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ELEMENTARY EDUCATION FOR ALL: A FUNDAMENTAL HUMAN RIGHT

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Elementary Education for All: A Fundamental Human Right

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1. INTRODUCTION

Education is basic necessity for survival just as food, clothing and shelter, education is equally essential with other necessities mainly for self-sustenance, dignity and growth. The framer of the Constitution realized the importance of education and has imposed a duty on the state under Article 45 of Directive Principle of State Policy to provide free and Compulsory education to all children until they complete the age of 14 years within 10 years from the commencement of the Constitution. In the context of child right movement, there had been continuous advocacy demanding the education should be made a fundamental right. Even activists of the child labour movement joined this campaign. Such advocacy and campaigning led to the Unni Krishnan Judgment. In an unprecedented manner, the Supreme Court establishes new Human Right Jurisprudence. Article 45 which was an Economic Social and Political Cultural right under DPSP was read with Article 21, a Civil and Political, Fundamental Right, thus making education an enforceable Fundamental Right.

2. HISTORICAL BACKGROUND

The system of public elementary education in India is gigantic and universal as compared to the private schools. Therefore, by default the only elementary schools available to children in rural areas are government or government aided schools. Hence the percentage of private schools imparting EE has increased from 18.86 percent in 2006-07 to 19.50 percent in 2007-08. This report implies that Indian School education system is in great danger which being devastated and demolished in order to pave way for privatization.

2.1 Right to Education prior to Constitution

The access to formal education in the past was determined by birth. The Indian society was highly stratified, hierarchal and in-egalitarian. Prior to Constitution, the education picture broadly reflected the socio-economic background of inequality. The education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothibhai

Phule had demanded state sponsored free education for all children.

When Freedom Movement grew in strength, the right to provide free and compulsory education to all children recognized as a necessary and important goal of independent India. It was an idea and even demand to provide free and compulsory education for all the children up to the age of fourteen years.

2.2 Education since Independence

The National Policy on education (NPE) in 1968, have been set up to give unqualified priority to the Universalization of elementary education (UEE) program. The revised program of action 1992 resolved to ensure free and compulsory education of satisfactory quality to all children up to 14 years before Indian enter the 21 century. The Supreme Court in the Mohini Jain v State of Karnataka in 1992 followed by Unnikrishnan J.P. vs State of Andhra Pradesh in 1993 ruled that education is a fundamental right that follows the right to life in Article 21 of the Constitution. The 86th Amendment Act, 2002 made three specific provisions in the Constitution for realization of free and compulsory education to children between the ages of six to fourteen years as fundamental right. These are:

1. Adding Article 21A in the part III fundamental rights.
2. Modifying Article 45.
3. Adding new clause (k) under Article 51A in fundamental rights, making parents or guardian responsible for providing opportunities for education to their children between six to fourteen years.

The Central Advisory Board of Education (CABE) committee was constituted as a first drafting the RTE Bill. The Bill did not have tenets of Common School System (CSS) that would allow for compulsory and uniform quality education to all. Every child of the age of six to 14 years shall have a right to free and

compulsory education in a neighborhood school till completion of elementary education.

3. RTE: CONSTITUTIONAL PROVISIONS WITH JUDICIAL INTERVENTION:

Article 21 of the India Constitutional provides right to life includes a political, Social and Culture life and of human dignity would lead to the inclusion of right to education within the ambit of right to life. The Supreme Court has implies the right to education as a fundamental rights as part of the right to life. In Mohini Jain vs State of Karnataka, the Supreme Court held that the right to education flows directly from the right to life and that the Constitution did not expressly guarantee right to education. Unni Krishnan v State of Andhra Pradesh, the Court held that right to education is not stated expressly as a fundamental right in Part III of the Constitution of India. The Court proclaimed that right to education as fundamental right upto the age of 14 years.

This was in consonance with Article 45 under which the State is under an obligation to provide free and compulsory education for all children until they complete the age of 14 years. In Bandhua Muti Morcha vs Union of India and others, The Court held that right to life guaranteed by Article 21 does take in educational facilities. The right to education has been treated as one of transcendental importance in the life of an individual's has been recognized since from last thousands of years. The Justice K. Ramaswamy and Justice Sagir Ahmad observed that: "Education citizens could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform". Article 21A of the Indian Constitution inserted by the 86th Constitutional Amendment which provides that State shall provide free and compulsory education to children of the age of six to fourteen years. Article 41 of the Constitution as part of Directive Principle of State Policy under part IV is a reality of the fundamental right under part III which remains beyond the reach of large majority who are illiterate. The obligation on state that within the limits of its economic capacity and development make, effective provision for securing the right to education. In the Judgment of Bapuji Educational Association vs State, the right to education of the minorities was challenged, the court held that the right to establish and manage educational institution could be termed as "business". The right to manage educational institutions which have secured affiliation cannot be associated to right to ownership and management of purely private property or business. It was further stated that the word business in Article 19(1) (g) cannot be regarded as excluding the right to establish and manage educational institution. The only restriction to the right could be by means is reasonable restriction imposed in "public interest" as provided under Article 19 (6) of the Constitution. The question of right to free and compulsory education was raised in the case of Mohini

