



## COMPARATIVE ANALYSIS OF CONSTITUTIONAL PROVISIONS ON EDUCATION IN SIX DEVELOPING COUNTRIES

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**Abstract:** This study intends to assess the constitutional provisions regarding education in six developing countries from three different continents-India and Sri Lanka from Asia; South Africa and Egypt from Africa; Brazil and Cuba from Latin America. As of 2011, out of 191 countries, more than 80 percent of constitutions guaranteed or aspired to protect the right to education and most of the constitutions introduced this concept after the global prioritization of education under the influence of World Conference on Education for All, 1990. From the study, it can be concluded, the countries having constitutional commitment regarding free and compulsory primary and secondary education have high enrolment rates and better quality of public education as compared to those which have constitutional commitment limited to only elementary education. The experience of comparative analysis of these constitutional provisions will be beneficial for the other developing countries especially when most of the countries are struggling to provide inclusive and equitable quality education to all.

**Index Terms – Constitution, Education, India, Sri Lanka, South Africa, Egypt, Brazil, Cuba**

### I. INTRODUCTION

The right to basic education is critically important to make people's life more meaningful and worthwhile. This intrinsic human value of education makes right to education as a basic human right and internationally it has been recognized as a fundamental right since 1948. Besides this, education is also an essential condition to unveil and protect other human rights (UNESCO, 2002: 30). When education is considered as a fundamental right then it will be the responsibility of the state to provide education for all. Education is an important public function and state is seen as the chief provider of education. Due to this, many countries have constitutional provisions regarding free and compulsory education for specified time period. Constitution of any country represents its fundamental values, commitments and political organization. Many states protect the right to education in the form of constitutional provisions and this right is protected in usually in two forms. The first form means the right to education is considered as fundamental right and other considers education in the form of 'Directive Principles of State Policy'. The first form is enforceable while the second one is unenforceable but obliges the government to provide education to all (Beiter, 2005). The constitutional provisions provide an indication of the commitment of the government to provide education for all children in a particular age group and so these are considered necessary for universal elementary education to all children. However, the constitutional provisions in the absence of other conditions are usually insufficient to realize the goal of education for all (Benavot and Resnik, 2006; UNESCO, 2010).

The recent international policy i.e. Sustainable Development Goals set out the commitment to provide 12 years of free, equitable, state sponsored education and quality primary and secondary education and out of this atleast nine years of education should be compulsory. It has been reported that out of 191 countries, 23 percent of countries have fewer than nine years compulsory education (UNESCO, 2016). In 2011, out of 191 countries, more than 80 percent of constitutions guaranteed or aspired to protect the right to education and most of the constitutions introduced this concept after the global prioritization of education under the influence of World Conference on Education for All, 1990. The global efforts to increase the access of education has been supported by the national governments in the form of legal commitments towards providing free and compulsory education to all children under a certain age cohort (Heymann, Raub and Cassola, 2014; UNESCO, 2017). The study of national constitutions regarding education is quite relevant in the present era, when majority of countries are planning and implementing various policies and plans to achieve the goal of inclusive and equitable quality education for all.

### II. EDUCATION IN THE CONSTITUTION OF SELECTED COUNTRIES

In the present study, six countries have been compared regarding their constitutional provisions on education. In most of the comparative education studies, nations are most preferred units of study. And most of the times, developed countries are compared with developing countries or comparison is done between developed countries. The comparative studies among developing countries are often neglected (Wolhuter et al., 2003). So, in this study also, six developing nations namely India and Sri Lanka from Asia, South Africa and Egypt from Africa and Brazil and Cuba from Latin America have been selected for the analysis. These three continents are unique in their growth and development of elementary education. The performance of Latin America in education has been considered better than the other two continents. On the other hand, all the education monitoring reports have pointed out that the Asia and Africa are lagging behind in the achievement of educational goals and these continents have maximum number of out of school children. However, like other

developing countries of the world, under the influence of global goals, the selected countries also have constitutional provisions regarding free and compulsory education for all children.

