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## “RIGHT TO EDUCATION IN INDIA: A STUDY”

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### Abstract:

*This research paper talks about 'Right to Education in India'. This paper primarily aims to facilitate the creation of a rights-framework which may be used to evaluate all existing policies, schemes and judicial decisions. I believe that such a policy review using rights-based indicators is an important pre-legislative step. However, it is important to clarify that this paper itself does not undertake such a review, and hence it does not provide a descriptive narrative/critique of either existing policies and schemes or judicial decisions. Further, one must also point out that even though this paper attempts to analyze the different threads of a rights-based model of school education, it certainly does not provide an exhaustive rights framework. We urge all readers to view this as an effort at raising issues for a national debate on a rights-based model of school education.*

### KEYWORDS-

Right to Education, Constitution, Law, Government, Assembly etc

### INTRODUCTION

India is signatory to three key international instruments that guarantee the Right to Education – Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights (Covenant), 1966 and the (UDHR) Convention on the Rights of the Child (CRC), 1989. In 2002, India joined, albeit after fifty-two years of Independence, the host of countries that provide a constitutional guarantee for Free and Compulsory Education (FCE).

Article 21-A of the Indian Constitution casts a duty upon the State to provide FCE to children in the age group of six to fourteen years, 'as the State may, by law, determine'. Historically, there has been a demand for a law for FCE in India and several Central-level legislative attempts have been taken towards this end.

The last of such attempts resulted in the Draft Right to Education Bill, 2005. One of several oppositions to this Bill came from private unaided schools. They lobbied against a provision that required them to make a twenty-five per cent reservation for poor children. The Centre kept this Bill in abeyance and circulated to all States a modified version – the Model Right to Education Bill, 2006 (Model Bill).

### FUNDAMENTAL RIGHT TO EDUCATION IN INDIA:

The demand for free and compulsory education in the pre-constitution era:

A reading of Indian education history reveals that it was notorious for its lack of social inclusiveness. The legendary tale of Ekalavya from the India Epic of Mahabharata showcases such social exclusion. Till the nineteenth century A.D., education was largely considered a privilege restricted to

persons at the higher end of the caste and class spectrum. Religious content of education, coupled with its elitist medium of instruction were two factors that contributed to such exclusion. People from the lower castes, and the so-called shudras (Dalit Bahujans) in particular were denied admission into Gurukulas or Ashramas.

A small reprieve came when the dominance of classic Vedic education was overthrown by Buddhism and Jainism; and education was no longer confined to hermitages. The Muslim rulers of the Indian Sub-continent also did not consider education as a function of the State.

It was largely perceived as a branch of religion and was entrusted to the theologians called Ulemas. In short, in ancient and medieval India, education was a privilege available only to a chosen few. The British introduced modern education into the Indian-subcontinent.

However, being largely confined to Brahmins and higher classes, this system of education also excluded the 'masses'. For instance, while reporting about the educational situation in Bellary (presently in the State of Karnataka) in the early nineteenth century A.D., Campbell, the then District Collector observed that “it cannot have escaped the government that of nearly a million of souls in this district, not 7000 are now at school ... In many villages where formerly there were schools, there are now none.” Similarly, missionary notice of 1856 stated that in all other parts of the country “a school, either government or missionary is as rare as a light house on our coast... there are four schools existing among three or four million of people.” The neglect of education by the British was also acknowledged by Wood's Despatch.

The demand for a law on FCE which was made during the freedom struggle, sought to break the above-mentioned heritage of an inequitable and neglected education system. In their evidence placed before the Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothiba Phule demanded State-sponsored free education for all children for at least four years. This demand was indirectly acknowledged in the Commission's recommendations on primary education. The Commission also recommended that schools should be open to all castes and classes.

Thereafter, the first law on compulsory education was introduced by the State of Baroda in 1906. This law provided for compulsory education to boys and girls in the age groups of seven to twelve years and seven to ten years respectively. In 1911, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial Legislative Assembly, albeit unsuccessfully, and in the midst of stiff resistance. The Legislative Council of Bombay was the first amongst the Provinces to adopt a law on compulsory education. Gradually, other Provinces followed suit as control over school education was transferred to Indian Ministers under the Government of India Act, 1919.

However, even though Provincial Legislatures had greater control and autonomy in enacting laws, progress in universalising education was poor due to lack of control over resources.

The idea of compulsory education was reiterated in 1937, at the All India National Conference on Education held at Wardha where Gandhi mooted the idea of self-supporting 'basic education' for a period of seven years through vocational and manual training. This concept of self-support was floated in order to counter the Government's persistent excuse of lack of resources.

