ARTICLES
Development of Education as a Human Right in India—An Analysis

M. Muni Hemachand*
Dr. T. Sita Kumari**

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. Education being a social process, inevitably occurs in a social matrix. Norms of society should therefore set the aims of education. Education must be sensitive to the demands and wishes of society. Education should concentrate on the individual needs as well as aspirations of society. Many education philosophies have stated the aim of education in terms of the harmonious development of personality that is all round development of human powers and potentialities. The principle of balance symmetry is the ruling conception of this aim. Therefore a balanced education system is needed with adequate educational objectives.

Education is undoubtedly a human right which has been transformed into a "luxury" instead of a right in many places. Signs of that can be seen through words and images of student journalists who report on the condition of education worldwide for the Education for All consortia and observe that hindrances in education range from lack of schools in Mozambique to issues that affect curricula formulation and not living up to the prestige of a previous era, like in the Russian Federation system. In India the situation is no different as many people were excluded from their right to education for very many years. It is rather sad that in this great land of ours where knowledge first lit its torch and where the human mind soared to the highest pinnacle of wisdom, the percentage of illiteracy should be appalling. Today, the foremost need to be satisfied by our education system is, therefore, the eradication of illiteracy which persists in a depressing measure. A true democracy is one where education is universal and where people understand what is good for them and also the nation and know-how to govern them. Education is a primary need of every human being and literacy is an indispensable tool for this purpose. It has to be recognizing that the aspiration and hopes for the people of our countries depend on the provision of appropriate systems of education. The great problem of poverty, ignorance and disease can be addressed effectively only if we succeed in our programmes for education.

* Research Scholar P.G. Department of Law, S.V. University, Tirupati-517502.
** Associate Professor, P.G. Department of Law, Sri Venkateswara University, Tirupati-517502.
and literacy. There is an ancient Chinese said 'if you are thinking of one year, plant rice, if you are thinking of a decade, plant trees, if you are thinking of a century, educate the people'. Recent days in many countries the right to education is considered as a fundamental right, and so it became obligatory on the countries to provide education for all people and so India is no exception for this.

**Education in Ancient India**

Education in Ancient India began around the 3rd century B.C. The Vedas, Puranas, Ayurveda, Yoga, Kautilya's Arthasattra are only some of the milestones that show the traditional Indian Knowledge system. In the past, because of the method of education, education remained confined within a very small section of the society. In absence of any written material priestly schools in India had devised a most remarkable and effective system of transferring knowledge to succeeding generations in form of hymns. The Gurukula System was an important concept associated with pursuit of studies in ancient India. A gurukula was a place where a teacher or a guru lived with his family and establishment and trained the students in various subjects. The gurukulas usually existed in forests. Admission into the gurukulas was not an easy process. A student had to convince his guru that he had the desire, the determination and the required intelligence to pursue the studies and had to serve him for years before he was admitted into the school and initiated into the subjects. Students in the gurukulas were subjected to rigorous discipline.

Few of most important universities of ancient India were Taxila (being the first university of world established in Seventh century B.C.), Vikramshila University and Nalanda University (built in 4 A.D). Huan Tsang in his records mentioned the University of Taxila to be at par with Nalanda and Vikramshila Universities. These institutions were considered to be the best Universities of its times in the subcontinent and an honour to ancient Indian educational system. Takshila University was famous for medical studies. Varanasi was famous for religious teachings. In the South, Ranchi was famous for its studies while the Vallabhi University was no less. There was a galaxy of eminent teachers like Panini- well known grammerian, Kautilya- the minister of Chandra Gupta Maurya and Charaka - a medical teacher of repute. *Nalanda university* - Nalanda was supposed to be the highest learning centre not just for India, but also for the entire South Asia. Students from foreign countries like China, Japan, Korea used to come here for higher studies. It had eight colleges, one of it having four storied building and around 10,000 students and teachers on its roll cards. It was one of the earliest examples of residential cum learning complex.

