



REVIEW ARTICLE

RIGHT TO EDUCATION AS FUNDAMENTAL HUMAN RIGHT

*Tushar Sharma

(Sr. A.O) Jaipur National University

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ABSTRACT

The right to education is recognized, promoted and protected at all levels from national, regional to international. Education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. The right to education is a fundamental human right. It is also central to realizing other human rights. Education is an extraordinary tool of empowerment. It is essential for the promotion and protection of all human rights. However, too often at both the national and international levels not enough is done to ensure the effective implementation of the right to education. Achieving the right to basic education, as a fundamental human right, is one of the biggest development challenges faced by the international community today. Millions of children, youth and adults remain deprived of basic education. Several international conventions, numerous writings and reports by United Nations (UN) bodies stress the importance of the fundamental right to education.¹ The right to education is codified in the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC). The international community reaffirmed the right to education at the World Education Forum in 2000.² The United Nations Educational, Scientific and Cultural Organization (UNESCO) has, therefore, placed the right to education at the forefront of its activities and the Education for All (EFA) is high on its agenda. The Dakar Forum agreed on six goals, which were considered to be essential, attainable and affordable, given strong international commitment and resolve. The right to education is an integral part of UNESCO's constitutional mandate. The constitution of UNESCO expresses the belief of its founders in "full and equal educational opportunities for all". The *Dakar Framework for Action* committed governments to strengthening national and regional mechanisms to ensure that EFA was on the agenda, *inter alia*, of every national legislature. It also emphasized that at the national level concrete measures are to be taken so that legal foundations of the right to education are strengthened in national systems. To make poverty history the international community realized that there is a need to provide financial support to develop poverty stricken states for complete removal of poverty. A target has been fixed to achieve this goal by the UN General Assembly and the UN Millennium Declaration was adopted in September 2000³ in which states agreed to endeavour their best to eradicate poverty, promote human dignity and equality and, thereby, achieve peace, democracy and environmental sustainability. In particular, the international community committed, in the Millennium Development Goals, to cut extreme poverty by half by 2015 and to banish extreme poverty by 2025. The international community has set a target that by 2015 children everywhere, both boys and girls, will be able to complete a full course of primary schooling.

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¹Article 26 of the UDHR; Articles XII and XXXI of the American Declaration on Rights and Duties; Article 18(4) of the ICCPR; Article 12(4) of American Convention on Human Rights; and Article 17(1) of the African Charter on Human and Peoples' Rights.

²The World Education Forum, which took place in Dakar, Senegal, in April 2000, was the first and most important event in education at the dawn of the new century. By adopting the Dakar Framework for Action, the 1,100 participants of the Forum reaffirmed their commitment to achieving Education for All by the year 2015 and entrusted UNESCO with the overall responsibility of coordinating all international players and sustaining the global momentum. Available at www.unesco.org/education/efa/wef_2000/.

³ 189 States adopted the UN Millennium Declaration. The Report is available at www.undp.org. General Assembly Resolution, A/RES/55/2, 55th session, 18 September 2000.

INTRODUCTION

International Recognition of Education as a Human Right

There are a large number of human rights problems, which cannot be solved unless the right to education is addressed as the key to unlock other human rights.⁴ The right to education is clearly acknowledged in the United Nations' Universal Declaration of Human Rights (UDHR), adopted in 1948, which states:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. ..." (Article 26)

Apart from UDHR, right to education is affirmed, protected and promoted in numerous international human rights treaties, such as the following:

- Convention concerning Discrimination in Respect of Employment and Occupation (1958) - Article 3
- Convention against Discrimination in Education (1960)
- International Covenant on Economic, Social and Cultural Rights (1966) - Article 13
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981) – Article 10
- The United Nations Convention on the Rights of the Child (1989) – Article 28 & 29

The right to education has therefore long been recognized by these international treaties as encompassing not only access to educational provision, but also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. With respect to applicability of these treaties in India, it is worthwhile to mention that India is a State party to the ICESCR, the CERD Convention, the CEDAW Convention and the Convention on the Rights of the Child.

The prominent organizations around the world striving for promotion of Right to Education are:

- United Nations Educational, Scientific and Cultural Organization (UNESCO)⁵
- United Nations Children's Fund (UNICEF)
- World Bank
- International Labour Organization (ILO)

⁴ View of Ms. Katerina Tomasevski, former United Nations Special Rapporteur on the right to education, who further developed the concept of '4 As' according to which education can be a meaningful right if it is made available, accessible, acceptable and adaptable.