The next landmark development in the history of FCE in India was the Post War Plan of Education Development of 1944, also called the Sargent Plan, which recommended FCE for eight years (six to fourteen years' age group). Despite the consistent demand for FCE during the freedom struggle, at the time of drafting the Constitution, there was no unanimous view in favour of a fundamental right to education. The Constituent Assembly Debates reveal that an amendment was moved to alter the draft Article relating to FCE. By this amendment, the term 'entitled' was removed from the draft Article to ensure that education remained a non-justiciable policy directive in the Constitution. Therefore, FCE made its way into the Constitution as a Directive Principle of State Policy under former Article 45,30 whereby States were required to ensure the provision of FCE to all children till the age of fourteen years within a period of ten years of the commencement of the Constitution.

#### **The demand for a fundamental right to education:**

The period spanning between 1950 to the judgement in Unnikrishnan's Case in 1993 saw several policy developments. The Indian Education Commission (Kothari Commission) 1964–1968, reviewed the status of education in India and made several recommendations. Most important amongst these is its recommendation of a common school system with a view to eliminating inequality in educational opportunities.

Immediately thereafter, the National Policy on Education (NPE), 1968 was formed. This Policy was the first official document evidencing the Indian Government's commitment towards school education.

It dealt with issues of equalisation of educational opportunity and sought to adopt a common school system in order to promote social cohesion. Interestingly, it even required special schools to provide

a proportion of free studentships to prevent social segregation in schools. Nevertheless, it retained the status of FCE as a 'directive principle'. Subsequently, the National Policy on Education, 1986, re-affirmed the goal of universalisation of school education and promised to take measures to achieve a common school system.

This policy document once again did not discuss or aim to alter the legal status of FCE in India, i.e., FCE continued to remain a non-justiciable Directive Principle of State Policy. On the contrary, the 1986 Policy has been criticised for having introduced non-formal education into India, and therefore having reduced the constitutional obligation of full-time schooling.

The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the Acharya Ramamurti Committee. Thereafter, several political as well as policy level changes influenced the course of FCE. The country witnessed an increased international focus on its initiatives regarding FCE after its participation in the World Conference on Education for All in 1990. India also ratified the UNCRC in 1992. The World Bank funded District Primary Education Programme (DPEP) was introduced in 1994 under the auspices of the IMF-World Bank Structural Adjustment Programme. DPEP introduced a five-year 'primary education' programme and a system of appointment of para-teachers. From the point of view of a 'right' to education, this five-year programme and the appointment of para-teachers have been criticised as having diluted the constitutional norm of quality compulsory schooling for children till the age of fourteen.

The use of the phrase 'primary education' and its corresponding five-year programme under DPEP may be contrasted with Dr B R Ambedkar's observations at the time of drafting the Constitution. He opposed the introduction of the phrase 'primary education' in draft Article 36 (corresponding to former Article 45) on the ground that the State was obliged to keep children below the age of fourteen years in an educational institution to prevent them from being employed as child labour.

A great legal breakthrough was achieved in 1992 when the Supreme Court of India held in *Mohini Jain v State of Karnataka*, that “the 'right to education' is concomitant to fundamental rights enshrined under Part III of the Constitution” and that “every citizen has a right to education under the Constitution”.

The Supreme Court subsequently reconsidered the above-mentioned judgement in the case of *Unnikrishnan, J P v State of Andhra Pradesh*. The Court (majority judgement) held that “though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21... (and) must be construed in the light of the Directive Principles of the Constitution. Thus, 'right to education' understood in the context of Article 45 and 41 means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes fourteen years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.”

The *Unnikrishnan* Judgement empowered people with a legal claim to FCE. This is evidenced by a spate of litigations that relied upon the principle of law laid down in the *Unnikrishnan* Judgement. A combination of forces from different quarters, viz, support from the judiciary, greater international attention and increased civil society and grass-roots level campaigns exerted tremendous pressure on the Government to introduce a fundamental right to education.

A Constitutional Amendment bill for the inclusion of a fundamental right to education was moved in the Parliament amidst much criticism and debate regarding the contents of the Bill.<sup>46</sup> The said amendment proposed that Article 21-A (fundamental right to free and compulsory education for children in the age group of six to fourteen years) be introduced, former article 45 (the then existing directive principle on FCE) be deleted and Article 51-A(k) (fundamental duty on parents) be introduced. In November 2001 the Bill was re-numbered as the 93rd Bill and the 83rd Bill was withdrawn. The 93rd Bill proposed that former Article 45 be amended to provide for early childhood care and education instead of being deleted altogether.

Despite continued criticism against the altered version, the Bill was passed in 2002 as the 86th Constitutional Amendment Act. Currently, under Article 21-A of the Constitution, every child between the ages of six and fourteen has a fundamental right to 'free and compulsory' education, which the State shall provide 'in such manner as the State may, by law, determine.'