**Education in Medieval Period (Mohammedans period)**

The Mohammedan era was at the beginning a setback for both the ancient Hindu and Buddhist learning in India. Many centres of education were destroyed. However, later sometimes some education institutions were

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2 www.uge.ac.in. visited on 22.03.2013
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founded under the patronage of the rulers and princes places like Agra, Delhi, Lucknow, Ajmer and Patna were famous centres for learning. The institution came under two categories.

1. The Maktabs
2. The Madrasahs

The Maktab was a primary school connected to a mosque where religion and Koran were taught. A madrasah was school of higher learning where higher education in science, Philosophy and law were taught. Many of this institutions were owned by communities but supported and aided by government of the day. Again an element of privatization is seen here. The encyclopedia of Education points out that in the higher schools, there was support by imperial giants and private bounty. All students were welcome and the schools become a common meeting ground for Hindu and Muslim youth. In a Maktab children of general people were given primary education. Along with religious education they were also taught reading writings and arithmetic. The children of rich people generally did not attend Maktabs. Their parents used to make private arrangement at the homes for their education. The children of royal families were taught in palaces under the strict control of Maulavis. The princesses were taught Arabic and Persian and Islamic religion. Besides, they were also taught political science, law, Jurisprudence and military science in order that they could be able administror. It was compulsory for princes to receive military training. Thus the children of the higher class people were given both theoretical and practical education.

After completing the education in a Maktab, one could come to a Madarsa for higher education. During the Muslim period Madrasas were centres of higher learning. Madrasas were granted Jagirs (land and Villages) by the kinds of their maintenance. They used to receive other financial grants as well. Some learned scholar was appointed as head of the Madarsa and he used to carry on the teaching work with the assistance of other teachers appointed for the purpose. The king never interfered in the administration of a Madarsa. The rich people used to give financial assistance to Madarsas. There was no official person or department for supervising the work of Madarsas. Akbar alone accepted the state responsibility of promoting education. Other rulers used to take interest in it either for their personal prestige or for expansion of Islam some hostels were also constructed along with Madarsas for providing residential accommodation to students.

**Education in British Period**

The educational system during the ancient India was most advanced in the world at a particular time. However, with the development of modern

5 Dr.S.P.Chaube, "History and Problems of Indian Education" Agrawal Publishers - 50.
government it was highly deteriorated and destructed due to various historical facts. The study of educational system with special reference to the development of right to education is generally started with the British period. However, it does not meant that there was no organized educational system in our country at past. The discovery of the sea route to India, in 1498, influenced the course of development of education in the Indian subcontinent.

Although many scholars have commented the British policy of introducing modern education, it was not a spontaneous benevolent act. The progress in education was facilitated with a view to serving their vested interests, i.e. to train Indians as clerks, managers and other subordinate workers to staff their vast politico administrative machinery. However, education of the 'Indian masses' was largely neglected, and by the beginning of nineteenth century, it was in shambles.

Lord Macaulay was authorized to fulfil the educational hopes and visions of Indians. It was fortunate for India, "that a man with the tastes, and the trainings, of Macaulay came to her shore as one vested with authority and that he came at the moment when he did, for that moment was very turning point of her (India) intellectual progress." By 1834 all educational action was at a stand, for the committee of public instruction was evenly divided— one half were for the continuation of the existing systems of education in Arabic Persian and Sanskrit with stipends given to students and with subsidies given for the publications of text books. The other half were for imparting elementary education in vernacular languages and higher education in English. The cogency and force at Macaulays celebrated view won the day and on 7th March, 1835 the government of Lord William Bentick announced, that "The great object of the British Government ought to be the promotion of European Literature and Science among the natives of India."

The educational system failed to fulfil the aspiration of the Indian people during the British rule. The right to education was confined to the level of demands made at times by the Indian leaders and it was hardly conceived by the British Govt. A few more universities were established during the period as centres of higher education, which were insufficient in order to cater in the needs of the large masses on the one hand and at the same time unsuitable to sustain and develop the traditional occupational profession, art and craftsmanship of the Indian people on the other hand.

