

Development of the Fundamental Right to Education under the Indian Constitution

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I. Introduction

An old Sanskrit maxim states - "That is education which leads to liberation"- liberation from ignorance which shrouds the mind liberation from superstition which paralyses effort, liberation from prejudices which blind the vision of the Truth. Education is enlightenment. It is the one that lends dignity to a man.² Today, education is perhaps the most important function of State and Local Governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later profession training, and in helping him to adjust normally to his environment.³ Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is no more than an animal. Education emancipates the human beings and leads to liberation from ignorance. According to Pestalozzi, education is a constant process of development of innate powers of man which are natural, harmonious and progressive. It is said that in the Twenty First Century, 'a nation's ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future,' accordingly twenty first century is termed as century of knowledge. The quality of education of the child will determine the quality of life in nation. Both at national and International levels efforts are being made to educate more and more people as education contributes in the development of the society which is consistent with the dignity of the human being.

The Constitution of India when adopted did not contain any express provision guaranteeing the right to education. However, the Constitution indirectly recognized the importance of education in Part IV of the Constitution. Thus Art.45 provides that 'the state shall endeavour to provide,

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² Gajendragadkar, J. (as he then was) in *University of Delhi v. Ram Nath* AIR 1963 SC 1873

³ *Brown v. Board of Education* 347 US 483 (1954)

with in a period of ten years from the commencement of Constitution, for free and compulsory education for all children until they complete the age of fourteen years'. Art.46 imposes an obligation to promote with special care the educational interest of the weaker sections including SCs and STs. Similarly Art.41 states that, the state shall make effective provision for securing the right to education, with in its economic capacity and development. Even though the Constitution imposed an obligation on the state to impart education to its citizens, the state owing to its financial capacity, was not discharging its constitutional obligation. Therefore, during the first decade of our Independence education per se was considered to be an activity that is charitable in nature. But after nearly 5 decades, now right to education has been not only recognised by judicial pronouncements but also expressly by the Constitution itself.

The development of Right to Education as a fundamental right in India is a story of gradual development of the concept of life under Article 21 of the Constitution. Article 21 says, 'no person shall be deprived of his life and personal liberty except according to the procedure established by law.' The right to life which is most fundamental of all is also most difficult to define. Certainly it cannot be confined to a guarantee against taking away of life; it must have a wider application. With reference to a corresponding provision in the 5th and 14th amendments of the US Constitution, which says that no person shall be deprived of his life and personal liberty or property without due process of law, in *Munn v Illions*⁴, Field J. observed:

"By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through with the soul communicated with the outer world."

This statement which has been repeatedly quoted with approval by our Supreme Court, has been further expanded in *Francis Coralie v. Union Territory of Delhi*⁵ where Bhagwati J. held:

"We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingle with fellow human beings.

⁴ 94 US 113

⁵ AIR 1981 SC 746

The development of new rights under Article 21 of the Constitution is the result of the Apex Court's attempt to expand the meaning of the term 'life'. In *Pathumma case*⁶ it has been clearly stated that "the attempt of the court should be to expand the reach and ambit of the fundamental rights rather than accentuate their meaning and content by process of judicial construction.... Personal liberty in Article 21 is of the widest amplitude." In this connection, it is worthwhile to recall what was said of the American Constitution in *Missouri v. Holland*⁷ where the US Supreme Court has observed:

"[W]hen we are dealing with words that also are constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters."

II. Harmonious Construction of Fundamental Rights and Directive Principles

Though the judiciary in a number of cases held that the Directives were subordinate to the Fundamental Rights, attempts were made to achieve the ideals mentioned Directive Principles. The courts came to realize that there should not be any conflicts between two sets of provisions of the Constitution which have a common origin and a common objective as would nullify either of them. The way out was found to lie in the doctrine of harmonious construction, arising out of the canon of interpretation that parts of the same instrument must be read together in order to reconcile them with one another. Applying this doctrine, the Supreme Court came to adopt the view that in determining the ambit of Fundamental Rights themselves, the court might look at relevant Directive Principles.

In *State of M. P. v. Pramod Bhartiya*⁸ the Supreme Court held that because clause (d) of Article 39 spoke of 'equal pay for equal work for both men and women' it did not cease to be part of Article 14. To say that the rule having been stated as a Directive Principle of State Policy is not enforceable in a court of law is to indulge in sophistry. Parts IV and III of Constitution are not supposed to be exclusionary of each other. They are complementary to each other. The rule is as much a part of Article 14 as it is of clause (1) of Article 16.