Early childhood care and education (for children up to six years of age) is provided for as a Directive Principle of State Policy under Article 45 of the Constitution. Furthermore, Article 51-A(k) imposes a 'fundamental duty' on parents to provide educational opportunities to their children in the age group of six to fourteen years.

#### **EDUCATION TRANSFERRED FROM STATE LIST TO CONCURRENT LIST:**

Since the State laws are obsolete and also require uniformity, the question that needs to be examined is how can one ensure uniformity in the enforcement of standards in school education? This can

be answered only after a brief description and analysis of legislative powers that are vested with the Centre and States with respect to school education. The Constitution, based on the principle of federalism, adopts a three-fold distribution of legislative powers. Different subjects for legislation find mention in one of three lists namely the Union List (List I), State List (List II) and Concurrent List (List III) in the Seventh Schedule to the Constitution. While the Parliament and State Legislatures have exclusive legislative power over entries in the Union List and the State List respectively, both the Parliament and State Legislatures have the power to legislate over entries in the Concurrent List. The three identified rationales underlining the placement of certain entries in the Concurrent List are as follows:

Secure uniformity in the main principles of law .

Guide and encourage local efforts.

Provide remedies for mischief arising in the local sphere, but extending, or liable to extend beyond the boundaries of a single province. Interestingly, education was enlisted as a legislative item originally in the State List.

It was subsequently transferred to the Concurrent List by means of a Constitutional Amendment in 1976. Today, entry 25 of the Concurrent List reads as follows: “Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.” The exclusion of entries 63–66 from the Concurrent List is immaterial for the purposes of this paper.

#### **Purpose and implication of the transfer of education from state list to concurrent list:**

The significance of the 1976 amendment and its implications are discussed in the National Education Policy of 1986 and 1992. The Policy clearly refers to the “substantive, financial and administrative” implications of the amendment. The Policy states as follows: “...the Union Government would accept a larger responsibility to reinforce the national and integrative character of education, to maintain quality and standards (including those of the teaching profession at all levels), to study and monitor the educational requirements of the country as a whole in regard to manpower for development, to cater to the needs of research and advanced study, to look after the international aspects of education, culture and Human Resource Development and, in general, to promote excellence at all levels of the educational pyramid throughout the country.”

Therefore, clearly, the Department of Education (Government of India) envisaged standard-setting by the Centre as one of the outcomes of this amendment. Interestingly, such an argument was even made at the time of drafting the Constitution, where Mr Frank Anthony strongly argued for Central control over school education to build a strong uniform cohesive policy on education: “...I feel that my proposal that education throughout the country should be controlled from the Centre will have the approval and endorsement of eminent educationists, men of vision and of men with statesmanship. What is happening today? On the threshold of independence (I cannot help saying it) certain provinces are running riot in the educational field. Provinces are implementing not only divergent but often directly opposing policies.

And it is axiomatic that a uniform, synthesised, planned education system is the greatest force to ensure national solidarity and national integration. Equally, divergent, fissiparous, opposing educational policies will be the greatest force for disintegration and the disruption of this country. It may be inferred from the above discussion that the 1976 transfer from the State List to the Concurrent List had a specific purpose and significance. It created an avenue for Centre’s intervention in the field of school education.

#### **RIGHT TO EDUCATION (RTE) ACT, 2009 OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT:**

Provides for free and compulsory education to all children of the age of six to fourteen years.

The Right of children to Free and Compulsory Education Act came into force from April 1, 2010. This is was a historic day for the people of India as from this day the right to education will be accorded the same legal status as the right to life as provided by Article 21A of the Indian Constitution. Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighborhood.

Any cost that prevents a child from accessing school will be borne by the State which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling. No child shall be denied admission for want of documents; no child shall be turned away if the

admission cycle in the school is over and no child shall be asked to take an admission test. Children with disabilities will also be educated in the mainstream schools. The Prime Minister Shri Manmohan Singh has emphasized that it is important for the country that if we nurture our children and young people with the right education, India's future as a strong and prosperous country is secure.

All private schools shall be required to enroll children from weaker sections and disadvantaged communities in their incoming class to the extent of 25% of their enrolment, by simple random selection. No seats in this quota can be left vacant. These children will be treated on par with all the other children in the school and subsidized by the State at the rate of average per learner costs in the government schools (unless the per learner costs in the private schools are lower).

All schools will have to prescribe to norms and standards laid out in the Act and no school that does not fulfill these standards within 3 years will be allowed to function. All private schools will have to apply for recognition, failing which they will be penalized to the tune of Rs 1 lakh and if they still continue to function will be liable to pay Rs 10,000 per day as fine.

