

Human Rights and Right to Education in India

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ABSTRACT

The human rights refer to all rights that are present in our existing society. Without human rights one cannot live as human beings in our existing society. Human rights are the basic rights that a person irrespective of race, caste, gender, creed, religion or any other background cannot be denied anywhere and or at any condition. Rights are provided in Part III of the Indian Constitution as fundamental rights. The Constitution guarantees six fundamental rights to Indian citizens as follows: right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and right to constitutional remedies. Education is the most powerful tool which can shape the destiny of an individual as well as the whole nation. The right to education is a fundamental human right under the right to freedom. It is also central to realising other human rights. The Indian Constitution has provisions to ensure that the state provides education to all its children. The Indian Constitution in its original enactment defined education as state list subject. In 1976, the 42nd Constitutional amendment was added and education became a concurrent list subject which enables the central government to legislate it in the manner suited to it. The 86th Constitutional amendment making education a fundamental right was passed by Parliament in 2002 under the article 21A. The Right of Children to Free and Compulsory Education Act (RTE Act), a law to enable the implementation of the fundamental right was passed by Parliament in year of 2009. Both the Constitutional amendment and the new law came into force from 1st April 2010. On Constitutional basis, the present paper highlights the fundamental human rights and right to education of the children.

Keywords: Human Rights, Right to Education, Indian Constitution, Children.

Introduction

Every human being has dignity. The principles of human rights were drawn up by human beings as a way of ensuring that the dignity of everyone is properly and equally respected. The human rights refer to all rights that are present in our existing society. Without human rights one cannot live as human beings in our existing society. Human rights are the basic rights that a person irrespective of race, caste, gender, creed, religion or any other background cannot be denied anywhere and or at any condition. Human rights are commonly understood as basic fundamental rights that a person cannot be denied by any individual or any government simply because he or she is a human being. President Franklin Roosevelt of USA, in his famous message to the Congress in 1941, for the first time used the term 'Human rights' and stressed that the world should be founded on four essential freedoms – freedom of speech, freedom of religion, freedom of want, and freedom of fear. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights Which had 30 articles most of which had been drafted by Rene Cassin who was later on awarded Nobel Prize in 1968. This Universal Declaration of Human Rights has been the most outstanding and the most fundamental landmark in the history of the concept of Human Rights in the world. The 30 articles of the Declaration together form a comprehensive statement covering economic, social, cultural, political, and civil rights. Every year 10th December is celebrated as Human Rights Day.

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. 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(1).

"Education shall be directed to the full development of the human personality and to the strengthening of respect for Human Rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace." Article 26(2).

The right to education is one of the fundamental rights proclaimed in the UDHR under Article 26. It is considered by the Declaration not only as a right in itself but also as a means of promoting peace and respect for human rights and fundamental freedoms generally.

Human Rights and Indian Constitution

Rights are claims that are essential for the existence and development of individuals. In that sense there will a long list of rights. Whereas all these are recognized by the society, some of the most important rights are recognized by the State and enshrined in the Constitution. Such rights are called fundamental rights. These rights are fundamental because of two reasons. First, these are mentioned in the Constitution which guarantees them and the second, these are justifiable, i.e. enforceable through courts. Being justifiable means that in case of their violation, the individual can approach courts for their protection. If a government enacts a law that restricts any of these rights, it will be declared invalid by courts. Such rights are provided in Part III of the Indian Constitution. The Constitution guarantees six fundamental rights to Indian citizens as follows: (I) right to equality (II) right to freedom (III) right against exploitation (IV) right to freedom of religion (V) cultural and educational rights and (VI) right to constitutional remedies.

Originally, there were seven Fundamental Rights in the Constitution. Besides the above mentioned six rights, there was the Right to Property also. Since this Right created a lot of problems in the way of attaining the goal of socialism and equitable distribution of wealth, it was removed from the list of Fundamental Rights in 1978 by 44th constitutional amendment. However, its deletion does not mean that we do not have the right to acquire, hold and dispose of property. Citizens are still free to enjoy this right. But now it is just a legal right and not a Fundamental Right.

(I) Right to Equality

Article 14: Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16: Equality of opportunity in matters of public employment.

Article 17: Abolition of Untouchability: "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Article 18: Abolition of titles.