⁵ UNESCO leads the global Education for All movement, aiming to meet the learning needs of all children, youth and adults by 2015. The six internationally agreed education goals of UNESCO3:

- 1) Expand early childhood care and education,
- 2) Provide free and compulsory primary education for all,
- 3) Promote learning and life skills for young people and adults,
- 4) Increase adult literacy by 50 per cent,
- 5) Achieve gender equality by 2015,
- 6) Improve the quality of education

The human race has always been witnessing struggles for certain basic rights. Every part of the world has met with suppression & oppression & struggles & resistances against such onslaughts on basic rights & liberties. The expression 'Human Rights' has become popular after the formation of United Nations in 1945. The preamble of the UN Charter reaffirms faith in fundamental human rights. One of the purposes of the United Nations is to achieve international cooperation in promoting & encouraging respect for human rights & for fundamental freedom for all without distinction as to race, sex, language & religion.⁶ UN has a duty to promote universal respect for & observance of human rights⁷. The term 'human rights' denotes all rights which are inherent in our nature & without which we cannot live as human beings⁸, Human rights are those basic, inherent, fundamental, natural & inalienable rights of human beings. They are considered indispensable for dignified human life. The purposes of securing human rights as such are to provide protection to these rights against the abuses of power by state organs; to establish institutions for the promotion of living condition of human beings and for the development of their personality; and at the same time, to provide effective remedial measures for obtaining redress in the event of violation of those rights⁹. Customary international law justifying intervention by one state in the affairs of another on humanitarian grounds should be considered as the beginning of the present day international human rights law¹⁰. There were isolated efforts to curb slavery¹¹ and trafficking in women & children¹² Humanitarian treatment of prisoners of war was reinforced¹³.

Human rights have ceased to be a matter of national affairs after establishment of UN and particularly after the UN adoption of UDHR, 1948. UN has today established an international regime for human rights by

- Adoption of General Assembly Resolutions forming 'soft law', (non-binding form)¹⁴
- Encouraging the member states to adopt the treaties forming 'hard law' (binding form)
- Establishing monitoring institutions and paving the way for implementation.

The UN Human Rights initiatives have led to a worldwide human rights movement. The high level human rights bodies of UN namely the International Human Rights Commission and the office of the High Commissioner for Human Rights are working in coordination with UN specialized agencies like UNESCO, UNICEF, WHO and International Non – Governmental Organizations. Almost all the national constitutions recognize & protect these universal human rights.

⁶ U.N. Charter, Article 1(3)

⁷ Supra n.3, Article 55

⁸ Teaching Human Rights, United Nations, New York, 1989 p.5

⁹ Imre, Szabo, "Historical foundations of Human Rights and Subsequent Development", The International Dimensions of Human Rights, Vol .1, English Ed., by Philip Alston, UNESO, p.11, as quoted in Dr . U. Chandra, Human Rights, p.1, Allahabad law Agency publications, 2000.

¹⁰ See, J.G. Starke, International Law, S.K. Kapoor, International Law, Central Law Agency.

¹¹ Slavery Convention 1926

¹² International Convention for the Suppression of Traffic in Women and Children, 1921

¹³ Geneva Conventions, 1949

¹⁴ Illustrations: UDHR 1948, Declaration on Elimination of all Forms of Discrimination against Women 1967, Declaration on Rights of a Child 1959, Vienna Declaration 1993 etc.

National level & local non-governmental organizations have also emerged in the battle towards achieving a future where people will live together in harmony, tolerance & mutual respect. Indian Constitution, 1950 embodies the human rights values¹⁵. Supreme Court of India by its activist approach to constitutional interpretation seeks to raise the Indian human rights norms to international standards. A plethora of cases stand testimony. Protection of Human Rights Act, 1993 establishes human rights commissions at the national and state levels to inquire into complaints of human rights violations and make recommendations to the government. The Act provides that Human Rights means the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India¹⁶. India also witnesses a large network of NGO's striving for human rights cause.

Human rights education: Indian scenario

Article 51A (I) of Indian Constitution 1950, imposes a duty on all citizens to develop scientific temper, humanism and the spirit of inquiry & reform. The effective discharge of this duty will require HRE to give people enhanced awareness & greater openness. Right to education has also been incorporated¹⁷. The Constitution mandates the state to direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom & dignity and that childhood and youth are protected against exploitation and against moral & material abandonment¹⁸. HRE of the children as well as the other people is indispensable to the full realization of the responsibility under this constitutional directive. Indian state has an obligation to foster respect for international law and treaty obligations as laid down in Article 51 of the Constitution. India is a signatory to UDHR & has ratified Civil and Political Rights Convention, Economic, Social and Cultural Rights Convention, CEDAW CRC etc. HRE is inescapable and a legal obligation.

Right to Education: The Indian constitutional perspective

The Indian Constitution is known to be a document committed to social justice. As per expert opinion, literacy forms the cornerstone for making the provision of equality of opportunity a reality.¹⁹ The Indian Constitution has therefore recognized education as the essence of social transformation, as is evident from its education specific Articles. The judicial decision from which the right to education emanated as a fundamental right was from the one rendered by the Supreme Court in *Mohini Jain vs. State of Karnataka*²⁰. In this case the Supreme Court through a division bench comprising of justices Kuldip Singh and R.M Sahai, deciding on the constitutionality of the practice of charging capitation fee held that:

‘The right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.’

This rationality of this judgment was further examined by a five judge bench in *J.P.Unnikrishnan vs. State of Andhra Pradesh*²¹ where the enforceability and the extent of the right to education was clarified in the following words:

‘The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.’