## 2.1 Education in The Constitution of India

The Government of India, since the inception of the Republic, has accepted the role of universal elementary education for strengthening the democracy and for nation building, and so free and compulsory education has been offered to all children as a constitutional commitment. The Article 45 as the Directive Principles of State Policy states that,

*The State shall endeavour to provide free and compulsory education to children up to the age of fourteen years within a period of ten years from the commencement of the constitution (Article 45).*

By setting a time limit to achieve the goal of free and compulsory education, India became first country to set time frame for the attainment of educational goals (King, 2016). The time limit to achieve this goal was 1960 but this target date has been revised several times and even today India fails to achieve the goal of universal elementary education. Besides this article, the constitution of India has several articles regarding the education, educational institutes, language etc. and these include Article 28, Article 29, Article 30 and Article 350. Regarding the education of the weaker sections of the society, Article 46 states,

*State shall promote with special care for the educational and economic interests of weaker sections of the people. And in particular, of the Scheduled tribes (ST's) and shall protect them from social injustice and all forms of exploitation (GOI, 2019).*

In addition to these article, Government of India is also a signatory to the international laws and treaties regarding the education as a fundamental right and also about the child rights. The Article 24 states that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in hazardous employment. The Article 45 and Article 24 both represent the commitment of Government to provide free and compulsory education to all children under the age of fourteen years. This Constitutional Amendment Act is enacted by Parliament in December 2002 to amend the Constitution of India and known as Constitution (Eighty-six Amendment) Act, 2002. This Constitutional Amendment was the result of the Unni Krishnan Judgement of Supreme Court in 1993 which held that children under the age of 14 years have the fundamental right to free education. As a result of this judgement, the State inserted Article 21 A after Article 21 of the Constitution which stipulates 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. The Article 21-A namely Right to Education states that,

*21 A. The State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine (GOI, 2019).*

The Content of Article 45 is substituted in this Act and 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. Besides this, Article 51 A is also added in the Constitution which imposes a duty on parent or guardian to provide opportunities for education of their children/wards between the age of six to fourteen years of age. This Act is the first Act in the history of India that a fundamental right has been added into the Constitution.

## 2.2 Education in The Constitution of Sri Lanka

Sri Lank got independence from Britain in 1948, but till 1972 it remained Commonwealth of the Empire and only on 16 May 1972, it proclaimed itself as an independent republic. The Constitution of the Democratic Socialist Republic of Sri Lanka has been created on 31 August, 1978 and this constitution has been amended several times. The revised version of the Constitution was published in 2015 and it includes 19 amendments. The Constitution gave importance to education and states that,

*The State is pledged to establish in Sri Lanka a Democratic Socialist Society, the objective of which include ... the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels. (Section 27. 2 (h) in Chapter VI: Directive Principles of State Policy and Fundamental Duties)*

The commitment of the Government to eradicate illiteracy and the assurance to all person regarding the right to universal and equal access to education at all levels is considered as a major landmark in this regard. The constitution established that it is the task of the state to establish a democratic socialist state, to raise the educational and cultural standards and to commit itself to the promotion of national identity through the elimination of discrimination. It has been affirmed that the State shall strengthen the national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups and shall take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice. The state shall ensure equality of opportunity to citizens and also promote the interests of children and youth to ensure their full development and to protect them from exploitation and discrimination. Besides these, the constitution also changed the medium from English to mother tongue either Sinhala or Tamil. The second important constitutional framework regarding education is the 13<sup>th</sup> Amendment of Constitution in 1987, through which education was decentralized to the Provincial level. The Provincial Council System was created and most of the functions performed by the Central Government have been devolved to this system (Democratic Socialist Republic of Sri Lanka, 2015).