(II) Right to Freedom

Article 19: Protection of certain rights regarding freedom of speech, etc.

Article 20: Protection in respect of conviction for offences.

Article 21: Protection of life and personal liberty.

Article 21A: Right to education.

Article 22: Protection against arrest and detention in certain cases.

(III) Right against Exploitation

Article 23: (1) Traffic in human beings and *beggar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Article 24: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

(IV) Right to freedom of religion

Article 25. Freedom of conscience and free profession, practice and propagation of religion

Article 26. Freedom to manage religious affairs

Article 27. Freedom as to payment of taxes for promotion of any particular religion

Article 28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions

(V) Cultural and educational rights

Article 29. Protection of interests of minorities

Article 30. Right of minorities to establish and administer educational institutions

Article 31. [Repealed.]

Saving of Certain Laws

Article 31A. Saving of Laws providing for acquisition of estates, etc.

Article 31B. Validation of certain Acts and Regulations

Article 31C. Saving of laws giving effect to certain directive principles

Article 31D. [Repealed.]

(VI) Right to constitutional remedies

Article 32. Remedies for enforcement of rights conferred by this Part

Article 32A. [Repealed.]

Article 33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.

Article 34. Restriction on rights conferred by this Part while martial law is in force in any area.

Article 35. Legislation to give effect to the provisions of this Part.

Education and Indian Constitutional Perspectives

To ensure global and international covenant on education, earnest struggle is made and essential amendment are brought in constitution of India to safeguard educational right to all citizen in light of global principle. The Indian constitution has provisions to ensure that the state provides education to all its citizens. The Indian constitution in its original enactment defined education as state subject. In 1976, the 42nd Constitutional amendment was added and education became a concurrent list subject which enables the central government to legislate it in the manner suited to it. The Fundamental Rights and Directive Principles of State Policy (DPSP) & Fundamental Duties of the Indian Constitution provide the framework for rights to education.

I. Right to Education and Human Fundamental Rights (Part III)

Article 21A: The Right of Children to Free and Compulsory Education Act (RTE, Right to Education): The Right of Children to Free and Compulsory Education Act' or 'Right to Education Act' also known as RTE', is an Act of the Parliament of India enacted on 4th August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A (Article 21 is the Fundamental Right to Life under Right to Freedom) of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. "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".

II. Right to Education and the Directive Principles of State Policy (Part IV)

Article 41: Right to work, to education and to public assistance in certain cases. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 45: Right for Early Childhood Care and Education (ECCE) to all children until they complete the age of six years. This article is considered as a directive principle of state policy. It states "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 Government of India has included ECCE as a constitutional provision through the amended Article 45 (as per the 86th Amendment of December, 2002 and passed by Parliament in July 2009) which directs that "the State shall endeavour to provide Early Childhood Care and Education for all children until they complete the age of six years".

Article 46: Promotion of the economic and educational interests of the Scheduled Castes, Scheduled Tribes and other weaker sections: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. It is laid down in Article 46 as a directive principle of State policy that the State should promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice. Any special provision that the State may make for the educational, economic or social advancement of any backward class of citizens may not be challenged on the ground of being discriminatory. Special efforts are being made for education of the backward classes. Scholarships, hostel facilities, ashram residential schools, relaxed norms for admission, reservation of seats are efforts to achieve universal education in case of backward classes.

III. Right to Education and Fundamental Duties (Part IVA)

By the Constitution (Eighty-Sixth Amendment) Act, 2002, (w.e.f 1.4.2010) adding a new clause (k) under Article 51A (fundamental duties), making parent or guardian responsible for providing opportunity for education to their children between six and fourteen years.

Conclusion

There is no doubt that education has a major role to play for protection and promotion of human rights. HRE is considered as one of the major tools to stop the violations against human rights. Education should be imparted to each and every one so that they understand the importance of human rights. Equality shall be the primary consideration in actions concerning children, respect for the views of the child are the general principals of the Convention on the Rights of a child. Education in their own mother language about human rights will make the learners more prompt about their values and ways to use them in their day to day life. The values of cultural diversity and social diversity should be inculcated as a basic teaching. For integration of human rights, the relevant subjects at the primary stage are languages & environmental studies. Stories, poems and songs concerning human rights values will have to be selected. Education should impart gender equality, respect for human dignity and rights.

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