Education after Independence

Under the British rule in India, education was imparted through the medium of English. It not only deprived the people of the knowledge of their own

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8 Trevelyan, Life and letters of Lord Macaulay, vo.1.1908 p.290.
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language and literature, but also wasted the precious time of the youth in cramming the rules of grammar of a foreign language. The pattern of education developed in India during the British rule was unplanned. In 1949 a University Education Commission was appointed under the chairmanship of Dr. S. Radhakrishnan to study the problems of university education and to recommend remedial measures. The Commission did a fine job and submitted a valuable report. According to one of the recommendations of this Commission, the University Grants Commission was set up to look after university education in the country. In 1964 the Government of India appointed an Education Commission under the Chairmanship of Dr D.S. Kothari to advise the government on the policy of education. The Commission submitted its report in 1966. The report indicated the guidelines for formulation of a national policy on education. In July 1968 the Government of India declared its National Policy on Education to promote education amongst India's people. The policy covers elementary education to colleges in both rural and urban India. The first National Education Policy was promulgated in 1968 by the government of Prime Minister Indira Gandhi, and the second by Prime Minister Rajiv Gandhi in 1986. Programme of Action (POA), 1992 under the National Policy on Education (NPE), 1986 envisaged conduct of a common entrance examination on all India basis for admission to professional and technical programmes in the country.

The Unnikrishnan judgment and a public demand to enforce the right to education, successive governments from 1993 worked towards bringing a constitutional amendment to make education a fundamental right. That led to the 86th amendment in December 2002 which inserted the following articles in the Constitution:

1. Insertion of new article 21A- After article 21 of the Constitution, the following article shall be inserted, namely:- "21A. 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."

2. Substitution of new article for article 45-For article 45 of the Constitution, the following article shall be substituted, namely:- "45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."

3. Amendment of article 51A-In article 51A of the Constitution, after clause (I), the following clause shall be added, namely:- "(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

The Supreme Court in Unnikrishnan v. State of A.P. (1993) ruled that the right to education is a Fundamental Right that flows from the right to life in

http://essaysandarticles.com/science/the-progress-of-education-in-the-post-
Article 21 of the Constitution. Following this ruling the 86th Constitution Amendment Act 2002 added Article 21-A, stating "The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law, determine". The 86th Amendment also modified Article 45 which now reads as "The state shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years". In the year 2009 it was made an Act to provide for free and compulsory education to all children of the age of six to fourteen years. The Act was named as ‘The Right of Children to free and compulsory education Act-2009’. It is fortunate to have a positive move which is highly commendable.

**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 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.

**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 accepted as a basic human right. “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. 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.

2. 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 promotion of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

The right to education is clearly acknowledged in the United Nations' Universal Declaration of Human Rights (UDHR), adopted in 1948. 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).

Constitutional and judicial perspective and Right to Education in India

The constitution of India makes substantial provisions for Right to Education of children in all situations including in emergency periods also the constitution makers were aware of Right to Education as the basic need and therefore incorporated the Right as one of the Directive Principles. Newly substituted Article 45\textsuperscript{12} provides for provision for early childhood care and education to childhood below age of six years. It says 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 speaks about promotion of education and economic interest of Scheduled caste, scheduled tribes and other weaker sections. It says that 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 caste and scheduled tribes and shall protect them from injustice and all forms of exploitation. Article 41 relates to right to work, to education and to public assistance in certain cases. It directs the State to ensure the people within the limits of its economic capacity and development. In fundamental duties Clause (k) has been inserted in Article 51-A by the Constitution (Eighty-Sixth Amendment) Act, 2002 Article-51-A (k) imposes a fundamental duty upon every parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years. The first case relating to the concept of education is Re kerala Education bill\textsuperscript{13} gave a broad power to the government to control private schools. In state of A.P. v. Narendra Nath\textsuperscript{14} the

