

Evolution of Right to Education - Case Study of India

Introduction

The right to education has been recognized as a constitutionally protected fundamental right in India. In *Unni Krishnan v. State of Andhra Pradesh* (1993), the Indian Supreme Court declared that the right to education comprises part of the fundamental right to life under Article 21 of the Indian Constitution. In 2002, through the Eighty-Sixth Amendment Act, the Indian Parliament amended the Constitution to insert a fundamental rights provision, Article 21-A. It requires the state to provide free and compulsory education of all children between the ages of six and fourteen in such a manner as the state may determine.

In 2009, the Indian Parliament enacted the Right of Children to Free and Compulsory Education Act [RTE Act]. The Act aims to provide “free and compulsory education to all children of the age of six to fourteen years.”¹ Over the past six years, many studies have been conducted to analyze the Act’s impact and effectiveness across India. Several NGOs have monitored its implementation through fact-finding reports. Most reports focus on how states across India have fared on a range of standards. “These studies generally look at learning outcomes, including students’ English and mathematics comprehension.”²

Prior to Right to Education

When the Constituent Assembly adopted the Indian Constitution in 1950, it also adopted provision for social justice called Directive Principles of State Policy (DPSPs). “The DPSPs were originally not justiciable in Indian courts; instead, they created a positive obligation on the state to pass and enforce legislation to promote greater socioeconomic justice”.³ “However, in a series of cases termed as ‘public interest litigation’, the Indian Supreme Court came to recognize a range of socioeconomic rights, including the right to education, as justiciable fundamental rights within the right to life in Article 21.”⁴

¹ The Right of Children to Free and Compulsory Education Act, 2009, No. 35 of 2009 available at <http://indiacode.nic.in/>

² Annual Report, 2013-14, Department of School Education & Literacy Department of Higher Education, Ministry of Human Resource Development, Government of India; available at: http://mhrd.gov.in/sites/upload_files/mhrd/files/statistics/EAG2014.pdf

³ Social Rights and the Indian Constitution, 2004 Law, Social Justice & Global Development Journal (Feb. 28, 2005)

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Evolution of Right to Education Act

The National Policy on Education (1986) was an initiative set up before the Indian Parliament to raise the quality of education. It built upon the National Policy on Education (1968) and the Kothari Commission Report (1966). “During the third five-year plan (1961-1966), there was need for comprehensive review of the education system, since the government felt that “the education system has not generally evolved in accordance with the needs of the times.”⁵ The Policy called for a drive for substantial improvement of primary schools and the provision of support services. Minimum levels of learning were laid down for the primary stage.

International Guidelines

The Right to Education has been recognized in several International Conventions such as the UDHR, the ICESCR, and the UN Convention on the Rights of the Child, among others. The right has been reaffirmed in several non-binding guidelines and principles of International law. All these instruments recognize that the right can be achieved by providing free and compulsory primary education. “The Committee on Economic and Social Rights’ General Comment No. 13 (1999) is an important milestone towards the implementing of ICESCR’s provisions on the right to education.”⁶ The realization of this right will only be achieved through certain essentials:

- a) **Availability** of functioning educational institutions and programs in sufficient quantity within the jurisdiction of the State party.⁷
- b) **Accessibility** of educational institutions and programs to everyone, without discrimination, within the jurisdiction of the State party.⁸
- c) **Acceptability** of the form and substance education including curricula and teaching methods to students and in appropriate cases parents.⁹
- d) **Adaptability** and flexibility of education so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.¹⁰

⁵ Third Five-Year Plan [1961 to 1966] See <http://planningcommission.nic.in/plans/planrel/index.php?state=planbody.htm>

⁶ General Comment No. 13, see at http://www.minoritycentre.org/sites/default/files/cescr_gen_comm_13_education.pdf

⁷ General Comment No. 13, see at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>, [Para 6]

⁸ General Comment No. 13, see at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>, [Para 6]

⁹ Right to Education: Indian and International Practices, p 4 (Available at: <http://rwi.lu.se/wp-content/uploads/2012/04/Right-to-Education-Indian-and-International-Practices-Manoj.pdf>)

