

## EDUCATION AS A HUMAN RIGHT WITH SPECIAL REFERENCE TO PRIMARY EDUCATION

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### Abstract

Education plays a very crucial role in overall personality development of human being. Education is one of the basic Human Right. If the children have provided the basic quality education then the Nation will develop. The growth of society is not possible without education. Education is the pillar on which the entire fabric of Nation resides. As far as Primary Education is concern which is base and foundation of Education, however, high drop-out rates, low attendance, universal, equitable and quality Elementary Education is the challenges. The RTE Act is a path breaking Act in the history of India Education towards providing quality Elementary Education to all. After making so many efforts the Right to Education is still in the words of Statute only. Enacting the Central legislation on right to free and compulsory Education is not going to bring a revolution because before enactment of this legislation almost all the states were having their own legislation from 1950 on the same Right to free and Compulsory Education Act but could not do much progress. India becomes one of the 135<sup>th</sup> Countries to make Education a Fundamental Rights to every child since 1<sup>st</sup> April 2010. In all the Countries Chile tops the list of countries in providing free and compulsory education for a period of 15 years to a child.

**Key words:** Primary Education, Human Right, RTE Act

### INTRODUCTION

India is one of the largest democratic country in the World and for the success of democracy there is a need of quality Education. Education is one of the means to bring the economic, political and social transformation in the society. The overall development of the nation and human being depends upon the education. Education is the means to acquire knowledge. Education is the basic human and Fundamental right guaranteed in our Constitution.

Children's are the wealth of the nation if they are properly educated and cared then only nation will develop. That's why quality Primary Education is necessary which is base and foundation of Education. Education plays an important role for the overall development of the Nation. That's why it is considered as the one of the basic human right. In India, Primary Education is still far away from its achievements. India is facing the grave problems of poverty, illiteracy and unemployment. We have obtained political democracy but social and economic democracy has not been achieved. These rights are highlighted in different International Convention as well as in the Constitution of India. All these Conventions imposed obligation on the signatory countries to provide free and compulsory Primary Education. Especially for the development of Primary Education, trained teachers should be appointed but unfortunately, that had not happen about the Primary Education.

### STATUS OF EDUCATION IN ANCIENT TIMES

The aim of Ancient Indian education was laid down by Vedas. According to Vedas the aim of education is liberation. East India Company came into India to expand their business but later on they established their Empire. During reign of East India Company, Primary Education was not much developed. For the achievement of this goal they mingled with the Bengal politics. They obtained the Diwani powers in Bengal and acquired full control over the Nawab. After acquiring the Diwani powers and the political grip over Bengal they showed that they were progressive and wanted the welfare of the people. They wanted to prove that they could control the affairs of the Government better than the Nawab. Some extent they paid attention towards the education in order to show that they were really interested in the public welfare. They continued the Government grants to educational institutions. They started the college at Calcutta, Madras and Banaras. The British Government wanted to win the sympathy and support of influential Hindu and Muslim people. Charles Grant was an Officer of the Company he came to India in 1773. He played a major role for development of education. Therefore he called as father of modern education<sup>1</sup> British Government formed many of the commissions for the progress of education but one of the important is Hunter commission.

<sup>1</sup> Sharma R. N. and R. K. Sharma: History of Education in India, Atlantic Publishers and Distributors Ltd. New Delhi, Page No. 74 to 78.

### Hunter Commission 1882:

Lord Ripon had appointed the Indian Education Commission i.e. Hunter Commission on 3<sup>rd</sup> February, 1882 to remove the defects of Primary Education. This year was considered as necessary to assess the development of Primary Education in the Country. The Commission was established under the Chairmanship of William Hunter known as Hunter Commission.

The Enforcement of Compulsory Education Act 1870 made education free and compulsory in England. Then demand was raised in India, to provide similar facilities in its colonies. Dadabhai Naoroji and Jyotiba Phule from Bombay Presidency demanded for laws to make Primary Education compulsory. They were made their evidence before the Hunter Commission in 1882. The Commission also recommended the transfer, control and administration of elementary education to local bodies as done in England. The first effective step in introducing compulsory Primary Education was taken only by Dadabhai Naoroji, in his evidence before the Hunter Commission put forward the demand that four years of compulsory education should be provided to all children. The demand for Universalization of Elementary Education was first put forward by Indians like Dadabhai Naoroji before the Hunter commission to make the local bodies elected by the Indians responsible for Elementary Education. Jotiba Phule also informed the Commission of his views in writing and suggested in his representation to the Education Committee that the responsibility for primary and secondary education should be handed over to the people.