\textsuperscript{12} Substituted by the constitution. (86th-Amendment) Act 2002 for Article-45
\textsuperscript{13} AIR 1958 SC 956
\textsuperscript{14} AIR 1971 SC 2560
The court tried to include the said right in to the right of personal liberty. The court replied that the right to education meant the liberty to apply for admission. Justice Bhagwati in a famous case Francis Coralie v. Union of Territory of Delhi held that the right to life included the rights to live with dignity including the facilities for reading writing and expressing oneself in diverse forms. In another case Bandhua Mukti Morcha v. Union of India. He further extended the right to live with human dignity, to include educational facilities as well. Accordingly 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. In Mohini Jain’s case Kulip Singh. J opined that “the state is under a constitutional mandate to provide educational institutions at all levels for the benefits of the citizens”. The main intention of the learned judge behind the above observation might have been that all citizens of India should get education and also the opportunity to acquire education. This will imply that every citizen of this country can call upon the state to provide him education at all stages. This interpretation which is very broad has been laid down by the Apex court by supplementing Article 21 with the directive principle under Article 41. The above proposition in Mohini Jain’s case was rejected by the court in Unni Krishnan’s case on the ground that the right to education which is implicit in the right to life and personal liberty guaranteed by Article 21, must be construed in the light of Directive Principles in part IV of the Constitution. In Unni Krishnan’s case the court has laid down that Right to Education understood in the context of Article 45 and 41 means every child/citizen of this country has a right to free education until he completes the age of 14 years and after a child/citizen completes 14 years his right to education is circumscribed by the limits of the economic capacity of the state and its development. Thus Unnikrishan’s case triggered a number of controversies and thus resulted in several new litigations. The apex court reconsidered the whole issue involved in T.M.A Pai Foundation v. Karnataka the question whether the citizens could claim fundamental right to establish and administer educational institutions was answered by the court in the affirmative. In P.A. Inamdar v. State of Maharashtra the supreme court delivered an unanimous judgement by 7 judges declaring that the state can’t impose its reservation policy on minority and non minority unaided private colleges, including professional colleges. Though this case relates to Right to establishment, administration and admission to professional colleges the honourable Apex court gave a comprehensive meaning to education. Till constitution Eighty-Sixth
Amendment Act, right to education was not a specially guaranteed fundamental right under the constitution, it was only in Unnikrishnan v. State of Andhra Pradesh widely interpreting Article 21, recognized right to education as one of the aspects of personal liberty. It imposes a duty upon the state to make out the steps for the achievement of the Right to education. Education is the source of many rights and without which many other objectives cannot be achieved.

To sum up 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. Right to education is a compelling right it cannot be allowed to melt into paleness. It has to have the lighting of a fire. One should bear in mind that owes it to the future generation, for in education there is an inherent of future growth.

21 Inserted by the constitution (86th Amendment) act -2002 21-A, stating “The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law, determine”.
22 AIR 1993-SC-2178.
Research Paper

Law

Right to Education Under the Indian Constitution

Research Scholar, P. G. Dept. of Law, S. V. University, Tirupati

Abstract

In the present century there is an unprecedented demand for education. Education is the basic need of a person along with food, cloth and shelter. The constitution makers were aware of Right to Education as the basic need and therefore incorporated the Right as one of the Directive Principles. Right to education is Concomitant to the fundamental rights because those rights cannot be fully enjoyed unless a citizen is educated and well aware of the rights enshrined in the constitution. The Supreme Court in Unnikrishnan Vs. state of Andhra Pradesh ruled that the Right to Education is a Fundamental right that flows from the Right to life in Article 21 of the constitution. The 86th Constitution Amendment Act 2002 added Article 21-A: Right to Education and modified Article 45. Right to Education is a compelling right, it cannot be allowed to melt into futility.