Landmark Cases Leading to Constitutionalization of Right to Education

In 1992 and 1993, the Supreme Court delivered landmark judgment in two PIL cases, where the plaintiffs claimed a judicially enforceable right to education. In *Mohini Jain v. State of Karnataka*, the petitioner challenged a notification passed by the Karnataka Government under Section 5(1) the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984. The notification permitted private medical colleges to charge high tuition fees to “Indian students from outside Karnataka” of an amount not exceeding Rs. 60,000 and the students who obtained “Government seats” were charged far lower tuition fees. The issue contented was admission due to non-payment of this tuition fee constituted a deprivation of the right to education. Supreme Court held that although the Right to Education has not been expressly guaranteed as a Fundamental Right under the Constitution, it is clear from the Preamble of the Constitution and the Directive Principles of State Policy, that the framers of the Indian Constitution intended the State to provide education for its citizens. The Court stated *that one is only able to obtain a dignified life in India through education, making education fundamental to the Right to Life, and therefore an obligation of the State to fulfill.*

In *Unni Krishnan v. State of Andhra Pradesh*, a petition was filed by certain private professional educational facilities. The petition raised the issue in regard to the constitutionality of State laws regulating capitation fees charged by such institutions. The Supreme Court held that the Right to basic Education is implicit by the Fundamental Right to Life (Article 21) when read in conjunction with Directive Principles of State Policy that related to education (Article 41 and 45). Court held *that the parameters of the Right must be understood in the context of the Directive Principles of State Policy, including Article 45 which provides that the State is to endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children under the age of 14 years. After reaching the age of fourteen, the Right to Education is subject to the limits of economic capacity and development of the state (as per Article 41).*

In response to which there were several petitions were filed in the Supreme Court challenging the *Unni Krishnan* judgment. An Eleven-Judge bench in *T.M.A. Pai v. State of Karnataka, [1993]* replying to these petitions held that the quality of education should not be interrupted by unnecessary rules and

¹⁰ General Comment No. 13,

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>

regulations.

The immediate effect of *Unni Krishnan* judgment was that any child below the age of fourteen who was denied facilities for a primary education could approach a Court for enforcement of their Rights. After the 86th Amendment of the Indian Constitution in 2002, where Article 21-A was inserted to provide compulsory education for children aged 6 to 14 years. The Right for Children to Free and Compulsory Education Bill was passed by both the both houses of Parliament under the governance of the UPA Government in 2009.

Development after the RTE

The Right to Free and Compulsory Education Act, 2009, had issued specific directions for a three-year timeline with the objective of improving infrastructural amenities and hiring of teachers. It assisted in enacting reasonable standards such as Firstly, it imparted responsibility over the appropriate government and local authorities under Section 6 of the RTE Act, for establishing schools within such areas or limits of the neighbourhood. Secondly, it restricted recognition of a school if it did not abide by the norms and standards of the school under Section 19. It further stated that, it is imperative for schools, which were established prior to the commencement of the Act, to take steps for fulfilling the requirement of norms and standards specified in the school. As a consequence of default, clause 3 of the section denied recognition granted to a school under Section 18, which effectively would prohibit the functioning of school.

After the enforcement of RTE Act, 2009 Supreme Court has through various interim orders and judgments directed the Central, State and other responsible administrative bodies for adhering to the provisions of the Act and its appropriate implementation. In addition to the implementation, it also widely discussed the validity of the RTE Act and its provisions specifically.

Conclusion

The journey of the act in context of globalization should be measured by its ranking in global economic order and its ability to provide quality education. The last two decades has shown steady improvement on all fronts in sector of education, still there is scope of improvement in many aspects. Education is a vital requirement for growth, empowering individual and opening up opportunities in the process of development. The jurisprudential aspect of the subject has grown effectively through the judgments, International Covenants, and many reports on infrastructural, development goals but the potential this

piece of legislation can achieve is unconceivable. Despite everything going in the right direction, there are instances where funds are misused, corruption is involved and to realize the objective of 'Education to All' is unfathomable, especially those areas which continue to be facing problems of poor infrastructure, poverty and livelihood issues which are always going to be faced with huge dropout rates.