

RIGHT TO EDUCATION: A JOURNEY FROM PRINCIPLE TO FUNDMENTAL RIGHT

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Introduction

Few decades back, State was engaged only in maintaining law and order. Such a restrictive approach is now no longer observed by the State. To make India a stronger democratic republic, the makers of the Constitution have incorporated few provisions with such an object to achieve amelioration of the Socio-economic condition of the people of India. With this aspiration the “Provision of free and compulsory education” was incorporated in Article 45 as a Directive Principles of State Policy. This objective is an obligation on the State in order to achieve socio-economic bourn. Article 45 is prescribing the directive for free and compulsory education which is interpreted as “providing free education up to the age of 14 years whatever the stage of education it comes to.”

Directive Principle of Free and compulsory education

In Re.. Kerala Education Bill, the Kerala State banned charging of fees from students in the primary classes, but it did not make any provision for payment to compensation to meet the revenue less occurred due to the ban. In Kerala, schools

were primarily run by religious minority groups. Due to the State ban these schools were also affected. And this was held violative of Art. 30 (1). Supreme Court held that the solemn obligation placed on the State by Art. 45 “to provide for free and compulsory education for children” can be discharged by it through Government and aided schools and that Art. 45 “does not require that obligation to be discharged at the expense of the minority communities.”

The financial condition of India was not that much strong as it is now, so, it may be possible that the framers of the Constitution had inserted education in Part – IV instead of Part III. Thus, protected the State from the constitutional obligation.

Implied Fundamental Right to Education Under Article 21

The Supreme Court accepted that the Constitution does not expressly guarantee the right to education, as such, as a fundamental right. But by reading Art. 21 in the light of Directive Principles of State Policy contained in Arts. 38,39A, 41 and 45, the Court opined that : “it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens” However, the court did not say up to what age a citizen has right to education guaranteed by constitution.

This judicial view put the State under the obligation to provide education to everyone at all levels through adequate number of higher and professional educational institutions. One of the important subjects involved in Mohini Jain’s case was the amount of capitation fees collected by the education institution at the time of admission for which Supreme Court quashed the Government Notification. The Bench explained capitation fee as “nothing but a price for selling education.” and amounts to commercialization of education adversely affecting educational standards. The Court further characterized institutions charging capitation fee as “teaching shops”. “The concept of teaching is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage... charging of capitation

fee in consideration of admission to education institutions is a potent denial of a citizen's rights to education under the constitution.”

The Supreme Court, in the matter of Unni Krishnan, through a larger Bench of Five Judges while considering the issue; whether the State could permit private professional educational institutes to charge capitation fee for admission of students, reiterated that “...having regard to the fundamental significance of education to the life of an individual and nation, the right to education is implicit in, and flows from, the right to life guaranteed by Art. 21. But the parameters of the right, which is not absolute, have to be determined in the light of the Directive Principles of State Policy contained in Arts. 41,45 and 46.”

Further Supreme Court held that the right to free education is guaranteed to every citizen till the age of 14 years and after this age, the obligation is subject to the “limits of the economic capacity and development” of the State.

As education is considered as one of the Human Right and it plays significant role in development of oneself as well as of the country. By this judicial trail it is interpreted by the Apex Court that Right to free and compulsory education is the “implied Fundamental Right” under Art. 21.

Right to education as Fundamental Right

The Constitution (86th Amendment) Act,2002 inserted Art. 21A and declared the right to Education as Fundamental Right. It says:

“The State shall provide free & compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine.”

Art. 21A has been described as the most important fundamental right and stands above other rights, “as one's ability to enforce one's fundamental rights flow from one's education.” The object of Art. 21A was rightly interpreted by the Supreme Court in Avinash Mehrotra v/s Union of India . The apex court held that Art. 21A has also been construed as the fundamental right of each and every child to receive

education free from fear of security and safety so that children have a right to receive education in a sound and safe building.

According to the mandate of Constitution (86th Amendment) Act-2002, 'Sera Shiksha Abhiyan' (SSA) is launched by Government of India as a flagship program for achievement of 'Universalization' of elementary education in a time bound manner, SSA seeks to provide quality elementary education including life skills. SSA has a special focus on girl's education and children with special needs. SSA also seeks to provide computer education to bridge the digital divide.

However, legislation was not enacted to make the right a reality. In 2008, Bhandari, J. in Ashokkumar Thakur directed, "The union of India to set a time-limit within which this Article is going to be completely implemented. This time limit must be set within six months. In case the Union of India fails to fix the time-limit, then perhaps this work will also have to be done by the court."

The long awaited dream came true in the year of 2009, when the Right Of Children To Free And Compulsory Education Act, 2009 was enacted by the Parliament. And came into forece on 1st April,2010. Free and compulsory education to all children in the age group of 6 to 14 years is now a legal as well as constitutional duty of the Government.

The legislation provides that it is the responsibility of the appropriate Government and local authorities to establish adequate number of schools to meet the requirements. The act furnishes indispensable support to each child to access secondary and higher education and paving the way to achieve the national and International standards herald by the Government of India.

The Act at a glance

- The Act provides for free and compulsory education for children in the age of 6 –14 years, in a neighborhood school, till the completion of elementary education.

- It prohibits for receiving donation, capitation fees and made school recognition compulsory.
- It proscribes interview of child or parents, private tuition by teachers and punishments to child.
- The Act lays down that 25% of total seats should be reserved for underprivileged children of the society, irrespective of the kind of the school.
- According to Section 4 of the Act, if the child is admitted for the first time in the school, he should be admitted to appropriate class as per his age and special training shall be provided to such child to bring him at par with others.
- It is the responsibility of appropriate Government to ensure the implementation of the provisions of the legislations.
- The appropriate Government also carry the responsibility to provide funds to meet the expenditure occurred to meet the requirements of the Act.
- It ensures wholesome development of child.
- It provides for standards reality to students-teacher ratio, infrastructure, school working days etc.

Conclusion

The Right Of Children To Free And Compulsory Education Act, 2009 has established the liabilities on the shoulder of the Government only, it is apparent that Government's efforts alone will not able to serve good quality of education to all.

However, several non-State players (i.e. NGO's, corporate foundations etc.) have also taken several initiatives for the improvement of standards of education. Government Education system, private schools, 'Non-State Players' are contributing to the education sectors but this effective partnership has yet not achieved the goals

because of the high population of the nation. As a result, several good initiatives have failed to mark difference to the existing education system.

References

1. Unnikrishnan. J.P. v/s State of Andhra Pradesh AIR 1993 SC 2178
2. AIR 1958 SC 956
3. Kerala Education Bill v/s Unknown
4. Mohini Jain v/s State of Karnataka AIR 1992 SC 1858
5. Ashokkumar Thakur v/s Union of India (2008) 6 SCC 1
6. (2009)6 SCC 398
7. (2008) 6 SCC 1 at p. 629