## 2.2 Education in The Constitution of The Republic of South Africa 1996

Nelson Mandela was the first President of the new democratic South Africa and he took his office in 1994 and then South Africa was invited to participate in the EFA process. As per the goals of EFA, the Constitution incorporates the concept of nine years of compulsory schooling for all. For the first time in the history of country, the education was made compulsory for black Africans (UNESCO, 2002: 107). The Constitution of the Republic of South Africa, 1996 is the fifth constitution of the country and it replaced the Interim Constitution of 1993. With the adoption of Interim Constitution 1993, the right of education of equitable nature became the fundamental human right of all South Africans. The Interim Constitution, 1993 also requires that education should be transformed and democratized in the following values: human dignity; the achievement of equality and the advancement of human rights and freedoms; non-racism and non-sexism. It also suggests that democratization of education should be done with the involvement and participation of all stakeholders in all the school activities. It determined that the three spheres of government namely national, provincial and local should function cooperatively for the development of education in the country. This Constitution of 1996 has Permeable, 14 chapter having 243 Sections and 7 Schedules. The Section 29 of the Chapter 2: Bill of Rights contained in the final Constitution of the Republic of South Africa stipulates that everyone has the right to basic education, including universal basic education. It provides equitable right of education for all and states that:

*(1) Everyone has the right-*



- (a) to a basic education, including adult basic education; and
  - (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.
- (2) Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable educational alternatives, including single medium institutions taking account-
- (a) equity;
  - (b) practicability; and
  - (c) the need to redress the results of past radically discriminatory laws and practices.
- (3) Everyone has the right to establish and maintain, at their own expense, independent educational institutions that –
- (a) do not discriminate on the basis of race;
  - (b) are registered with the state; and
  - (c) maintain standards that are not inferior to standards at comparable public educational institutions (Republic of South Africa, 1996)

The bill of rights in this constitution is considered as the most progressive in the world because it contains all categories of human rights that are usually included in international human right instruments. The country has ratified all the international conventions on the right of education and also the rights of the child. The state is committed to provide equal access of education to all and especially to those who were previously excluded from the system. The constitution of the country is considered as the supreme law of the state and it establishes that it will heal the divisions of the past and improve the quality of all the people of the state. It determined that the national, provincial and local spheres of government should work cooperatively and the legislative and main policy planning responsibility will be done by the national sphere. As the constitution considers education as a fundamental human right, the government of the country is undoubtedly keen to improve the educational access for all to meet this obligation (Motala et. al, 2007).

#### 2.4 Education in the Constitution of Arab Republic of Egypt

The first constitution of the country came in 1923 when Egypt was partially under the British rule. The 1923 Constitution aimed at universalizing education in the country and Article 19 states that elementary education is compulsory for all children between the ages of 6 to 12 years. This article was considered as a major turning point in the development of education in the country. The next executive step for education was taken by country in 1952 and this step focused on establishing unified compulsory elementary education. In 1971, under the rule of President Sadat, a new democratic constitution has been adopted and this constitution guaranteed equal opportunities for all citizens. Article No. 18 of this constitution stated that education is basic right for all Egyptian citizens and basic education (primary) is compulsory. The constitution promised free education in various stages and illiteracy eradication was considered a national duty. The period of compulsory education was extended from six to nine years in 1981 by Law No. 139 and preparatory education in addition to primary education was made compulsory. This law also emphasized that state should work hard to extend compulsory education to other educational stages (NCERD, 2001: 8). Law no. 23 of 1999 stipulated that the duration of the compulsory education is nine years. The recent constitution came in 2014 and this Constitution of Egypt promised free education for all the citizens of the country. Right to education is considered as a fundamental right in this constitution and it is made compulsory until the end of secondary stage. The goals of Education are framed as the development of character, national identity, scientific thinking, talents as well as promotion of innovations, citizenship, tolerance and non-discrimination. The Article (19) of Chapter One: Social Components under Part II: Basic Components of the Society of the Constitution states that,

*Every citizen has the right to education. The goals of education are to build the Egyptian character, preserve the national identity, root the scientific method of thinking, develop talents and promote innovations, establish cultural and spiritual values, and found the concept of citizenship, tolerance and non-discrimination. The State shall observe the goals of education in the educational curricula and methods, and provide education in accordance with international quality standards.*

*Education is compulsory until the end of secondary stage or its equivalent. The State shall provide free education in the various stages in the State's educational institutions according to the Law.*

*The State shall allocate a percentage of government spending on education equivalent to atleast 4% of the Gross National Product (GNP), which shall gradually increase to comply with international standards.*

*The State shall supervise education to ensure that all public and private schools and institutes abide by its educational policies*  
Article (19).