Keywords: Education, Constitution

Introduction

Education is an integral part of country's development and can result in the promotion of all round empowerment of masses. Individually Education brings perfection to life which means the growth and development. Education qualifies a person to fulfill certain economic, political and cultural functions and thereby improving their socio-economic status. It helps to equalize status between individuals who belong to different social strata. Thus education is the basic need of a person along with food, cloth and shelter. Education at one time was considered as charity or philanthropy, gradually it became an occupation. Gradually this occupation had the protection of the Constitution. The Indian Constitution guaranteed it under Article 19(1) g. Later it was included under Article 21-A further some of the judiciial dicta also go on to hold it as Right to Life. Thus education is accepted as a useful activity, whether for charity or for profit, is an occupation. It is a service to the society. Even though it is an occupation it cannot be equated to a trade or business. In short, education is essential for the nation's progress and prosperity.

According to Oxford Dictionary2, the term 'Education' is defined as process of education or being educated, and the theory and practice of teaching. It also gives information about or training in a particular subject or informal an enlightening experience.

According to Mita's Legal and Commercial Dictionary3, the term Education is defined as The action or process of educating or of being educated; a stage of such process; the knowledge and development resulting from an educational process (a man of little; the field of study that deals mainly with method of teaching and learning in schools.

George Peabody has defined education as "Education a duty due from present to future generations."

In the recent past Nelson Mandela had stated that - "Education is the most powerful weapon which you can use to change the world."

Now it may be said that education is a high ideal and value to be pursued and an absolute necessity for the all round growth of human personality it prepares a sound base for the peaceful co-existence and advancement of the society. Education must therefore, made available not in the sense of freedom to get oneself educated but in sense of providing every facility necessary to get oneself educated.

Constitutional Status and Right to Education in India

The constitution makers were aware of Right to Education as the basic need and therefore incorporated the Right as one of the Directive Principles. Newly substituted Article 45 provides for provision for early childhood care and education to children below age of six years. It says 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 speaks about promotion of education and economic interest of Scheduled caste, scheduled tribes and other weaker sections. It says that 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 scheduled tribes and shall protect them from injustice and all forms of exploitation. Article 41 relates to right to work, to education and to public assistance in certain cases. It directs the State to ensure the people within the limits of its economic capacity and development. In fundamental duties Clause (k) has been inserted in Article 51A by the Constitution (Eighty Sixth Amendment) Act, 2002 Article 51-A (k) imposes a fundamental duty upon every parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years. In part III following articles of the Constitution make provision for education. Article 19(1) (g) states all citizens shall have the rights to practise any profession, or to carry on any occupation, trade or business. This rights are intended to ensure that citizen rights to do business does not depend on grant by the state and the state cannot prevent a citizen from carrying on a business, except by law imposing a reasonable restriction in the interest of the general public. Article 21A says the state shall provide free and compulsory education to all children of the age six to fourteen years in such manner as the state may, by law determine.7. Till constitution Eighty-Sixth Amendment Act, right to education was not a specially guaranteed fundamental right under the constitution, it was only under Unnikrishnan vs. State of Andhra Pradesh when that, widely interpreting Article 21 recognized right to education as one of the aspects of personal liberty. It imposes a duty upon the state to make such steps for the achievement of the Right to Education. Educaton is the source of many rights and without which many other objectives cannot be achieved. Not after more than six decades there are a large number of people...
who are illiterate in this country. Whatever might have been the intention of the legislature and executive towards these constitutional objectives or may be defects in five years plan, the existence of mass illiteracy has proved their failure. The political agenda of literacy and more directive adult education programmes failed to eliminate illiteracy which was expected to be achieved within 10 years of the commencement of the Constitution of India.