The same has also been reiterated by the Hon'ble Supreme Court in *Bandhua Mukti Morcha, etc. vs. Union of India*²²

‘In Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi, right to education at the secondary stage was held to be a fundamental right. In J.P.Unnikrishnan v. State of Andhra Pradesh, a constitution Bench had held education upto the age of 14 years to be a fundamental right.... It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.’

Right to Education act, 2009

Way back in the year 1911, a man had wished that Indian people be conferred with the right to education and had even urged the Imperial Legislative Assembly for the same. The man was none other than Gopal Krishna Gokhale. It is after 100 long years that his dream of free and compulsory education has come true. The 86th Constitutional amendment making education a fundamental right was passed by Parliament in 2002. In the year 2009 a law to facilitate the realization of the fundamental right to education was passed by the Parliament by way of the Right of Children to Free and Compulsory Education Act (RTE). The right to education has finally become a fundamental right by giving effect to the Act on April 1st, 2010. The Act mandates the Government to provide education to every child up to the eighth standard, free of cost, irrespective of class and gender.

Therefore to put it briefly the RTE Act provides for the following:

- Children, who have either dropped out from schools or have never been to any educational institution, will be enrolled in the schools with no school refusing admission to any child.
- Private institutions have to reserve 25 percent of seats from children from weaker sections of society.
- Neighborhood schools will be identified by a system of school mapping, and children of six and above who are not in schools will be identified by local authorities or school management committees.
- All such schools are required to be recognized failing which they shall be penalized for upto Rs. 1 lakh.
- The Act also prohibits donation or capitation fees and no admission test or interview of the child or parent for admission.

¹⁵ Part - III, Articles 14-32 Comprise of fundamental rights incorporating the civil and political rights and Part IV Articles 36-51 comprise of directive principles of State Policy incorporating the economic, social and cultural rights.

¹⁶ Section 2(1) (d)

¹⁷ Article 21A; See also Articles 30,41,45 and 51 A(k)

¹⁸ Article 39(f)

¹⁹ Consultation Paper on 'Literacy in the Context of the Constitution of India', Advisory Panel on Promoting Literacy, Generating Employment, Ensuring Social Security and Alleviation of Poverty, September 26,2001, <http://lawmin.nic.in/nrcwcfinalreport/v2b1-5.htm>

²⁰(1992) 3 SCC 666

²¹ (1993) 1 SCC 645

²² JT 1997 (5) SC 285

- No child can be held back, expelled and required to pass the board examination till the completion of elementary education.
- It also provides for adequate number of qualified teachers to maintain a ratio of one teacher for every 30 students.
- Schools have to ensure proper infrastructure, which includes a playground, library, adequate number of classrooms, toilets, barrier free access for physically challenged children and drinking water facilities within three years.
- 75 percent members of the school management committees will comprise parents of the students who will monitor the functioning of the schools and utilization of grants.
- The National Council for the Protection of Child Rights shall monitor the implementation of the act, together with Commissions to be set up by the states.
- Financial burdens will be shared between the Centre and States in the ratio of 55: 45 and 90:10 for the North-Eastern States.

The Act however does have the following loopholes

- It is quiet silent on the rights of children with disability. It does not facilitate the education for children with disability since as per the Persons with Disability Act, 1995, the government should ensure that every child with a disability every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years and not just upto 14 years as provided under the RTE Act.
- It encourages implementation of its provisions through Public Private Partnership, which therefore would lead to privatization and commercialization of education.
- A number of PILs have been filed by various private unaided and minority schools against the Act, contending that the Act violates their fundamental right guaranteed under Article 19(1) (g), 29 and 30 of the Indian Constitution. The matter has been placed before a Constitution Bench of the Supreme Court comprising of five judges for final decision.
- The fundamental right to free and compulsory education has been confined only to education from the age of 6 to 14 and does not provide for the fundamental right to education in the formative years through pre schooling (for children in the age group of 2- 6) and also in the graduation level till the age of 18 years.

Conclusion and Suggestions

States parties must closely monitor education including all relevant policies, institutions, programmers, spending patterns and other practices so as to identify and take measures to redress any *de facto* discrimination. Education operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated.

In the last 60 years the government of India has evolved very successful programmers in imparting primary education in the country. Primary education is now provided in the mother tongue or regional language in all the states and union territories (UTs). There has been substantial increase in access to elementary education, with reduced class, caste and sectional disparities. Despite substantial achievements, the task of universal elementary education (UEE) is far from complete. Enrolments in the schools have certainly increased but so have the number of out of school children. Sadly, the country today has one of the largest illiterate populations in the world. Caste, gender, class and regional disparities in UEE though reduced are still glaring and persistent. The educational administration in most states and UTs has yet to effectively tackle endemic problems concerning shortage of teachers, teacher absenteeism, inadequate and improperly designed school buildings, lack of teaching/learning equipment, need-based teacher training, and a curriculum related to real life requirements.

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