In addition to Article (19), the constitution has various article regarding the further education like technical and technological education, university education etc. The Article (22) considers teachers, faculty members and their assistant as the main pillars of education and to ensure quality of education and to achieve the goals of education, the state shall care for their financial and moral rights. Three subjects namely Arabic Language, Religious Education and National History are specified by as Core Subjects by the Article (24) and these will be taught at all levels in public and private pre-university education (Egypt State Information Service, 2014).

#### 2.5 Education in the Constitution of Brazil

The Federal Constitution of Brazil 1988, 7<sup>th</sup> and most recent constitution of the country was enacted in October 1988, recognized the three educational systems in the country as the federal system, the state and federal districts, and the municipal system. The constitution guaranteed the right of education to all the citizens and affirmed the obligation of the State to provide free eight years primary education to those who did not have access to the education. The Constitution also determines that the Federal Government and the state along with local government should spend 18 percent and 25 percent of their resources on the education respectively. In Chapter III that deals with 'Education, Culture and Sports' of the Constitution under Article 205 of Section I (Education) it has stated that Education is the right of the

all and duty of the state and family, and it shall be promoted and fostered with the help of society (The Federative Republic of Brazil, 2010:142). This article states that education is,

*“Education, which is the right of the all and duty of the state and of the family, shall be promoted and fostered with the cooperation of the society, with the view of the full development of the person, his preparation for the exercise of citizenship and his qualification of work.”*

The Federal Constitution in Article 206 further stated that education shall be provided on the basis of principles such as equal conditions of access and permanence in school, free public education in official school, guarantee of standard of quality etc. The duty of State toward education is stated in Article 208 and it is established that the state shall provide free of charge mandatory basic education for every individual to those who did not have access to schooling at what was describe as ‘proper age’. The State shall ensure the progressive universalization of high-school education and assistance shall be provided to students during the basic education through supplementary programmes such as providing school materials, food, transportation and health care. This article further states that the competent authority is liable for the failure or irregularity in the offer of compulsory education. In the next article i.e. Article 209, it has been stated that teaching is open to private enterprise provided that it should be in compliance with the general rules of national education (ibid.: 142-143). The article 212 states that,

*“The Union shall apply, annually, never less than eighteen percent, and the States, and the Federal Districts, and the Municipalities, atleast twenty five percent of the tax revenues, including those resulting from the transfers, in the maintenance and development of education (CA No. 53, 2006; CA No. 59, 2009).”*

This article is an outstanding feature of the Constitution of Brazil that a constitutional commitment regarding educational expenditure has been made through Article 212. The public funds should be transferred to public schools and may be channeled to community, religious and philanthropic school as stated by Article 213. The Article 214 establish the need of ten-year National Plan of Education with the view of organizing national education system with the cooperation of states and municipalities and defined the various actions, such as eradicating illiteracy, universalization of school assistance, improvement of quality of education, professional training, stipulation of public funds for the investment in education etc., which should be carried out with the integration of federal, state and municipal governments (ibid.:144-145).

The three constitutional amendments namely Constitutional Amendment No. 14 of 1996, Constitutional Amendment No. 53 of 2006 and Constitutional Amendment No. 59 of 2009 are quite important for the development of basic education in the country. The Constitutional Amendment no. 14 added a new wording to the Article 208 of the Federal Constitution as *“I- mandatory and free elementary education, including the assurance of its free offer to all those who did not have access to it at proper age; II- progressive universalization of high school education.”* The amendment is important as it provides right of education to all irrespective of their age. It also created a Fund for Maintenance and Development of the Elementary Education and for the Increase of the Worth of Teaching Profession (FUNDEF). The FUNDEF was created in 1996 and it was implemented in 1997-98 and it had a revolutionary impact on the education system of Brazil and it reduced the regional differences in the accessibility of education. The fund has been created for financing sub-national spending on the primary and secondary education and it also sets a national floor for national spending on a per student basis for basic education. It has been observed that the Fund for Primary Education Administration and Development and for the Enhancement of Teachers’ Status (FUNDEF) has contributed for reducing education inequalities between different regions of the country (Neri and Buchmann, 2008).

