

HUMAN RIGHTS VIS-A-VIS RIGHT TO EDUCATION IN INDIAN CONTEXT:

PROBLEMS AND ISSUES

By

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Theme: **Social justice**

Sub Theme: **Scaling up Quality Education to all**

EDUCATION: STATUS IN ANCIENT TIMES

“Maataa Shatruo Pitaa Vairi Yen Balo Na Paathitaa Na Shobhate Sabhaa Madhye Hansa Madhye kako Yathaa.”

This is a Sanskrit saying depicting the importance of education. It means that “a Mother and Father who do not encourage their child’s education are his enemies indeed; an illiterate among educated one is the same as, in a group of Swans the Crow is neither wanted nor admired”.

In the ancient age Hindus were divided into four Varnas or classes, which later hardened into caste system. Education thereby imparted depended on each of the classes. Subjects like religion, philosophy, etc were solely taught to the priest class, the *Brahmins*. The *Kshatriyas*, the warrior class, was given knowledge in the various aspects of warfare. The business class, the *Vaishyas*, were taught trade related aspects while the lower class, the *Shudras* were made to stay away from education. The *guru* used to provide free education including boarding and lodging to his shishias. The Indian education during the Asian period had influenced the educational system on Western and South-east Asia.

HUMAN RIGHTS BASED APPROACH TO EDUCATION

Human rights are rights that are basic in nature and entitled to every human being, irrespective of his nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Such rights would include right to life, equality before the law, freedom of expression, the right to work, right to social security, right to education, collective rights, such as the rights to development and self-determination, etc. Therefore as is evident human rights are inseparable, interrelated and interdependent. The improvement of one right makes the progress of the others possible. Correspondingly, the denial of one right has negating affects on the others. The basic right that is protected by the term human right is right to life with dignity. A human rights-based approach to education is therefore necessitated since it assures every child a quality education that respects and promotes her or his right to dignity and optimum development. The right to education is marked priority on the agenda of the international community since right to education is not only a human right in itself but also is quintessential for the exercise of all other human rights. A number of human rights treaties accepted and recognized internationally, identifies right to education as a fundamental aspect for development and social transformation.

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Human rights in Indian Legal Parlance means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution embodies in the international covenants and enforceable by courts in India. According to Justice V.R. Krishna Iyer:

*Human rights are those irreducible minima, which belong to every member of the human race when pitted against the State or other public authorities or group or gangs and other oppressive communities. Being member of the human family, he has the right to be treated as human, once he takes birth or is alive in the womb with a potential title to personhood.*¹

Therefore human rights have a special significance in this changing world scenario.

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.² 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:

- I. United Nations Educational, Scientific and Cultural Organization (UNESCO)³

¹ V.R.Krishna Iyer, *The Dialectics and Dynamics of Human Rights in India – Yesterday , Today and Tommorrow* – Tagore Law Lectures, (Calcutta: Eastern Law House, 1999) 54

² 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.

³ 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,

- II. United Nations Children's Fund (UNICEF)
- III. World Bank
- IV. International Labour Organization (ILO)

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.⁴ 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*⁵. 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*⁶ 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*⁷ specifically referred to the earlier judgments made in this connection as under:

“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.”

5) Achieve gender equality by 2015,

6) Improve the quality of education

⁴ 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/ncrwc/finalreport/v2b1-5.htm>