Jain case popularly known as "Capitation fee case." The main issues involved were

- (a) Is there a 'right to education' guaranteed to the people of India under the Constitution?
- (b) If so, does the concept of 'capitation fee' in fact the same?
- (c) Whether the charging of capitation fee in consideration of admission to educational institutions is arbitrary, unjust, and unfair and as such violates the equality clause contained in Article 14 of the Constitution?

The Judgment of Unnikrishnan, was the accuracy of the verdict given by the court in Mohini Jain case, it was held that right to education is fundamental right under Article 21 of the Constitution as it directly flows from right to life. The Court partially overruled the Mohini Jain decision and held that the right to free education is available only to children until they complete the age of 14 years, then the responsibility of the state to provide education is subject to the limits of its economic capacity and development. The duty created by the Article 41, 45 and 46 can be executed by the state either by establishing its own institutions or by aiding, recognizing or granting affiliation to private institutions. The Court mentioned that the Article 45 in Part IV has to be read in harmonious construction with Part III of fundamental right Article 21 of the Constitution, as the impact of right to life is of no use without education. Equal opportunities for development of all children during the period of growth should be our aim, for this world serves our larger purpose of reducing inequality and ensuring social justice. The Court found that government paid no serious attention to its responsibilities enclosed in the Directives for nearly twenty five years and the grounds for the negligence appears to be fact that they were not answerable to any one, not even to the courts.

The Court stated that article 45 has the ten year limit as children has right to education to call upon the State to provide educational facilities to him within limit of its economic capacity and development. The non-implementation of this Article 45 as regard to economic capacity is a matter within subjective satisfaction of the States.

In the subsequent case of the M. C. Mehta vs State of Tamil Nadu and others, the Supreme Court stated that the Article 45 has obtained the status of a fundamental right following the judgment of Unnikrishnan, as expressly stated that the provisions of the Part III and Part IV are supplementary and complementary to each other. The Court directed that the right in the provisions of Part III is superior to the moral claims and aspirations in the provisions of Part IV. The Court observed that the strength of the Constitution possibly is that children should not to be employed in factories as childhood is the determining phase and as stated in

Article 45 as they are supposed to be subjected to free and compulsory education up to age of the 14 years.

Although according to the provision all children until the age of 14 years believed to be in school, economic necessity compels grown up children to search for employment.

In *Islamic Academy of Education and others v State of Karnataka and others*, the question for determination concerned of the fee structure in private unaided professional educational institutions. There can be rigid fee structure by Government. Institutes must have the freedom to fix its own structure considering the need to produce funds to run the institute and to provide facilities compulsory for the student. They must also be capable to generate surplus which must be utilized for the development and growth of the educational institution.

In *TMA Pai Foundation v State of Karnataka*, the court observed that unaided educational institutions exercise a great autonomy as they, like any other citizen carrying on an occupation are entitled to a reasonable surplus for the development and expansion of the institution. The court further held that the state governments and universities cannot regulate the admission policy of unaided educational institution. An unaided minority educational institution would be free to appoint as long as some important qualification were stick to. It further lay down that minority institutions may have its own procedure and method of admission as well as selection of students, but such procedure must be fair and transparent. In *Modern School vs Union of India J, Kapadia*, reiterated that "what is prohibited is the commercialization of education". The Court held the right of the director of education to examine the economics of each private un-aided school to make sure they don't indulge in the privatization of education and to regulate their fee structures to certify they earn only rational surpluses. The Court stated that right of educations means that citizen has a right to call upon the state to provide education facilities within limits of its economic capacity and development.