Norms and standards of teacher qualification and training are also being laid down by an Academic Authority. Teachers in all schools will have to subscribe to these norms within 5 years. The National Commission for Protection of Child Rights (NCPCR) has been mandated to monitor the implementation of this historic Right. A special Division within NCPCR will undertake this huge and important task in the coming months and years. A special toll free helpline to register complaints will be set up by NCPCR for this purpose.

NCPCR welcomes the formal notification of this Act and looks forward to playing an active role in ensuring its successful implementation. NCPCR also invites all civil society groups, students, teachers, administrators, artists, writers, government personnel, legislators, members of the judiciary and all other stakeholders to join hands and work together to build a movement to ensure that every child of this country is in school and enabled to get at least 8 years of quality education.

#### CONCLUSION:

This paper has briefly traced the demand for FCE. Starting from the period around the freedom struggle, there has been a consistent demand for FCE. The Constitution originally provided for FCE as a Directive Principle of State Policy, and now provides for a fundamental right to FCE, 'as the State may by law determine.' Therefore, the details and content of such a right are to be regulated by the State. Under the Constitution, both the Centre and the States have concurrent legislative powers with respect to education. However, in order to maintain uniform standards across India and to create a 'common language', it is imperative to enact skeletal Central-level legislation in such a manner that it allows room for local need-based innovations.

Further, there have been concerns that the freedom given to the State to enact a law (implementing the right to education) may be used to dilute the scope of the right itself. In order to respond to such concerns, this paper has explored some elements that form the backbone of a rights-based approach. Therefore, these elements may be used to evaluate policies and proposed laws to ensure that they fall within a rights framework. Legislation, if viewed as the sole method implementing a human right, will not be successful in achieving its objective.

Therefore, any model of implementing human rights should incorporate coercive as well as non-coercive rules. Moreover, the first step in any legislative process is the formulation of clear policy directives. Before enacting skeletal legislation, the Centre should undertake a detailed evaluation of all existing educational policies and schemes using the suggested rights-based approach. This will help identify aspects of such policies that fall within and outside a rights framework. There is an urgent need to consolidate the experiences of providing school education in the last five decades and evolve a realistic pro-child rights-based policy on education, which may then be translated into legislation.

The institutional framework required to implement such a policy can be determined only after the policy itself is evaluated and updated using a rights matrix. The following aspects provide some guidelines in defining the non-negotiable minimum matrix of rights, which is useful not only for policy analysis but also for developing an institutional framework for implementation:

Identifying minimum entitlements related to availability and accessibility.

Identifying minimum entitlements related to acceptability and adaptability.

Respecting and implementing non-negotiable principles such as equality, non-discrimination, survival and development of the child, child participation and best interests of the child.

**“RIGHT TO EDUCATION IN INDIA: A STUDY”**



Creating an enabling framework where solutions to barriers against FCE are provided.

Ensuring that barriers against FCE are not punished.

Ensuring that relationships between child–State, parent–child, parent–State and community–child/parent–State are clearly defined.

Locating social accountability of different actors and creating a grievance redressal mechanism. This would entail clear identification of duty-bearers at different levels – Centre, State, District, Local level bodies and school.

Capacity building of the right–holders as well as the duty–bearers.

A clear rights-based policy should be translated into skeletal Central legislation. Such skeletal legislation should be supplemented by Model Statutory Rules that will operate in the absence of State Rules. Such a model of legislation will allow for State-level flexibility without compromising on non-negotiable minimum standards.

**BIBLIOGRAPHY**

The 'Fundamentals' of the Fundamental Right to Education in India Researched and written by Dr Niranjana Radhya and Aruna Kashyap

Mohini Jain v State of Karnataka Supreme Court of India (1992 AIR 1858)

Study on Right to Education in India Article for Blog Post Writing Competition 2011 | by Akansha Rai and Shivani Rana May 26th, 2011

Basu, Durga Das (1965). Commentary on the constitution of India : (being a comparative treatise on the universal principles of justice and constitutional government with special reference to the organic instrument of India). 1–2. S. C. Sarkar & Sons (Private) Ltd.

Basu, Durga Das (1984). Introduction to the Constitution of India (10th ed.). South Asia Books. ISBN 0-8364-1097-1.

Basu, Durga Das (1981). Shorter Constitution of India. Prentice-Hall of India. ISBN 978-0-87692-200-2.

Das, Hari Hara (2002). Political System of India. Anmol Publications. ISBN 81-7488-690-7.

Dash, Shreeram Chandra (1968). The Constitution of India; a Comparative Study. Chaitanya Pub. House.

Ghosh, Pratap Kumar (1966). The Constitution of India: How it Has Been Framed. World Press.

Khanna, Hans Raj (1981). Making of India's Constitution. Eastern Book Co. ISBN 978-81-7012-108-4.



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