

# Teacher Educator Must Know the Right to Education: Need for A Legal Perspective

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## Abstract

All the teacher-educators deal with education in its various kinds and perspectives, but perhaps they hardly deal with legal education. Here it is paramount to note a popular saying about law that 'Ignorance of law is no excuse'. Therefore, it is a must in the present context of this paper to highlight some special features of a very important piece of legislation i.e. the Right of Children to Free and Compulsory Education Act, 2009 so that the teaching community may find it handy to be acquainted with the basic law about this right to children. The Act spells out firstly the definitions of relevant terms and words used in the Act and then duties of appropriate government and parents, responsibilities of schools and teachers for free and compulsory education, redressal of grievances, constitution of National & State Advisory Councils and miscellaneous other provisions of the Act.

Jurisprudence of Right to Education begins with India's International Commitment to it with universal declaration of human rights, 1948 and different international covenants and UN convention on Rights of Child, 1989. More emphasis will be given to the present provisions of the above referred Act, along with a few suggestions.

## I. Introduction: 'Education' A Word of Widest Import

'Education' is not only a word of some meaning, but it is a complete concept, both an academic and functional, and it also involves process or processes of conscious learning, a process of development of individuality as well a process of adjustment to our environment. Thus, Education aims at the development of the total personality of the individual whereas 'Instruction' is addressed only to his mental development.

Modern education may be said to be a friend, philosopher and guide. Even much more can be well said about modern techniques of education, the present writer feels and firmly believes that all modern tools and techniques may be fast developing but they all aim at equipping a teacher with all round dynamic personality with which he can squarely face today's technological times, along with his in-born sense of discretion at his individual command. Because, if a teacher remains slave only to modern techniques without really being improved unto himself, he will fail miserably.

## II. Need For Some Legal Education

Today's academic and professional education has many branches that are so developed as they find place as academic subjects like Environmental Education, Human Rights Education, Consumer Education and Physical Education etc. Likewise, legal education is also an academic subject of much societal interest and needs to be known by teacher-educators and as well as teachers. In Law, it is a popular saying that 'ignorance of law is no excuse'. So, teachers, also as a responsible citizen must know the basic law of the land. Constitution of a country is the basic law of the land. India's constitution today, has provisions of the Right to Education, both under directive principles of state policy and under fundamental rights respectively in part IV & part III of the constitutional scheme, including fundamental duties also.

Initially, our constitution only provided directive principle of elementary education in Articles 45 & in limited sense in Article 41, casting an obligation upon future governments to make efforts of providing free and compulsory education for children until they complete the age of fourteen years. But after constitution (86th Amendment) Act, 2002, now, we have right to free and compulsory elementary education both as a Fundamental Right under 21 A, and as a directive principle in the form of amended Article 45 (which talks of early childhood care and education below the age of six years also), and in addition, Article 51 A (k) which has been enshrined as a fundamental duty of the Indian parents to provide opportunity to their children for education between age of six and fourteen years.

## III. Law and Right to Education

The Hon'ble Supreme Court observed that children of the nation are supremely important asset. Their nurture and solicitude are our responsibility, children's programme should find a prominent part of our national plans for the development of human resources, so that our children grow up, to become robust citizens, physically fit, mentally alert, and morally healthy; endowed with the skills and motivations needed by society [1].

## IV. Position in Other Countries

The Government of India Act, 1935 provided that "education should be made free and compulsory for both boys and girls." In European countries like in Great Britain and Ireland, France, Germany and Italy etc., it is compulsory and free. In Spain, Portugal, Greece, Bulgaria, Serbia and Romania, it is free, and in theory, compulsory, though compulsion is not strictly enforced [2].

## V. Right to Life was Expanded by Supreme Court

Education is one of the basic elements for the success of democratic system of any Government. An educated citizen may choose better representatives, to form the Government. Education provides human dignity to a person, to develop himself as well as contribute towards the development of his country. The framers of our constitution realizing the importance of education, impose a duty on the state under Article 45, as one of directive principles of State Policy, to provide free education to all children until they complete the age of 14 years, within 10 years from the commencement of the constitution. The object was to abolish illiteracy from the country. It was expected that the elected Governments of the country would honestly implement this directive. But, this right was not recognized by many states [3].

