

Constitutional Safeguards of Free and Compulsory Education: A Focus on Right to Education in India

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Abstract: *Constitution provisions when read carefully lead only to one conclusion, that is, the Constitutional recognition of the Right to Education and a reflection of the policy in these provisions from Article 21 of the Constitution in the form of the most valuable right without which life is neither possible nor meaningful. This is easy to explain after a judicial blending of the Chapter III and IV of the Constitution treating, Inter alia socio-economic justice as part of the Fundamental Right.*

Key Words: *Education, Justice, Equality, Fundamental, Compulsory.*

1. INTRODUCTION :

“Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of midnight hour, when the world sleeps, India will awake to life and freedom.” With these eloquent words on the historic night of August 14, 1947, Mr. Jawaharlal Nehru signaled free India’s journey into an unknown future. India stepped out from the old to the new...The India nation long suppressed, “awoke to life and freedom.”

For redeeming the pledge substantially, India decided to be an effective democracy. This fact alone underlined the vital role education plays in the national development. “Educate your masters” became the slogan of the resurgent nation. This culminated in making liberal provisions in Indian Constitution.

The Constitution of India as well as the Charter of India’s Freedom is a unique and rare blue-print of democracy. As it embodies India’s full self-expression and mirrors the hopes and aspirations of people, it is but natural that education should find an honored place in this document. The Constitutional provisions related to education are described in this chapter for anyone interested in education and in the educations of future citizens. A firm grasp over all the Constitution’s provisions which are made for solving educational and social problems in the country is of tremendous importance.

2. Constitutional Safeguards of Education in India :

Part IV of the Constitution (Article 37 to 51) contains what may be described as the Directive Principles of State Policy. The Directive Principle are the embodiment of the principles of social engineering and ideals of social order that contains popular aspirations and expectations of the people more particularly the ideals of economic democracy. Indeed, they are compromise between ideals and reality. Commenting on the nature of Directive Principles of State Policy, Paras Diwan has observed that it was like “a vast beautiful vase in which everyone was permitted to put a bunch of flowers of his own liking and choice, and the Directive Principles became more than percepts....the flowers of all the ideals, sentiments, aspirations, percepts and goals were placed in this base. The Gandhian, ideology the Hindu orthodoxy, ideals of socialism, aspirations of weaker section of society, sentiments of minorities, all found a place.”

Speaking in the justification of inclusion of Directive Principles in the Constitution, Dr. B.R Ambedkar observed that “our object in framing the Constitution is really two-fold (1) to lay down the form of political democracy, and (2) to lay down that our ideal is economic democracy and also to prescribe that every Government whatsoever is in power, shall strive to bring about economic democracy.

The Directive Principles do not set any particular form of economic democracy, like, individualism, or socialistic or communistic form of democracy. They simply set the goals to be achieved in accordance with available material resources and economic capacity of the State from time to time. The goals so set are, in fact, to advance the aims and objectives stated in the Preamble to the Constitution, i.e., to establish a equalitarian society based on social, economic and political justice.

The Directive Principles impose obligation upon the State to take positive action to promote the welfare of the people by securing and protecting as effectively as may be social order in which justice, social, economic and political shall inform the institutions of national life. Thus, the Directive Principles differ from the fundamental rights in respect

that the fundamental rights cast a negative duty upon the State to refrain from doing something. The various fundamental rights incorporated in Part III of the Constitution constitute restraint upon the action, both executive as well as legislative of State. They require the State to refrain from doing something prejudicial to the rights of individuals so guaranteed. On the other hand, the Directive Principles enjoin the State to do something positive for the welfare of the people. In reality, the Directive Principles constitute directions to the legislature as well as executive to orient their policy of administration in accordance with these principles.

Article 37 of the Constitution clearly states that the “Directive Principles are not enforceable by any court. It is argued that the obligation of State to implement, these principles are moral only. If a State does not take initiative to implement these principles no judicial proceeding can be instituted against it. As a matter of fact, the implementation of these principles depend upon the mobilization of resources, thus keeping in view the financial constraints of State, it is left on them to implement these principles in accordance with their economic capacity. Here again, the Directive Principles may be distinguished from the fundamental rights on the ground that the fundamental rights are enforceable through courts. Article 13 of the Constitution specifically provides that any law which is inconsistent with fundamental rights are void. There is no such provisions in respect of the Directive Principles with the result that these principle are regarded as directory in their scope and operation. Thus, they constitute guidelines for the legislature but they do not confer and additional power or competence upon the legislature.