⁵ (1992) 3 SCC 666

⁶ (1993) 1 SCC 645

⁷ JT 1997 (5) SC 285

RIGHT TO EDUCATION ACT, 2009

| Std | I | II | III | IV | V | VI | VII | VIII | IX | X | XI | XII | XII | XIII | XIV | XV | XVI | XVII | | | | | | | | | |
|----------------------|---|----|-----|----|----------------------|----|-----|---------------------|----|-------------------------|----|--------------------------|-----|------|-----|----------|--------|--------------|----|----|----|--|--|--|--|--|--|
| Age | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | | | | | | |
| ELEMENTARY EDUCATION | | | | | | | | SECONDARY EDUCATION | | | | HIGHER EDUCATION | | | | | | | | | | | | | | | |
| PRIMARY SCHOOL | | | | | UPPER PRIMARY SCHOOL | | | Secondary School | | Senior Secondary School | | | | | | PG Univ. | | M.PHIL /PH.D | | | | | | | | | |
| | | | | | | | | | | | | | | | | B.Ed | | | | | | | | | | | |
| | | | | | | | | | | | | Open University | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | B. Tech | | | | | M.tech | | | | | | | | | | |
| | | | | | | | | | | | | MBBS | | | | | MD/MS | | | | | | | | | | |
| | | | | | | | | | | | | Primary Teacher Training | | | | | | | | | | | | | | | |
| NON FORMAL CENTRES | | | | | NON FORMAL CENTRES | | | | | Technical School | | Poly Technics and IITS | | | | | | | | | | | | | | | |

The basic structure of education in India is depicted in the following figure:

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.

· Source: <http://education.nic.in/cd50years/g/u/9F/ouifozoI.htm>

- 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.
- 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:

1. 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.
2. It encourages implementation of its provisions through Public Private Partnership, which therefore would lead to privatization and commercialization of education.
3. 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.
4. 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.

INITIATIVES TAKEN BY THE INDIAN GOVERNMENT TO PROMOTE RIGHT TO EDUCATION, BEFORE THE RTE ACT

- **The Five year Plans** - Ever since India gained independence, developmental plans for a period of five years are being developed by the Planning Commission with the participation and contributions from all the States. It is evident that through the five year plans, the first being initiated in 1951, till the most recent one (Eleventh Plan: 2007-12),

there have been continuous efforts to strengthen the base of education in India by improving the quality of education imparted through several programs and schemes, introducing reforms in content and evaluation and encouraging research.

- **Sarva Shiksha Abhiyan (SSA)**, was started in 2001, to provide education to children between 6–14 years by 2010. The programme focuses specially on girls and children with challenged social or financial backgrounds. The SSA also aims to provide practical infrastructure and relevant source material in form of free textbooks to children in remote areas.
- **Mid-Day Meal Scheme (MDMS)** was launched in 1995 to enhance enrolment, retention, and participation of children in primary schools, simultaneously improving their nutritional status.
- **National Policy on Education (NPE)** was introduced in 1968. There have so far been mainly two comprehensive statements of the National Policy on Education, viz. those of 1968 and 1986. The national policy of education (1986) and program of action (1992) lay down the objectives and features of Indian education policy such as promotion of equality, common educational structure, education for women's equality, adult education etc.
- **District Primary Education Programme (DPEP)** This programme was initiated in 1994, with an aim to provide access to all children to primary education through formal primary schools or its equivalent through alternatives. Thereby in 1994 the Ministry of Human Resource Development delegated the task of designing and developing a school based computerized information system, to National Institute of Educational Planning and Administration (NIEPA), New Delhi⁸.
- **District Information System for Education (DISE)** This is the first database software created by NIEPA in 1995. This software was again redesigned as per recommendation from SSA, to provide computerized data and statistical analysis of the various data.⁹
- **Targets of the Eleventh Five Year Plan**
 - 1) Universal enrolment of 6–14 age group children including the hard to reach segment.
 - 2) Substantial improvement in quality and standards with the ultimate objective to achieve standards of Kendriya Vidyalayas (KVs) under the Central Board of Secondary Education (CBSE) pattern.
 - 3) All gender, social, and regional gaps in enrolments to be eliminated by 2011–12.
 - 4) One year pre-school education (PSE) for children entering primary school.
 - 5) Dropout at primary level to be eliminated and the dropout rate at the elementary level to be reduced from over 50% to 20% by 2011–12.
 - 6) Universal coverage of technology at Upper Primary Schools by 2011–12.
 - 7) Significant improvement in learning conditions with emphasis on learning basic skills, verbal and quantitative.
 - 8) All Education Guarantee centres to be converted into regular primary schools.
 - 9) All States/UTs to adopt NCERT Quality Monitoring Tools.