### OBJECTIVES OF THE STUDY

- 1) To overview the Primary Education in India.
- 2) To study the role of Judiciary relating to Primary Education in India.
- 3) To analyze the Right to Education Act.
- 4) To give appropriate suggestions for development of Primary Education.

### MEANING AND DEFINITION OF EDUCATION

Education is a dynamic concept and its meaning changes from time to time. It has been interpreted differently by the different persons in accordance with their own backgrounds and ideas.

Etymologically the term 'education' is believed to have been derived from Latin word 'educare' or from another word in the same language 'educere' means 'to bring forth', 'to draw out' or propulsion from the internal to the external. There are still persons who believe that the word has been derived from the Latin word 'educatum' which itself is composed of two terms: 'E' and 'duco' 'E' implies a movement from inward to outward and 'duco' means developing or progressing. The meaning of these root words lead us to believe that the term education means to provide a nourishing environment that would facilitate or bring out and develop the potentialities of a child. Now a day education is used to refer both to a process and product.<sup>2</sup>

### INTERNATIONAL FRAMEWORK IN PRIMARY EDUCATION

Education is very sin qua non for the development of each and every country. Education is not only a means for development, it is development itself. There is very close relationship between the societal, economic development and education. In different international convention which put obligation to all countries that Primary Education should be free and compulsory.<sup>3</sup>

#### A. Universal Declaration of Human Rights 1948:

The Universal Declaration of Human Rights is also called as the Magna Carta of Human Rights. Specifically two Articles are there which contains children's rights to education. Education is one of the basic and fundamental human rights and without the education man cannot live dignified life.

**Article-26 Right to Education:** Particularly this Article of the Convention state about the right to Education. Clause first and second related to general right to education and clause third which gives right to the parents to choose the right kind of education for their children

- a) Everyone has the right to education - Education shall be free, at least in the elementary and fundamental stage. Technical and professional education shall be made available and higher education shall be equally accessible to all on the basis of merit.

<sup>2</sup> Pathak R. P.: Education in Modern India - Global Trends and Development, Atlantic Publishers and Distributor's Private Limited New Delhi, Page No.1.

<sup>3</sup> Jain Neeraj, Education under Globalization Burial of the Constitutional Dream: Aakar Books, Delhi. Page No. 3.

- b) 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.
- c) Parents have a right to choose the kind of education that shall be given to their children.

**B. Declaration of the Rights of the Child 1959:**

After Universal Declaration of Human Rights again in the U.N. Declaration of the Rights of the Child state about the rights of child. This declaration discusses not only the right to Education but overall rights for the development of child. Even before and after birth what protection is needed to the children.

**C. U.N. Convention on the Rights of the Child 1989:**

**Article 28: Right to Education:** All children have the right to a Primary Education, which should be free. Wealthy countries should help poorer countries to achieve this right to education.

**D. International Covenant on Economic, Social and Cultural Rights 1966:**

**Article 13(1))** - Provides for the right of everyone to education.

**Article 13(2a)** -Primary education shall be compulsory and available free to all.

**E. International Covenant on Civil and Political Rights 1966:**

**Article 24**-Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as minor.<sup>4</sup>

**HUMAN RIGHTS APPROACH TOWARDS THE PRIMARY EDUCATION**

Human rights are the birth rights which are inalienable rights, inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity. They are necessary as they provide suitable conditions for the material and moral uplift of the people. Human rights are also referred as fundamental rights, basic rights, natural rights and birth rights.<sup>5</sup> These rights include right to life, equality before the law, freedom of expression, the right to work, right to social security, right to education, rights to development and self-determination, etc. Therefore as is evident human rights are inseparable, interrelated and interdependent. The improvement of one right makes the progress of the others possible. Correspondingly, the denial of one right has negating affects on the others. The basic right that is protected by the term human right is right to life with dignity. A human rights-based approach to education is therefore necessitated since it assures every child a quality education that respects and promotes her or his right to dignity and optimum development. The right to Education is marked priority on the agenda of the international community since right to Education is not only a human right in itself but also essential for the exercise of all other human rights. A number of human rights treaties accepted and recognized internationally, identifies right to education as a fundamental aspect for development and social transformation.