In the Constitutional Amendment No. 53, the FUNDEF created by Constitutional Amendment No. 14 was replaced by Fund for the Maintenance and Development of Basic Education and for the Appreciation of Educational Professionals (FUNDEB). This fund has expanded its focus than the FUNDEF and included early childhood education, out of school youth and adult education besides the elementary education and high school education as included in the previous fund. The duration of mandatory basic education has been increased from 9 to 14 to 4 to 17 years in the Constitution Amendment No. 59. It also states that assistance in the form of supplementary programmes like school material, transportation, food and health care should be provided to all the students in basic education. For the universalization of mandatory education, the Federal government, the State, the Federal Districts and the Municipalities shall establish forms of cooperation for the organization of the education systems. The amendments directed municipalities to act on priority basis for the universalization of elementary education (The Federative Republic of Brazil, 2010).

## 2.6 Education in the Constitution of the Republic of Cuba

Cuba has several constitutions and its first constitution was drafted in 1976 and since then it has been amended several times. In 2018, the constitution was again amended and this amended constitution was enacted in 2019 and this remains an issue of serious discussion among people and academics. The various articles in this constitution are related with the education, and most important is Article 51 which deals with right of education. This Article states that,

*Everyone has the right to education. The right is guaranteed by the extensive and free system of schools, semi-boarding and boarding (schools), and scholarships in all types and levels of education, and by the free school material (s), which provide all children and young people, whatever the economic situation of their family is, with the opportunity to study in accordance with their aptitude, social demands and the necessities of socio-economic development.*

Chapter V is related to Education and Culture and in this Article 39 states that,

*The State guides, foments, and promotes education and sciences in all their manifestations.*

*Its educational and cultural policy is based on the following postulates:*

- a) *[it] bases its education and cultural policy on the advances of science and technology, the Marxist and Martian ideology, the Cuban progressive pedagogical tradition, and the universal one;*
- b) *Education is function of State, and free of charge. It is based on the conclusions and contributions of science, and on the closest relationship between study and life, work, and production.*

*The State maintain an extensive system of scholarships for students, and provides the worker with multiple facilities for study, so that they may reach the highest possible levels of knowledge and skill...*

- g) *The State orients, foments and promotes physical education and sports in all their manifestations as a means of education and of contribution to the integral education of the citizens;*

The law specifies that education is the function of the state and it is free. It also describes the integration and structure of national education system and minimum general basic preparation that every citizen must acquire. For the promotion of the patriotic education and communist training of younger generations, the education (both general and specialized) should be combined with work, research for



development, physical education, sports, participation in social, political and military training activities. The Article further specifies that the State promotes the participation of citizens in the realization of educational and cultural policy. The Article 42 specifies the duty of the institutions of the state that these should educate everyone in the principle of equality of human beings. There will be no distinction on the basis of race, color, sex, religious creeds, national origins, or any other factor offending human dignity is specified in the Article 43. The Constitution of the Cuba is based on the principle that providing education services to all is the function of the state. Education is a civic right and it should be supplied free of charge. Education is also considered as the task of the society including family, school, teachers etc. The educational policies are framed on the basis of principles framed by the Constitution and then approved by maximum organs of Party and Government. After that these policies are discussed in social debate between teachers and students and a national consensus is developed. The particular aspects of policies are elaborated and adopted by Government's superior organs and Ministry of Education. From the year 1959 to 2011, the education system of the country has undergone major transformation such as the illiteracy rate was approximately 23 percent in 1959, but in 2011 the illiteracy rate was only 0.2 percent. The duration of average schooling increased from 3 years to 10 years for the same period. The success of Cuban Education System is based on the fact that there remains a close coordination between the policies and strategies implemented by the State to ensure the educational development (Lopez, 2011).