Article 46 of the Constitution provides for pro- motion of education and economic interests of SC/ST and others weaker sections. This Article only enjoys promotion with special care of the education and economic interest of the weaker section of the people in particular, of the Schedule Caste and Schedule Tribe. It does not enjoy the state to scarify the Indian society as a whole for promoting the education and economic interests of Schedule Tribes and Schedule Castes. Article 46 of the Constitution does not ignore the minimum primary need of Indian society. In *Ashok Kumar Thakur vs Union of India*, In this Judgment the Supreme Court ruled against the reservations as provide in Act on two grounds :

Firstly it was held that the exact Proportion of BC, Other Backward Classes in Indian Population was not accurately identified.

Secondly, the Court held that setting quotas or reservation might not be an appropriate means of promoting diversity or affirmation action because it discriminates against meritorious candidates who do not suffer social disadvantage of cast, race or ethnicity.

In *Society of Unaided Private Schools of Rajasthan v Union of India*, The Supreme Court holds minority schools to be exempt from right to education Act. The Supreme Court in the case of *Society for Unaided Private Schools of Rajasthan v. Union of India*, upheld the constitutional Validity of RTE Act, laying down that it applicable to all schools except minority schools, it infringed upon their freedom of occupation under Article 19 (1) (g) . The Court repeatedly upheld that state has no power to force the admission of from amongst non-minority communities, particularly minority schools as affects to the minority character of institution.

The Supreme Court held that RTE Act is not applicable to unaided minority schools. As per the majority judgment by the bench headed by Honourable Chief Justice S. H. Kapadia, Justice K. S. Radhakrishna and Justice Swatanter Kumar J. J. "the validity of the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following: (i) a school established, owned or controlled by the appropriate Government or a local authority; (ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; (iii) a school belonging to specified category; and (iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority. However, the said 2009 Act and in particular Sections 12(1) © and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and, consequently, applying the *R.M.D. Chamarbaugwalla v. Union of India* Principle of severability , the said RTE Act 2009 shall not apply to such schools. In *Pramati Educational and Cultural Trust v Union of India*, the Constitutional validity of the Articles 15 (5) and 21-A of the Constitution was challenged as so far it relates to unaided educational institutions. The Constitution (Ninety -Third) Amendment, 2005 inserted clause (5) in Article 15, enables the State to make special provisions for members of the Schedule castes, Schedule tribes and, socially and educationally backward classes, for admission to all educational institutions including private unaided institution except minority institutions. By the enactment of Right of Children to Free and Compulsory Education Act, 2009 and its Rules, 2010

imposing several obligation on the schools as defined by the Section 2 (n), which included private managed educational institution. The obligation include duty to admit at least 25% students belonging to disadvantaged group and weaker sections of society as defined by Section 2(d) and 2(e) of the Act. The Supreme Court holds minority schools to be exempt from right to education Act.

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Forced admission of children of poorer, weaker and backward section of the society to a small percentage of seats in private educational institutions to achieve the Constitutional goals, of equality of opportunity and social justice set out in the preamble of the Constitution, such a law would not be destructive of the right to the private unaided education institution under Article 19 (1) (g) of the Constitution.

4. CONCLUSION AND RECOMMENDATION

The goal of Universalization of Elementary Education can only be achieve right to education provided to all the children through common school system recommended by Education Commission (1964-66) and committed by Government of India, National Policy for Education NPE (1968), NPE (1986) and NPE (1992). Education being a concurrent subject, centre and states will have to collaborate to implement the Act in its true spirit.

There are many lacunas exist in RTE Act and prevailing harsh socio-cultural and economic ground realities pose daunting challenges for executing RTE Act, 2009. The factors of sex opportunities cost of reduction and parent's attitude towards education plays considerable influence on the decisions of children's enrolment. To achieve the objective of the Right to Education it must be aligned with Sarva Shiksha Abhiyan (SSA).

The diversity and complexity of the situation of children, teachers need to have at their disposal a deep fund of empathy, commitment, conviction, conviction and ability to motivate to per- severe ; of knowledge and resources should be create to provide meaning full educational experiences for all children.

REFERENCES

1. Tilak, Jandhyala B. G. (2003), 'Financing Elementary education in India' in R. Govinda (ed.), India Education Report, National

Institute of Educational Planning and Administration, Oxford University Press, New Delhi.

2. Baghel. H. N - Education and Indian Society. Hari Prasad Bhargav, Agra (1985)
3. Sinha, Amarjeet. 2003. Basic Education For All. The Elusive Quest for Social Justice in a Dynamic Democracy. The Case of India.
4. MHRD (2003a). Education for All National Plan of Action, Ministry of Human Resources Development, Government of India, New Delhi.
5. MHRD (2010), Report to the People on Education 2009-10, Ministry of Human Resource Development, Government of India, New Delhi.