**RIGHT TO EDUCATION AND PROVISIONS IN THE INDIAN CONSTITUTION**

Indian Constitution is highest law of land. There are various provisions in Indian constitution. Some Provisions in fundamental rights and some in directive principles. They are as follows. Amendment in December 2002 which inserted the following articles in the Constitution-

- a) **Article 21A**- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."
- b) **Article 45** - State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.
- c) **Article 51A (k)** - who is a parent or guardian to provide opportunity for education to his child or as the case may be, ward between the age of six and fourteen years.

**JUDICIAL INITIATIVES TOWARDS PRIMARY EDUCATION**

Following are the important judgments of Supreme Court which put the obligation on Government to make a Primary Education free and compulsory. Number of times through the judicial decisions the court take a positive step towards the right to education makes a fundamental right.

<sup>4</sup> <https://www.loc.gov/law/help/child-rights/international-law.php>.

<sup>5</sup> Dr. Agarwal H.O. International Law & Human Rights, sixteenth Edition 2009, Central Law Publications, Allahabad. Page no.730.

In a case *Mohini Jain vs. State of Karnataka*<sup>6</sup> the court held that right to education at all level is a fundamental right under Article-21A of the Constitution and charging capitation fee for admission is illegal and amounted to denial of citizens right to education .The education in India has never been a commodity. The court did not say up to what age citizen the right to Education has guaranteed by constitution.

Again the matter was raised in a case *Unni Krishnan vs. State of A.P.*<sup>7</sup>. In this case court specifically held that the right to education for the children of the age of 6 to 14 is a fundamental right. The court did not agree with the decision of Mohini Jains judgement that the children of the ages have the right to education but held that the right to free education is available only to the children of up to the age of 14 years and overruled the Mohoni Jains case on this point .The Article 21A makes it obligatory for the Government to enact a central legislation to give effect to the constitutional amendment. Even though the strong publics demand that the right to education a fundamental right still there was no improvement in situation after the number of years. But the question arises that how this project would be implemented.

#### SALIENT FEATURES OF RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

Following are the salient features of Act.

- a) Prohibition of any kind of fee and charges or expenses which may prevent children from pursuing and completing the Elementary Education.
- b) Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion the completion of Elementary Education
- c) Provide free and compulsory Elementary Education to every child.
- d) Ensure availability of a neighborhood school.
- e) Ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated.
- f) Maintain records of children up to the age of fourteen years.
- g) Ensure and monitor admission, attendance and completion of Elementary Education by every child.
- h) Provide infrastructure including school building, teaching staff and learning material.
- i) Ensure good quality elementary education.
- j) Ensure timely prescribing of curriculum and courses of study for Elementary Education;
- k) Provide training facility for teachers.
- l) Ensure admission of children of migrant families.
- m) Monitor functioning of schools within its jurisdiction.

#### CONCLUSION AND SUGGESTIONS

Now a day education is very much important for the development of human being as well as the development of the nation .But there is need of effective implementation of the Right to Education Act. Non - governmental organizations also takes initiatives to implement the Act itself. Government should take the initiatives to provide the quality education to the children then only people will attract to send their child in public schools. Rural and hilly area the government should establish the schools then only government will successful to provide the free and compulsory education to the children. Even the passing of Right to Education Act which were implemented from 2010 but still situation is has not been changed.

Day by day the population of the country has increased and the number of children of age from 6 to 14 years is in crore. 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 it means the only rich person is able to afford to send their children to these schools. When the education will become a fundamental right of a citizen would go for its enforcement. If there are no schools how the Government would implement it only making education compulsory would not solve the problem .The other alternative is to encourage the non-governmental organizations to come forward and to participate in it to fulfill the mandate of the constitution of India. The Government must help them and see that teachers and employees working in private educational institutions get minimum salary to survive and make the scheme successful. Now a day private school has become centers for exploitation. In absence of these initiatives, it is doubtful that the constitutional mandate to provide free Education to all children in order to become able citizen of the country would be successful.

<sup>6</sup> AIR 1992 SC 1858

<sup>7</sup> (1993)1SCC645