In *Bandhua Mukti Morcha v. Union of India*⁹ the Court held that it is the fundamental right of every one in this country, assured under the

⁶ (1978) 2 SCC 1

⁷ 252 US 416,433

⁸ (1993) 1 SCC 539, 541

⁹ (1984) 3 SCC 161

interpretation given to Article 21 by this Court in Francis Mullin case¹⁰: to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, education facilities, just and humane conditions of work and maternity relief.

In the fact in the case of *Kesavananda Bharati v. State of Kerala*¹¹ all the judges constituting the Bench have with one voice given the directive principles contained in the Constitution a place of honour. Hegde and Mukherjea, JJ. as they then were have said that the fundamental rights and the directive principles constitute the 'conscience' of our Constitution. The purpose of the directive principles is to fix certain social and economic goal for immediate attainment by attainment by bringing about a non-violent social revolution. Chandrachud, J. observed that our Constitution aims at bringing about a synthesis between 'fundamental rights' and the 'directive principles of State policy' by giving to the former a place of pride and to the latter a place of permanence.

In *Minerva Mills Ltd. v. Union of India*¹² Chandrachud, C.J. quoted with approval the simile of Granville Austin that Parts III and IV are like two wheels of a chariot and observed that "to give absolute primacy to one over the other is to disturb the harmony of the Constitution". The learned Chief Justice observed further: "Those rights (fundamental rights) are not an end in themselves but are the means to an end. The end is specified in Part IV."

III. Right to Education

The Constitution of India did not specifically provide for right to education as a fundamental right until Article 21 A was added by the Constitutional (86th Amendment Act) Act, 2002. The development of the fundamental right to education was also in the way of development of right to life under Article 21 of the Constitution. Nevertheless the constitution under Article 41 and 45 gave the State directive to achieve inter alia education to a certain extent.

Article 45 stated as under:¹³

¹⁰ (1981) 1 SCC 608

¹¹ (1973) 4 SCC 225

¹² AIR 19980 SC 1789

¹³ The Constitution (86th Amendment) Act, 2002 has substituted a new article for Article 45 which now provides that "the state shall endeavour to provide early

"Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

The question of right to education of the poor was raised in the Supreme Court for the first time in the case of *Mohini Jain v State of Karnataka*¹⁴ which involved the issue of the levy of captivation fee in an educational institution. The court observed¹⁵ "Right to life' is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavor to provide educational facility at all levels to its citizens." In this case the court said that Article 21 has been interpreted by this Court to include the right to live with human dignity and all that goes along with it. "The "right to education" flows directly from right to life.' In other words, 'right to education' is concomitant to the fundamental rights enshrined in Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of citizens. The benefit of education cannot be confined to richer classes.

In *Brown v. Board of Education*¹⁶ Earl Warren, C.J., speaking for the U.S. Supreme Court emphasised the right to education in the following words:

"Today, education is perhaps the most important function of State and local governments.... It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principle instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."

childhood care and education for all children until they complete the age of six years"

¹⁴ (1992) 3 SCC 666

¹⁵ Ibid at 679-80

¹⁶ 347 US 483 (1954)

It is relevant to notice that Article 45 does not speak of the "limits of its economic capacity and development" as does Article 41, which inter alia speaks of right to education. Surely the wisdom of these constitutional provisions is beyond question. Not seeking to lay down the priorities for the Government and only emphasising the constitutional policy as disclosed by Articles 45, 46 and 41 the Apex Court in *Unni Krishnan v State of Andhra Pradesh*¹⁷ held that the citizens of this country have a fundamental right to education. The court held the right to flow from Article 21. It emphasised that his right is not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.

To give legislative recognition to the fundamental right to education the Government of India by Constitutional (86th Amendment Act) Act, 2002 had added a new Article 21A which provides that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine". It has further strengthened this Article 21A by adding clause (K) to Article 51-A which assigns a duty on the person who is a parent or guardian to provide opportunities for education to his child or ward between the age of 6 and 14 years. By the same amendment Article 45 of the Constitution was reworded which now says that "the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

On the basis of Constitutional mandate provided in Article 41, 45, 46, 21A and various judgments of Supreme Court the Government of India has taken several steps to eradicate illiteracy, improvement the quality of education and make children back to school who left the school for one or the reasons. Some of these programmes are National Technology Mission, District Primary Education Programme, and Nutrition Support for Primary Education, National Open School, Mid- Day Meal Scheme, Sarva Siksha Abhiyan and other state specific initiatives. However the Constitution only ensures that the state shall provide primary education to the children up to the age of 14 years, and the secondary and higher education is contingent and conditional upon the economic capacity of the state. The right to education will be meaningful only and only if the all the levels education reaches to all the sections of the people otherwise it will fail to achieve the target set out by our Founder Father to make Indian society an egalitarian society.

¹⁷ 1993 1 SCC 645