of the strength of the class, of which shall receive children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardians to any screening procedure. Any school that receives capitation fee, shall be deemed punishable with a fine which may extend to ten times the capitation fee charged; subjects a child to screening procedure, Shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions. No child shall be subjected to physical punishment or mental harassment.

CONCLUSION

86th Constitutional Amendment Act (2002) via Article 21 A (Part III) seeks to make free and compulsory education a fundamental Right for all children in the age group 6-14 years. Resolution of Article 21A, 45A and 51 in the constitution: The 86th Constitutional Amendment (2002) included a new article (21A) which notes education as a fundamental right: "The state shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the state may, by law, determine." To ensure this right, Article 51A had a clause added that said "who is a parent or guardian to provide opportunities for education to his child or, as the case may be ward, between the ages of 6 and 14 years." In addition, early childhood care and education for children up to the age of 6 years was included in the amendment (Art. 45). These amendments have direct impact on children with disabilities in the area of early intervention, education and parental involvement.

The much awaited Right to Education (RTE) Act which has just been passed by the parliament would play an important role in achieving universal elementary education in India. The success and failure of RTE would largely depend on consistent political attention. Budgetary allocation of funds should be sufficient in this respect. Every literate person should also come forward and spread the usefulness of education to illiterate parents who are unable to appreciate the relevance of education in curbing the social evils. Social inequalities and monopolization by any group should not be permitted at any cost. Education which is free of cost up to a certain level must be accessible to all. The Bill on Free and Compulsory education introduced in Rajya Sabha very rightly made the statement that provision of

free and compulsory education of satisfactory quality to children from disadvantaged and weaker section is, not merely the responsibility of schools run or supported by the appropriate governments but also of schools which are not dependent on government funds. The right to education is a fundamental right and UNESCO aims at education for all by 2015. India along with other countries of the world should also put sincere efforts to make this goal a real success.

REFERENCES:

1. Francis Coralie V. Union Territory of Delhi, AIR 1978 SC 597
2. See Sathe, S.P. The Right to know,' (1991)
3. www.ssa.nic.in/rte-docs/free%20and%20compulsory.pdf (accessed on 10/10/2014)
4. The courts after Maneka Gandhi V. Union of India AIR 1978 SC 597 began to read right to education into the post Maneka Art. 21 of the Constitution ; see also Muralikrishna Public School V. Regional Joint Director of School Education, AIR 1986 AP 204.
5. Ibid
6. Art. 45: Free and compulsory education for all Children until they complete the age of 14 years. Art. 46 Constitution takes care of the educational and economic interests of the Scheduled castes and Tribes and other weaker sections of the society.
7. Mohini Jain V. State of Karnataka. AIR 1992 SC 1864
8. Unnikrishnan, J.P V. State of AP 1993 (1) SCALE 290
9. for details see Madhav Godbole, "Elementary Education as a Fundamental Right – The issues" EPW Vol XXXVI, December 15, 2001
10. T.M.A Pai Foundation Vs. State of Karnataka, AIR 2003 SC 355
11. National Sample Survey, March 21, 2007
12. A Human Rights based approach to education for all. UNESCO and UNICEF (2007)
13. Minority Schools of Albania, Advisory opinion, Series A/B-No. 64 (1935) .

Publish Research Article International Level Multidisciplinary Research Journal For All Subjects

Dear Sir/Mam,

We invite unpublished Research Paper, Summary of Research Project, Theses, Books and Book Review for publication, you will be pleased to know that our journals are

Associated and Indexed, India

- ★ International Scientific Journal Consortium
- ★ OPEN J-GATE

Associated and Indexed, USA

- Google Scholar
- EBSCO
- DOAJ
- Index Copernicus
- Publication Index
- Academic Journal Database
- Contemporary Research Index
- Academic Paper Database
- Digital Journals Database
- Current Index to Scholarly Journals
- Elite Scientific Journal Archive
- Directory Of Academic Resources
- Scholar Journal Index
- Recent Science Index
- Scientific Resources Database
- Directory Of Research Journal Indexing

Indian Streams Research Journal
258/34 Raviwar Peth Solapur-413005, Maharashtra
Contact-9595359435
E-Mail-ayisrj@yahoo.in/ayisrj2011@gmail.com
Website : www.isrj.org