**Judicial perspective and Education**

The first case relating to the concept of education is Re Kerala Education bill. The Kerala education bill gave a broad power to the government to control private schools. According to the bill the government could recognize or not, a newly established school or it could take over any school. It was contended that the wide discretion given to the government offended Article 14 of the constitution. The court rejected this contention and held that the general policy of the bill was laid down in its preamble and title, the power given to the government to take over schools could be exercised only for purposes mentioned in the bill and hence it was not fit by Article – 14 unless in implementing the policy decision was in fact arbitrary. The judicial finding in the said instance could not issue a direction for the enforcement of directive principles relating to education. In state of A.P. Vs Narendra Nath11 the court tried to include the said right in to the right of personal liberty. Article 21 and the right to education meant the liberty to apply for admission. This liberty according to the court was validly curtailed 'according to procedure established by law' by the admission test. Thus the court has adopted a restrictive view to right to education. The question of the fundamental right to education, its scope and limitation came before Supreme Court in Mohini Jain's case12. The court framed the general issue for consideration is, is there a right to education guaranteed to the people of India under the Constitution? Justice Kuldip Singh speaking for the court, examined the 'education' mentioned under Article 41 and observed 'The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under part III'. The directive principles have to be read into the fundamental rights. Both are supplementary to each other. The state is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under part III could be enjoyed by all.

Thus, the learned judge advocated for inclusion of the right to education into fundamental right. This interpretation of this directive principle which is non-judicial, unenforceable, mainly a directive principle through the court, an organ of the state came forward to ensure sure this basis principles, when the other two organs of the state, i.e. Legislature and Executive failed to achieve those objectives. Thus the court held that the right to take a student to the fundamental rights enshrined under part III of the constitution because those rights cannot be fully enjoyed unless a citizen is educated and well aware of the rights enshrined in the constitution and that matter not only this right but all the other rights. Justice Bhagwati in a famous case14 held that the right to life included the rights to live with dignity including the facilities for reading writing and expressing oneself in diverse forms. In another case15 he further extended the right to live with human dignity, to include educational facilities as well. Accordingly 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 assailed unless it is accorded by the Right to Education. Another important aspect regarding right to education is what are the boundaries or parameters of this right. Whether the state may be directed through the writs to provide education to all persons of their choice and to establish as many institutions of different disciplines as necessary for that purpose. In Mohini Jain's case16 Kuldip Singh, J opined that "the state is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens". The main intention of the learned judge behind the above observation might have been that all citizens of India should get education and also the opportunity to acquire education. This will imply that every citizen of this country can call upon the state to provide him education at all stages. This interpretation which is very broad has been laid down by the Apex court by supplemental Article 21 with the directive principle under Article 41(1) of the Indian constitution. The aforementioned proposition in Mohini Jain case was rejected by the court in Unnikrishna's case18 on the ground that the right to education is implied in the right to life and personal liberty guaranteed by Article 21, must be construed in the light of Directive Principles in part IV of the constitution. Thus the court has laid down that Right to Education understood in the context of Article 45 and 41 means every citizen[9] of this country has a right to free education until he completes the age of 14 years and after a child/teenager completes 14 years his right to education is curtailed by the limits of the economic capacity of the state and its development. After Unnikrishna's case many private educational institutions approached the Supreme Court. The initiative for these cases is the principles that Fundamental Right to establish and administer educational institutions as a part of right guaranteed under Article 19(1)(g) of the constitution which has been decided in Unnikrishna's case. The court laid open the question whether the right to establish an educational institution could be said to be carrying on any trade or business. According to the court the educational right is a fundamental right in view of the meaning of Article 19(1)(g) the court pointed out that trade or business normally connoted an activity carried on with a profit motive. It further noted that education had not been commerce in India and can never be treated as Trade or Business. The court also ruled out the possibility of it being called as a profession within the meaning of Article 19(1)(g). It further stated that a person or body of person had a right to establish an educational institution it could not be an absolute one and it would be subject to laws made by the state in the interest of general public. The court made it very clear that the right to establish an educational institution would not carry with it the right to recognition or right to affiliation. Thus Unnikrishna's case triggered a number of controversies and thus resulted in several new litigations. The apex court reconsidered the whole issue involved in T.M.A. Parf foundation Vs Kamalakara22 the question whether the citizens could claim fundamental right to establish and administer educational institutions was answered by the court in the affirmative. The court held that such a right would fail with in the purview of Article 19(1)(g) since it took the characteristic of an occupation referred to there in T.M.A. P Parf accepted the holding the term occupation comprehended right to establish educational institution but it rejected the qualification added by Unnikrishna i.e. right to establish an institution is not a power given and the right to get recognition. When Right to Education is given a fundamental status it includes the right to establish an educational institution and it should not be confused with the right to ask recognition. This case also questions the existing regulatory mechanism governing private sector the impact of the decision in the society would open up the educational field for private sectors to be regulated by market forces. This has the potential to commercialize education. P.A. Inamdar Vs State of Maharashtra23 The supreme court delivered an unanimous judgement by 7 judges declaring that the state can't impose its reservation policy on minority and non-minority unaided private colleges, including professional colleges. Though this case relates to Right to establishment, administration and admission to professional colleges the honourable Apex court gave a comprehensive meaning to education. Education, accepted as useful activity whether for charity or for profit is an occupation. Nevertheless, it does not cease to be a service to the society and even though an occupation, it cannot be equated to a trade or a business. In short, education is national wealth essential for the nation's progress and prosperity.