### III. COMPARATIVE ANALYSIS

The selected countries also have constitutional provisions regarding free and compulsory education for all children. The provision of free and compulsory education in the national constitution or any kind of legal guarantee has been considered effective in the realization of the goal of universal elementary education. The free education at all levels in Cuba yielded much positive results. In Sri Lanka also, the free education at pre-university level also helped the country to have impressive net enrolment rates at primary and lower secondary education level. The youth literacy rates of India and Egypt improved a lot since 1990 mainly due to the provision of free and compulsory elementary education. In Brazil also, the access to education has increased after the provision of free and compulsory education has been implemented through Constitution. On the other hand, the performance of South Africa was not good in terms of enrolment rates at primary and lower secondary education mainly due to the lack of direct free education in the country (UNESCO Institute of Statistics).

The constitutions of India and Brazil have fixed the duration of free and compulsory education for eight years. The Constitution of India defines that the State shall provide free and compulsory education to all children of the age cohort of 6-14 years in such a manner as determined by the State. On the other hand, the Constitution of Brazil has the provision of free eight years of primary education to those who did not have access to education. The Constitution of Brazil is ahead of India in fixing the percentage of budget for education in its provisions (UNESCO, 2004). The Constitutional Amendment No. 59 in 2009 in Brazil has extended the range of compulsory school years and now education is compulsory from 4 to 17 years old. Egypt also has the constitutional provision regarding the percentage of government spending on education like Brazil. Education is free and compulsory in Egypt until the end of secondary education. It has been considered that the constitution of South Africa lacks the clarity regarding the right to education as South African Constitution considers education as right but education is not directly free in this country but it is compulsory for the children falling in the age cohort of 7-15 years. The Constitution of Sri Lanka consider that education is the obligation of the government and eradication of illiteracy has been mentioned in the 'Directive Principles of State Policy and Fundamental Duties'. Sri Lanka lags behind regarding the other selected countries regarding the constitutional provisions of education as education is not considered as right here. But in Sri Lanka, education is made free and compulsory for the children aged between 5-16 years through the 'Regulations on Compulsory Schooling'. The constitution of Cuba provides the right of education at all national educational institutions and education is free at all levels and compulsory for the children aged between 6 to 16 years.

All the selected countries are similar in having constitutional provisions regarding the education but the level of legal commitment varies among these. Right to education in these countries can be categorized either as justiciable or non-justiciable (UNESCO, 2017). And it is interesting to point out that both Sri Lanka and Cuba have right to education as non-justiciable and despite of that the present scenario of universal elementary education in both the countries is far better than other four countries. Both Cuba and Sri Lanka have achieved universal primary education and even both the countries have almost universal enrolment in secondary education. Both countries have praised for their better performance in education sector. India, Egypt, South Africa and Brazil have right to education which is justiciable but the performance of universal elementary education in these countries still lags behind Cuba and Sri Lanka.

### IV. CONCLUSION

The constitutional provisions regarding education along with other conditions plays a critical role in the education development of any country. In this globalization era, equitable quality education at all levels is must for knowledge-based economy. Various research studies have proved that the rate of returns of primary and secondary education are quite high. But despite of that, even today the developing countries are struggling with the goal of quality education for all. The international developmental agenda such as Sustainable Development Goals also give due importance to the inclusive and equitable quality education for all and the nation states are changing their legal provisions and also educational policy planning to realise this goal. From the analysis of these constitutional provisions, it can be concluded that present status of education is comparatively good in Cuba and Sri Lanka, as both the countries provide free and compulsory education for longer duration of time as compared to other four countries. Besides the access to education in Cuba and Sri Lanka, the quality of education is also better than other countries. The constitutional protection of right to education in the form of free and compulsory primary and secondary education is more effective as compared to free and elementary compulsory education. India, Brazil and Egypt provide free and compulsory education at elementary level and due to this along with other factors, these countries have not achieved significant progress in educational attainment. South Africa, despite having constitutional provisions for free and compulsory education, is not providing direct free education and this is the main reason that access to education in South Africa is significantly low as compared to other five countries. It can be concluded that the experiences of Cuba and Sri Lanka are quite instructive as in both the countries the whole cycle of school education is free and compulsory as compared to other four countries in which only elementary education is free and compulsory.

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