But our Supreme Court found out the definite content and substance of Right to Education and creatively interpreted and treated it to be a fundamental feature of the Right to Life incorporated in our constitution.

## VI. India's Position : Laying Down the Content and Parameters of Right of Education

Our Supreme Court held that right to free education falls in

the 'right of life' enshrined in Article 21 of the constitution.<sup>4</sup> Supreme Court made it clear that many freedoms guaranteed as fundamental rights cannot be fully realized without the proper education. Supreme Court though reiterated the right to education as fundamental right but limited the state obligation to provide educational facilities with certain classification — (i) Every citizen has a right to free education until he completes the age of fourteen years; but (ii) beyond that stage, the state obligation to provide education is subject to the "limits of economic capacity and development of the state."

#### **VII. Enactment of the Constitution (86th Amendment) ACT, 2002**

After the Unnikrishnan case, the ideal and noble-intentioned commitment of Indian Parliament broadening the canvas of Right to Education came in the form of the Constitution (86th Amendment) Act, 2002. This amendment has inserted Article 21 A and clause (k) in Article 51 A with the substitution of Article 45 of the constitution.

#### **VIII. Fundamental 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 [5].

#### **IX. Early Childhood Care and Education to Children below the age of six years**

Below the age of six years, the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years [6].

#### **X. Fundamental Duties of the Parents or Guardian**

It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.<sup>7</sup>

#### **XI. Right to Education under International Law**

The Right to Education should be seen from International Law angle also. If we closely see the Universal Declaration of Human Rights, 1948, we find it a fundamental fountain of all human rights, human dignity and an inspiration for all national and international efforts to promote fundamental freedoms, international peace and other common standards of mankind's behaviour, and this declaration is a general principle of law by virtue of the recognition it gets at the hands of international community in terms of worldwide moral standards and prescriptions.

#### **XII. Universal Declaration of Human Rights, 1948**

Article 26 of Universal Declaration of Human Rights provides that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. ....Parents have a prior right to choose the kind of education that shall be given to their children.

#### **XIII. International Covenant on Civil and Political Rights, 1966**

This covenant is silent will regard to free and compulsory education at any level, but speaks about religious and moral education to

their wards.

Article 18(4) of the Covenant states that "the State Parties to the present Covenant undertake to have respect for the liberty of parents and when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conventions."

#### **XIV. International Covenant on Economics, Social and Cultural Rights, 1966**

Article 13 of the Covenant provides right to education to everyone. It states that "the State Parties to the present Covenant recognize the right of everyone to education. ....they further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

#### **XV. United Nations Convention on Rights of Child, 1989**

Emphasis is laid on the need for international cooperation to ensure this right. Make higher education accessible to all on the basis of capacity by every appropriate means (Article 28). Article 29 of this convention stresses : The State must recognize that education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential.

#### **XVI. Some Definitions of Important Words in the Right of Children to Free and Compulsory Education Act, 2009**

Let us now peek into the provisions of the Act called as above (and hereinafter called 'The Act')

##### **Enforcement Date of the Act**

The central government appoints the 1st day of April, 2010 for enforcement date of the Act.

##### **Definitions of the main words of the Act**

"Child" means a male or female child of the age of six to fourteen years [Sec. 2(c)];

"Child belonging to disadvantaged group" means a child belonging to the scheduled caste, the scheduled tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate government, by notification. [Sec. 2(d)];

"Elementary Education" means the education from first class to eighth class [Sec. 2(f)];

"Guardian", in relation to a child, means a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a court or a statute;

"National Commission for Protection of Child Rights" means the national commission for protection of child rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005 [Sec. 2(i)];

"Parent" means either the natural or step or adoptive father or mother of a child;

"School" means any recognized school imparting elementary education and includes —

- a school established, owned or controlled by the appropriate government or a local authority;
- an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate government or the local authority;

- a school belonging to specified category; and
- an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate government or the local authority;

“**Specified Category**”, in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate government;

“**State Commission for Protection of Child Rights**” means the State Commission for Protection of Child Rights constituted under Section 17 of the Commission for Protection of Child Rights Act, 2005 (4 of 2006).