**Conclusion**

The Supreme Court in Unnikrishna Vs State of A.P. (1993) ruled that the right to education is a Fundamental Right that
flows from the right to life in Article 21 of the Constitution. Following this, the 86th Amendment Act 2002 added Article 21-A, stating "The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law, determine." The 86th Amendment also modified Article 45 which now reads as "The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years." In the year 2009 it was made an Act to provide for free and compulsory education to all children of the age of six to fourteen years. The Act was named as 'The Right of Children to free and compulsory education Act-2009'.

Justice V.R. Krishna Iyer said that what is guaranteed by this fundamental right is not mere animal existence nor vegetable survival but rightful opportunity to unfold the human potential and share in the joy of creative living. This is a difficult task and requires enormous resources, skilled planning and sincere execution of Plans and Policies. Right to education is a compelling right and cannot be allowed to melt into paleness. It has to have the lighting of a fire. One should bear in mind that it owes it to the future generation, for in education there is an inherent of future growth.

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4. Article 45 the state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years. Education includes in Article (10) (g) in the case of 'M.A. The Foundation Vs State of Karnataka', AIR 2003 SC 395 in the case the term "education" has to be term interpreted. 5. Interpreted by the constitution, (84th Amendment) act, 2002, AIR 1999 SC 2178.
7. Article 45 the state shall endeavour to provide, within a period of ten years from the commencement of this Constitution, free and compulsory education for all children until they complete the age of fourteen years. Education includes in Article (10) (g) in the case of 'M.A. The Foundation Vs State of Karnataka', AIR 2003 SC 395 in the case the term "education" has to be term interpreted.
9. Article 21 which is a fundamental right. 10. Mohan Jain Vs State Of Karnataka, AIR 1952 SC 538.
10. Francis Curran Vs Emperor of India AIR 1951 SC 704.
11. Jayakrishnan Vs Union Of India AIR 1964 SC 982.
17. Article 42 which is "The state, within the limits of economic feasibility and development, makes effective provision for ensuring the right to work, to education and to public assistance." 18. Uma Nakanishi Va state of A.P. AIR 1999 SC 2178.
21. All individuals shall have the right to participate in the conduct of public or private affairs affecting the life of the community or society to which they belong. 22. AIR 1999 SC 326.

130 * INDIAN JOURNAL OF APPLIED RESEARCH
THE RIGHT TO EDUCATION IN EVENT OF
NATURAL DISASTERS - AN OVERVIEW

By

M. Muni Hemachand

Abstract

In the present century there is an unprecedented demand for education.
Education is the basic need of a person along with food, cloth and shelter. The
constitution makers were aware of Right to Education as the basic need and
therefore incorporated the Right as one of the Directive Principles. Right to education
is Concomitant to the fundamental rights because those rights cannot be fully
enjoyed unless a citizen is educated and well aware of the rights enshrined in the
constitution. Natural disasters have been visiting every part of the globe at one time
or the other. The world is becoming increasingly vulnerable to natural disasters. From
earthquakes to floods and famines, forest fire, hurricane, tsunami, mankind is even
more threatened by the forces of nature. In every emergency situation, whether
natural disaster or man made disaster or disaster caused due to conflict situation or
otherwise, education especially pre-primary, primary and secondary schools suffer
large scale devastation and irregularity, this is because of poor infrastructure and
inadequate focus on educational system at a period of crisis. The Supreme Court in
Unnikrishnan Vs state of Andhra Pradesh ruled that the Right to Education is a
Fundamental right that flows from the Right to life in Article 21 of the constitution. The
86th Constitution Amendment Act-2002 added Article 21-A Right to Education and
modified Article-45. Right to Education is a compelling right; it cannot be allowed to
melt into paleness.