⁸ The National University of Educational Planning and Administration (NUEPA) was established in 1962 by the Ministry of Human Resource Development, Government of India. However in 1979 renamed as the National Institute of Educational Planning and Administration (NIEPA), <http://www.nuepa.org/>

⁹ On January 22, 2010 NUEPA came out with a publication named *Flash Statistics: Elementary Education in India: Progress towards UEE* to provide State-specific indicators on different aspects of Universalisation of Elementary Education (UEE). The publication is based upon the DISE 2008-09 data received from as many as 1.29 million schools spread over 633 districts across 35 States & UTs.

The Eleventh Five Year Plan specially focuses on SCs, STs, minorities, and rural women and also on low literacy States, tribal areas, other disadvantaged groups and adolescents. The Eleventh Plan also aims to support IGNOU, existing State Open Universities and the States setting up new Open Universities.

MAJOR CHALLENGES IN THE ACCOMPLISHMENT OF THE RIGHT TO EDUCATION

The major issues that come across the students day after day are:

- 1) Inadequately maintained buildings,
- 2) Dilapidated classrooms,
- 3) Lack of sanitation facilities,
- 4) Non-availability of drinking water,
- 5) Libraries and laboratories with no proper maintenance or equipment,
- 6) Availability of qualified teachers
- 7) High student-teacher ratio
- 8) Outdated curriculum and teaching methodologies involving only memorizing of the subject without any understanding of the subject.
- 9) Lack of vocational training and non-availability of such courses that help the students to get employed on completion of their schooling.
- 10) Long distances to schools
- 11) Low enrolment of girls

Availability of teachers in schools is an important aspect for providing quality education.

In the year 2006, UNESCO and teachers' unions worldwide had come up with an international message that: 'Every Child Needs a Teacher' if the goal of free quality education for all is to be realized.¹⁰ The Right to Education Act, 2009 provides that there should be one teacher for every 30 students. The total number of teachers in India in 2008-09 as per the *Flash Statistics, 2010* released by NUEPA¹¹ reveals that, on an average, there were 4.5 teachers in a school in 2008-09 that imparts elementary education compared to an average of 3.0 teachers per primary school. Within India, the teacher absence rate ranges from 15% in Maharashtra to 71% in Bihar. A recent survey conducted by the Educational Consultants India Limited for the Human Resource Development (HRD) Ministry reveals that on an average, teachers of three big states - Andhra Pradesh, Uttar Pradesh and Madhya Pradesh, in primary and upper primary schools, are absent for 28 days during an academic year.¹² According to the survey out of the 168 days in academic calendar in AP, the teachers were found absent from school for 68-69 days. This is similar to the situation in Madhya Pradesh and Uttar Pradesh where the teachers were absent for 63-64 days out of 229 days and for 57-58 days out of 214 days, respectively.

Non availability of drinking water has been observed to be the main reason for the high dropout ratio in the schools operating in rural areas, as is in the case of nearly half of the schools in Arunachal Pradesh, Assam and Meghalaya. A survey conducted by the Maharashtra Education

¹⁰ www.ungei.org

¹¹ Ibid

¹² *When teachers bunk school - EdCIL stud*, March 27, 2010, http://www.indiaedunews.net/Today/When_teachers_bunk_school_-_EdCIL_study_11089/

Department's Nagpur division revealed that as many as 170 primary schools out of the 6,675 operated by the Zilla Parishad lack even basic drinking water facilities.¹³

Gross drop out rates among the girls by the time they reach class V¹⁴ was observed by the human development index for the year 2009, according to which the literacy rate is 53.67 per cent among girls as compared to boys which is 72.26 per cent. The major reason behind this is the workload within and outside the household.

Lack of toilets is another major reason for the high drop out rate among girl students. From 2004-05 to 2008, the state has only achieved 58 per cent coverage with a dismal 12.5 per cent of facilities catering to girls separately. Compare this to Chandigarh, which tops the list with 89.19 per cent toilets for girls¹⁵. Even a state like Uttar Pradesh, with its own developmental problems, has done better: 69.41 per cent schools here have toilets for girl students.

