

# CONSTITUTIONAL CONTOURS OF RIGHT TO EDUCATION AND EDUCATION SYSTEM IN INDIA

Usha Chaudhary

Lecturer

Department of Home Science

Mussoorie Girls Inter College, Mussoorie, India

---

**Abstract:** The idea of education is as old as the history of mankind itself. The need for the education was felt by human beings from the ancient times; however, the concept was not defined. When we start discussion on the concept and basis of this right it becomes necessary to trace its historical development in order to find out a universally acceptable definition. The other relevant issue in this respect which attracts our attention is to locate the particular law under which the protection may be properly accorded to this right. At this stage it becomes necessary to look into provisions of other Constitutions in order to drive its fine points that may be beneficial for developing the parameters of the right in our country. An attempt for the protection of right to education through international instruments is equally desirable to discuss to evolve the international common standard of this important right. The aforesaid developments have been analyzed in the following pages before discussing the Indian position in the Constitution and other relevant provisions and judicial decisions.

---

## 1. HISTORICAL BACKGROUND

From ancient Bharat to modern India, education has always occupied a place of prominence in Indian history. In ancient times, Nalanda, Taxila and Vikramsila universities were renowned seats of higher learning, attracting students not only from all over the country but from far off countries like Korea, China, Burma (now Myanmar), Ceylon (now Sri Lanka), Tibet and Nepal. Today, India manages one of the largest higher education systems in the world.<sup>1</sup>

It may be stated that the education in India has been notorious for not being socially inclusive. Till the 19th century, it was to a great extent considered a benefit confined to people at the higher end of the station or class framework. History is loaded with cases of standing, class and sex based segregation in conferring education. Education was the sole benefit of the priestly castes (Brahmins) fundamentally in light of the religious reason for the substance of education, combined with the elitist medium of direction that was conferred the information. Admission to Gurukulas or Ashrams was not open to all. People from lower castes, and so-called 'shudras' (untouchables), in particular, were barred from receiving education. Buddhism and Jainism overthrew the dominance of classical Vedic education by the end of the eighth century A.D.<sup>2</sup> forcing education beyond the confines of hermitages. Thereafter, several learned Brahmins started Pathshalas (schools) in important towns where they received patronage. The Muslim rulers of the Indian sub-continent also did not consider education as a function of the State. It was perceived as a branch of religion and therefore entrusted to learned theologians called Ulemas.<sup>3</sup> Therefore, in ancient and medieval India, education was intertwined with religion. From the location of Gurukulas to excluding sections of the society from accessing education, the system of education was clearly not accessible to all persons.

## 2. FRAMING OF THE CONSTITUTION

In 1946, the Constituent Assembly was constituted to frame a Constitution for free India. Nehru at the very outset told the members of the assembly:

The first task of this assembly is to free India through a new constitutions, to feed the starving people, and to cloth the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity.<sup>4</sup> On 3rd November, 1948, Pandit Lakshmi Kant Mitra moved a motion by amendment No. 962, in the assembly.<sup>5</sup>

That in article 36, the words "Every citizen" is entitled to free primary education and be deleted; and the article

---

<sup>1</sup> [www.ugc.ac.in](http://www.ugc.ac.in) visited on 14<sup>th</sup> May 2018

<sup>2</sup> R. Thaper, "A History of Indian Education," Penguin Books, 1966 Vol. I, p.63

<sup>3</sup> S. M. Edwardes and H L O Garrett, "Mughal/ Rule in India," Asia Publications Services, 1979 p. 221

<sup>4</sup> Quoted in M. L. Upadhyaya, "Legal Aspects of Equality of Educational Opportunities in India, VII JBCI(1974) P.134

<sup>5</sup> CAD, Vol. VII p. 538

will read quoted is, as: "The state shall endeavor to provide within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years. " The object of this amendment was to bring article 36 into line with the preceding and the subsequent articles, in form at any rate, because draft articles 30, 31, 32, 33, 34, 35, 37 and 38 of draft Constitution all begin with the words "The state shall... Draft article 36 provided; every citizen is entitled to education etc." The learned member argued therefore that if the words as referred above are deleted this also would come into line with the other articles. He further pointed out that part IV deals with directive principles of state policy, and the provisions in it indicate, the policy that is to be pursued by the future government of the country. Unfortunately in article 36, this directive principle is coupled with a sort of a fundamental right, i.e. "that every citizen is entitled ... etc."