However, the Directive Principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Moreover, the courts look to these principles as yardstick for determining the reasonableness and public purpose¹ in the sense that they constitute as dependable index of public purpose upon fundamental right. So, the Directive Principles are uplifted by the judiciary to such a level as to make them enforceable human rights.

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

- a) Article 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.
- I. Employment
 - II. Education and
 - III. Public assistance in cases of unemployment old age, sickness and disablement and in other cases of underserved want.

- b) Newly substituted Article 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.

Before Constitution (Eighty-Sixth amendment) Act 2002, Article 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** the Supreme Court held, the “Right to Education” up to the age of 14 years is a Fundamental Rights within the meaning of Article 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 Rights to education has been added as a fundamental right in Article 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.

- c) Article 46 speaks about promotion of education and economic interest of scheduled caste, scheduled tribes and other weaker section. It 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.

Acknowledging Part-IV of the Indian Constitution the Hon’ble Bombay High Court observed that policy and plans establishing new schools should be clearly explained by the State Government.

It is a fact that the Constitution, these directive principles are fundamental in the governance of the country, but they cannot be enforced through court of law. However the Supreme Court has interpreted the directive principles in a very liberal manner and have even enforced some of them under appropriate situations.

3. Education as Fundamental Right :

Following Articles of the Constitution makes provision for educational rights available:

Article 19 (1) (g) of the Constitution of India provided that all citizens have the rights to Practice any Profession, or to carry on any occupation, trade or business. This right is intended to ensure that 'Citizens' right 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 general public.

Article 21-A

It lays down 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. Till 2002 Constitution Eighty Sixth Amendment, Right to Education was not a specially guaranteed Fundamental Right under the Constitution, it was only after **Unnikrishnan v. State of Andhra Pradesh**, which had widely interpreting Article 21 that it recognized Right to Education as one of the aspects of personal liberty. This was done by the Judiciary in exercising its role of judicial activism not by our legislatures who are deemed to be reflecting the wishes of the people. However, though at a very late stage, Right to Education has been made by the Constitution (Eighty Sixth Amendment) Act 2002 a Fundamental Right.

4. Education as Fundamental Duties :

The education policy of the State has to promote and inculcate such culture among its citizens so that they sincerely discharge their Fundamental Duties contained in Article 51-A. The Fundamental Duties contained in Article 51-A are in fact the Principles on the basis of which free and compulsory education to children has to be moulded and implemented. Following Fundamental Duties relate to the type of education to be imparted in the educational institutions.

- (a) To render social service when called upon to do so.
- (b) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional and sectional diversities and to denounce practice derogatory to the dignity of women.
- (c) To value and preserve the rich heritage of our composite culture.
- (d) To protect and improve the natural environment including, forest, lakes, river and wild life and to have compassion for living creatures and
- (e) To developed scientific temper, humanism and spirit of enquiry and reform.

The newly added sub-clause (k) to Article 51-A of the Constitution makes it a Fundamental Duty of the parents not just to send their children to a school provided by the State but also to 'provide opportunities' for education' to their children.

Article 51-A is confined to citizens unlike some of the Articles relating to Fundamental Rights (e.g. Art.-21) which extend to all "persons". The Court may look at the Fundamental Duties while interpreting equivocal statutes which admit of two constructions. The unfortunate aspect of Fundamental Duties is that they cannot be enforced by writs. They can be promoted only by Constitutional method. However, they cannot be used for interpreting ambiguous statutes. Where the Constitutionality of an Act is challenged, the Court may look at Art. 51-A to uphold it would be for the educational institutions to impress on the mind of the taught the significance of these Fundamental Duties so that later in life they may behave in manner consistent with these duties.

5. The Right of Children to Free and Compulsory Education Act, 2009 :

Constitution was amended to make education a Fundamental Right, the Central Government has implemented the Right of Children to Free and Compulsory Education Act, 2009. The Act promises to empower children through mandatory education till class VIII. The law aims to bring 8.1 million school children of the total 193 million children in six and 14 age group in the ambit of quality school education. In short, the Government can be sued for not providing free education.

6. CONCLUSION :

Act 2009, legalizes the right to free and compulsory education for all children between the ages of 6 to 14 in India, modern India certainly had achieved a landmark. Every citizen of India within the age group has the right to education. The World Bank Education specialist for India, Sam Carlson, has observed that the Right to Education Act is the first legislation in the world that puts the responsibility of ensuring enrollment, attendance and completion of a course of study on the Government whereas in the U.S. and other countries it is the parent's responsibility to send their children to schools. Some of the basic principles which guide us in the implementation of the Act are-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. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. Basic education is a fundamental necessity which can be considered at par with shelter and clothing.

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