### **XVII. Main Features of the Right of the Children to Free and Compulsory Education Act, 2009**

The main features of the Act may be summed up as follows —

- Free and compulsory education to all children of India in the 6 to 14 age group.
- No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;
- A child who completes elementary education (upto class VIII shall be awarded a certificate;
- Calls for a fixed student-teacher ratio;
- Will apply to all of India except Jammu and Kashmir;
- Provides for 25% reservation for economically disadvantaged communities in admission to class one in all private schools;
- It mandates improvement in quality of education;
- School teachers will need adequate professional degree within five years or else will lose job;
- School infrastructure to be improved where need exists, else recognition cancelled;
- Financial burden will be shared between state and central government [8].

### **XVIII. Some Experience Sharing from Gujarat Success**

Some figures from the State of Gujarat put the idea of financial incentives for youth into action. Figures indicate that the school enrolment drive of the State Government supported by incentives like Vidyalaxmi bond of Rs. 1,000 given to each girl who completes primary education and 60 kg of wheat for tribal girls attending school, has met with significant success. Besides, many corporate houses and community have also come forward to motivate parents and children by donating school bags, uniforms, stationery etc. [9].

As a result, the drop-out rate has come down from 28.72% in 2003-04 to 2.98% in 2007-08 in class 1 – 5. In girls, this rate has dropped from 29.67% to 3.25 in the same period [10].

### **XIX. Some Recommendations for the Enforcement of Compulsory Education**

The Hon’ble Supreme Court has made the following recommendations in this regard —

- The recommendations for the enforcement of compulsory education are contingent upon the implementation of a financial incentive programme that would make education viable for the poor. The carrot must come before the stick.
- The Parliament should criminally penalize those parents their children to work and penalize those employers who preclude children from attending school or completing homework.
- The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most

important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented [11].

### **XX. Conclusion**

The standard of any country can be measured by the rate of its literacy, especially of the age group of 6 to 14 years. Unfortunately in India, after legislation by almost all the States and providing compulsory education in some states from 1960s, we could not achieve the result. The central and state government also made many attractive schemes to send the poor children to school. The main programmes are Sarva Shiksha Abhiyan, Mid-Day Meal, Cess Tax, dress distribution, Scholar, etc., but so many efforts could make only little improvement. In such conditions it is found that the defect is within the system, implementation, observation of the scheme, etc. [12].

To make 100% literacy it is necessary that every one of us should play a positive role, without any greed to political, academic or professional level. It is not only the States, Educational Institutions, or local self government bodies, but all of us should come together hand in hand to fight illiteracy in the country, by helping such unprivileged children [13].

Therefore, in respect of education everybody of us is a stake holder in a fast globalizing world where democracies — being responsive and responsible form of Government — we all have to be responsible citizens in our respective countries — and proper education is the only panacea for the proper solution of maximum number of problems.

### **References**

- [1] Lakshmi Kant Pandey v. Union of India, AIR 1984 SC 469.
- [2] Lok Sabha Debates, 28th November, 2001, Vol. 26 page 476 : quoted by Dr. Murli Manohar Joshi, (Then) Minister of HRD, while debating on a bill relating to 86th constitutional amendment.
- [3] Malik, Dr. Krishna Pal, “Right to Education”, Ist Ed. 2010, Allahabad Law Agency.
- [4] Mohini Jain v. State of Karnataka (1992) 3 SCC 666.
- [5] Article 21A, inserted by Constitution (86th Amendment) Act, 2002
- [6] Article 45, substituted by the Constitution (86th Amendment) Act, 2002
- [7] Article 51A(k), inserted by Constitution (86th Amendment) Act, 2002
- [8] Malik, Dr. Krishna Pal, “Right to Education”, Ist Ed. 2010, Allahabad Law Agency, p. 61.
- [9] Ibid.
- [10] Ibid.
- [11] Ibid.
- [12] Ibid.
- [13] Ibid.



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