Here directive principle is combined with a fundamental right, therefore it was submitted by the learned member that the portion indicated above should be deleted. They contended that if a right to education becomes non-justifiable, it would remain as pious wishes. They added that if it does not become imperative obligations of the State towards the citizens, they would be perpetuating a needless fraud. If the State has no such responsibility laced upon them, they might be inclined to avail themselves of every excuse to justify their own inactivity to the matter, indifference, or worse.

### 3. DEFINITIONAL CONCEPT

Life isn't only an animate or vegetative presence yet it is a condition of cognizant being. It is bolstered with an important heap of appropriate to make it conceivable and significant in perspective of the reality the privilege to life can't mean just a privilege to quicken presence however it incorporates each one of those rights which are important to make life advantageous.

Such rights are countless start with the primary snapshot of presence in the womb of the mother up to the last goad of presence. Of every single such right the most noteworthy is the 'right to education'. The 'right to life' has no importance in the event that one can't live it.

A man can't live properly except if arranged for it through education and preparing. Subsequently the first and the premier commitment of the state, is that it must perceive and respect the 'rights to education' of its kin to improve their lives and endeavor to make great subjects out of them. Especially when without education, a state cannot expect its citizen to be capable and skilled.<sup>6</sup>

Education is the very foundation of good citizenship and principal instrument to awaken the child to cultured values and for preparing the child for latter professional education and helping him/her to adjust to the environment. Education nourishes intellectual advancement and develops neither dignity of the persons, without which there is neither intellectual excellence nor pursuit of happiness. Without education a man is so circumstanced that knows not how to make the best of himself. For him the purpose of society is abinitio frustrated, when citizens are in that vulnerable ignorance and squaller, they know not themselves how to make use of their opportunities and the opportunities are mockery and the fundamental rights are teasing illusions.<sup>7</sup>

Education develops human personality and the faculties of the pride and fortifies the regards of the human right and central opportunities. Education empowers all people to take an interest successfully in free society, advances comprehension, resilience and fellowship among all people. Hence education is an apparatus to look after peace, solidarity and honesty of the Nation.

Education is the way to the entryway of modernization. Enhanced education prospects, including proficiency and open doors for aptitude preparing, have coordinate ramifications for the nature of the existence that individuals appreciate. In the evolving society, it is currently all around perceived that education, formal and nonformal, is connected with projects of rustic advancement. To be active participants, the people in the rural areas must become aware of national and educational goals and programmes.<sup>8</sup> Education can play a vital role in promoting and developing self-confidence, self-reliance, initiatives and skills of innovations. It is notable that all such things are basis and significant in the process of human development and, in turn, for the development of human society as a whole.

Education brings excellence, enriches the mind and illuminates the spirits. It prepares a child for the good citizenship. It liberates from ignorance, superstition, prejudices and ultimately unfolds the vision and truth. Ignorance is the mother of weakness and helplessness, whereas education brings light of knowledge and the knowledge in itself is power. Again, education is the preeminent means for promoting human values, the quality of human resources and respects for the cultural heritage. It is the excellence source of all happiness. In the absence of education exploitation and abuse of the child is sure to occur.<sup>9</sup>

In *Mohini Jain v. State of Karnataka*<sup>10</sup> the Supreme Court highlighting the importance of education said that, the fundamental purpose of education is same at all time and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life. Besides

<sup>6</sup> M. Afzal Wani, Education as a Human Right: Policy and Action in India, 40 JILL (1998) p. 244

<sup>7</sup> E. Dharma Rao, Scheduled Castes and Scheduled Tribes Admission into Educational Institutions, AIR 1991 (Jour) p. 185

<sup>8</sup> A.K Singh and A.Bhaumik, "Education, Participatory Education and Rural Development, Chugh Publication, All. P. 254

<sup>9</sup> Shrinivas Gupta, "Legal Attitude towards Child Education." CTLQ. 1994. Vol VII p. 432

<sup>10</sup> AIR 1992 SC 1858.

in a democratic form of government, which depends for its sustenance upon the enlightenment of the populace, education is a social and political necessity. In India, the leaders harped upon universal primary education as a desideratum for national progress but the percentage of illiteracy here is still appalling. In this era of knowledge-explosion when the frontiers of knowledge are enlarging with incredible swiftness it is the foremost need of the state to eradicate illiteracy that persists in a depressing measure.