CONCLUSION

To quote Justice PN Bhagwati, Former Chief Justice of India:

*The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.*¹⁶

Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Therefore education which empowers the future generation should always be the main concern for any nation. It is now an undisputed fact that right to education can be realized on a national level only through compulsory education, or better say, through free compulsory primary education. However due to the widespread poverty and various prejudices in the society, the efforts to develop an educational system in India with full access, equality and quality of education has not been achieved. The inability to check the drop out rates among the marginalized sections of the population is another cause of worry.

Substantial efforts are therefore crucial to eradicate the social disparities and guarantee quality education on an equal basis and such efforts are needed in the following areas:

- If every child can avail of some kind of early childhood education, the chances are high that the child will go on to regular school. Therefore the concept of pre-school should be more generalized.
- Since a child's family also plays a major role in getting the child educated it would be in the best interest of the child to have the family involved in the School's Development Plans through the setting up of School Management Committees. Such Committees made up of parents, local authorities, teachers and children themselves, should be encouraged to be formed so as to include all the stratas of the society to overcome the

¹³ ZP primary schools don't have drinking water facilities! - The Times of India, <http://timesofindia.indiatimes.com/city/nagpur/ZP-primary-schools-dont-have-drinking-water-facilities/articleshow/5870828.cms#ixzz0z17pGX3Y>

¹⁴ School drop out rate among girl child alarming, needs check, <http://www.merineews.com/article/school-drop-out-rate-among-girl-child-alarming-needs-check/15800743.shtml>

¹⁵ Elementary Education in India: Where do we stand? State Report Cards, 2007-08, NUEPA, New Delhi, October 2009

¹⁶ Planning Meeting: Research on child labour in South Asia, Jaipur, June 18, 2000 CUTS-CITEE, Jaipur, <http://www.cuts-international.org/linkages-Meeting-18.htm>

social disparities, as well. Such SMCs would also help in evaluating the competency of every teacher in the school and also to assess the progress of the students

- To improve the quality of education, Teachers, who are the foundation for imparting exceptional education, need to be paid market-driven compensation. At present the basic minimum salary of a teacher is, as per the Sixth Pay Commission, is Rs.22,000. On comparing the meager salary that is handed out to a teacher in India with those in other countries, these wages are evidently not appropriate.¹⁷ Therefore to motivate the teachers to work hard towards realization of a successful educational system it would be better if the schools are allowed to plan out the salary packages of each of its teachers.
- Commercialization of education in the unaided private schools needs to be restrained by introducing a legal framework in the country to control and regulate the unaided private schools in the matter of fees and other charges. Recommendations for the same have also been forwarded by the All India Parents Association through their letter dated 31.07.2010 to Chairperson, National Advisory Council, Smt. Sonia Gandhi. The said letter depicts the sad state of an ordinary parent in this country who is unable to provide quality school education to his child, firstly due to lack of basic infrastructure in the government schools and secondly due to the ruthless exploitation of these ordinary parents by the unaided private schools by subjecting the students to arbitrary, unjust and exorbitant fees and other charges. A PIL has also been filed against private schools charging "exorbitant" fees by the Forum for Fairness in Education against, what they allege is, exorbitant collection of tuition and other fees charged under various heads by unaided schools.
- It is a sad to see little children walking to school, backs bent under the load of books, therefore reducing the load of school bags is also a major concern. Based on the recommendation of the Professor Yashpal Committee, the HRD ministry had asked the National Council of Education Research and Training to rework school syllabus to reduce the load of books. The Central Board of Secondary Education has also framed guidelines for its affiliated schools to reduce backpack loads. However the implementation of the said recommendations has yet not seen sunlight, as the plight of the small children is still sympathetic. The burden of school bags should be abolished atleast at the Primary level by giving utmost care to home works and assignments.

To sum up, there is an utmost need for realizing that provision for universal access to quality school education is the groundwork of development and a fundamental condition in the process of creating India as a knowledge society.

¹⁷ *Low pay for teachers still bane of education,*
<http://m.timesofindia.com/PDATOI/articleshow/6494467.cms>