Since children are future citizens and the success of the democracy depends upon their ability, both children and democracy are interrelated and independent. It also implies that education is the means through which democracy establishes social justice. Thus, a right to adequate education is a defining feature of democracy which is necessary for its survival and functioning.

From the above laid discussion, it is concluded that education is as necessary as food, cloth and shelter. At the end it may be said that education is a high ideal and value to be perused and an absolute necessity for the all round growth of human personality. It prepares a sound base for the peaceful co-existence and advancement of the society. Education must, therefore, be made available to everyone; available not in the sense of freedom to get oneself educated but in sense of providing every facility necessary to get oneself educated. This is a difficult task and requires enormous recourses, skilled planning and sincere planning and sincere execution of plans and policies.

#### 4. INDIAN FRAMEWORK

Education has many facets within and beyond the constitution as well as its contents and development in pre-independent period. The concept of education primarily meant the learning and imparting of knowledge. This issue may involve a variety of the question relating to the opportunities available, liberty of the people to learn their assessability in their area and the right to education. It further involves various modes and methods of education centers, including the issues as to eligibility and availability of education to various classes of beneficiaries. When we talk about education it becomes significant that what does it means and how far it is desirable looking to the needs and recourses of the country. Whether it means and includes the primary education or it should be strengthen over to the higher levels also. It is very difficult for any country more particularly for developing one like India to afford the entire cost of education at all levels. Therefore a discussion under the sub chapter centers around the constitutional guarantee of education and how far it would go to fulfill needs of the Indian people.

#### 5. CONSTITUTIONAL PROVISIONS:

The expression "Education" in the different Articles of the Constitution means and include education at all levels, i.e. from the primary school levels up to the post-graduate levels. It includes professional education also. The expression "Educational Institution" means institutions that impart education. The "Educational Institution" is of different types. They have been classified broadly in Government/Private educational institutions. There is further classification on the basis of receipt of aid, i.e. classification into aided and un-aided educational institutions. A further classification exists on the basis of levels of education that it imparts, e.g. schools, undergraduate or post-graduate colleges and professional institutions.

##### 5.1. DIRECTIVE PRINCIPLES OF STATE POLICY:

Directive Principles of State Policy include following provisions relating to education:

(a) Newly substituted Art 45 provides for provision for early childhood care and education to childhood below the age of six years. It says that State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.<sup>11</sup>

Before Constitution (Eighty-sixth amendment) Act 2002, Art 45 required the State to make provision within ten years for free and compulsory education for all children until they complete the age of fourteen years. The object of this Article was to abolish illiteracy from the country. In a landmark judgment in *Unnikrishnan v. State of Andhra Pradesh*<sup>12</sup> the Supreme Court held, the "Right to Education" up to the age of 14 years is a fundamental right within the meaning of Art. 21 of the Constitution, but thereafter the obligation of the state to provide education is subject to the limit of its economic capacity. "The right to education flows directly from rights to life", the court declared. Fortunately, this judicial verdict has been given a final place in the Constitution by Constitution (Eighty- Sixth Amendment) Act, 2002. Right to education has been added as a fundamental right in Art, 21- A which provides that 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) Art 46 speaks about promotion of education and economic interest of Scheduled caste, scheduled tribes and other weaker sections. IV says that the State shall promote with special care the educational and economic interests of the weaker section of the people, and in particular of the scheduled caste and the scheduled tribes and shall protect them from injustice and all forms of exploitation.

<sup>11</sup> Substituted by the Constitution (Eighty-sixth Amendment) Act 2002 for Art 45, which provides for free compulsory education for children. The State shall endeavor to provide within a period of ten years from the commencement of this constitution for free and compulsory education for all children until they complete the age of fourteen years.

<sup>12</sup> AIR 1993 SC 2178.

(c) Art 41 relates to right to work, to education and to public assistance in certain cases. It directs the State to ensure the people within the limits of its economic capacity and development

- Employment
- Education and
- Public assistance in cases of unemployment, old age, sickliness and disablement and in other cases of underserved want.

But policy and plans established new schools should be cleared explained by the State Government.<sup>13</sup>

Under the constitution, these directive principles are fundamental in the governance of the country, but they cannot be enforced through court of law.<sup>14</sup> However the Supreme Court has interpreted the directive principles in a very liberal manner and have even enforced some of these under appropriate situations.

## 5.2. FUNDAMENTAL RIGHT:

Following Articles of the Constitution makes provision for education: Article 19(1) (g): all citizens shall have the rights to practice any profession, or to carry on any occupation, trade or business<sup>15</sup> This rights is intended to ensure that 'citizen' rights to business does not depends on grant by the State and the State cannot prevent a citizen from carrying on a business, except by a law imposing a reasonable restriction in the interest of the general public.

(a) Article 21 -A: Right to Education

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. Till. 2002s Constitution Eighty-Sixth Amendment, right to education was not a specially guaranteed fundamental right under the constitution, it was only Unnikrishnan v. State of Andhra Pradesh<sup>16</sup> which had, widely interpreting Art 21, recognized rights to education as one of the aspects of personal liberty. This was done by the judiciary exercising its role of judicial activism not by our legislatures who are deemed to be reflecting the wishes of the people. However, through at a very late stage, right to education has been made by the Constitution (Eighty-Sixth Amendment) Act 2002, a fundamental right.<sup>17</sup>

## 5.3. EDUCATION AND RIGHTS TO LIFE

In India the Judiciary has given an extended meaning to constitutional expression like "life" and personality liberty" and has in unequivocal terms recognized 'rights to education 'as fundamental rights. The Supreme Court of India in Francis C. Mullin v. Administrator, Union Territory of Delhi<sup>18</sup> has remarked:

Whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter. Include a right to basic necessities of life and also the right to ... constitute the bare minimum expression of the human self. After referring to the aforesaid constitutional provisions the court observed that 'right to education' has not been guaranteed expressly as fundamental rights under part III of the constitution but the framers of the constitution have made it obligatory for the state to provide education to its citizens. The court forcefully put forward the view that the preamble of the constitution promises to secure to all citizens' justice -"social, economic and political", combining social and economic rights along with political and justifiable legal rights. In order to establish social justice and to make the masses free in the possible sense the state was to strive to achieve the goals set out in the preamble of the constitution. As regard social justice it has been specially enjoyed as an object without providing education to the large majority who are illiterate.

## 6. CONCLUSION

In the Indian way of thinking, a human being is a positive asset and a precious national resource. In our national perception education is essential for all. This is fundamental to our all-round development; material and spiritual .The objective of education in India are drawn in the backdrop of the secular, democratic and federal structure of the Indian polity as set down by the Constitution of India. The Indian Constitution guarantees Right to Equal Treatment of all citizens irrespective of religion, caste, gender, or habitation; the right to education of minority; the right to protection of

<sup>13</sup> Gram Vikas Shikahan Prasarak Mandai v. State of Maharashtra AIR 2000 Bom.437

<sup>14</sup> Art.37 of Constitution of India

<sup>15</sup> Education is included in Art ( 19) (g) in the case of T.MA Paifoundation v. State of Karnataka. AIR 2003 SC, 355. In this case the term 'education' covered in terms 'occupation'.

<sup>16</sup> AIR 1993 SC 2178

<sup>17</sup> Art 21-A of the Constitution of India

<sup>18</sup> AIR 1981 sc. 746

life which have been interpreted by the law of the land as the right to life to be lived with human dignity, implying that right to life of a child included a basic right to education. Mahatma Gandhi had visualized education as a means of awakening the nation's conscience to injustice, violence and inequality entrenched in the social order. The Gandhian concept of education has impacted the framing of the objectives of the Indian education emphasizing self-reliance and dignity of the individual which would form the basis of social relations characterised by non-violence within and across society. The use of the immediate environment, work experience forms a significant resource for socialising the child into a transformative vision of Society.