Key words: Education, Natural Disasters, Constitution

Introduction:

Education brings perfection to life which means the growth and development
of a human being in toto. Education qualifies a person to fulfill certain economic,
political and cultural functions and thereby improving their socio-economic status. It
helps to equalize status between individuals who belong to different social strata.
Thus education is the basic need of a person along with food, cloth and shelter.
Education in ancient India was the sole privilege of the priestly castes (Brahmins)
primarily because of the religious basis for the content of education. Admission to
Gurukulas or Ashrams was not open to all, people from lower castes so called
‘shudras’ (untouchables) were barred from receiving education1. The discovery of the
sea route to India, in 1498, influenced the course of development of education in the
Indian sub-continent. The British policy of introducing modern education was not a
spontaneous benevolent act. The progress in education was facilitated with view to
serving their vested interests, i.e., to train Indians as clerks, managers and other

1 Research Scholar, P G Department of Law, S V University, Tirupati, Andhra Pradesh, India
subordinate workers, however, education was largely neglected by the British. In this context, the demand for free and compulsory education in India traced back to the early stages of the freedom struggle in British India. It subsequently became an integral part of the freedom struggle. The Indian National Congress fought valiantly for the expansion of elementary education and literacy, in general, and in rural India, in particular. The first law on compulsory education was introduced by the state of Baroda in 1906. This law provided for compulsory education for boys and girls in the age groups of 7-12 years. In 1937, at the All Indian National Conference on Education held at Wardha, Gandhi mooted the idea of Self-supporting ‘basic education’ for a period of seven years through vocational and manual training. Despite the consistent demand for free and compulsory education during the freedom struggle, at the time of drafting the constitution, there was a unanimous view that the citizens of India should have a right to education as alone a fundamental right, but it was kept under directive principle of state policy under the Article – 45. Education at one time was considered as charity or philanthropy, gradually it became an occupation. Later on this occupation had obtained the protection of the Constitution. The Indian Constitution guaranteed it under Article 19(1) g. In the year 2002, it was included under Article 21-A (Right to Education) further some of the judicial dicta also go on to hold it as Right to Life. Thus education is accepted as a useful activity, whether for charity or for profit, is an occupation. It is a service to the society. Even though it is an occupation it cannot be equated to a trade or business. In short, education is essential for the nation’s progress and prosperity.

Definition of Education:

According to Oxford Dictionary, the term "Education" is defined as process of education or being educated, and the theory and practice of teaching. It also gives information about or training in a particular subject or informal an enlightening experience.

According to Mitra’s Legal and Commercial Dictionary, the term Education is defined as The action or process of education or of being educated; a stage of such process; the knowledge and development resulting from an educational process (a man of little); the field of study that deals mainly with method of teaching and learning in schools.

George Peabody has defined ‘education’ as "Education a debt due form present to future generations." In the recent past Nelson Mandela had stated that: - “Education is the most powerful weapon which you can use to change the world.”

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3 G. Kher, Wardha Education Scheme, First Committee’s Report, available at http://education.nic.in.
5 Article 45 the state shall endeavour to Provide, within a period of 10 years from the commencement of this constitution for free compulsory education for all children until they completed the age of 14 years.
6 Unni Krishnan Vs state of A.P. AIR 1997 SC 2178.
Thus Education is an integral part of country's development and can result in the promotion of all round empowerment of masses.

Natural disasters have been visiting every part of the globe at one time or the other. The world is becoming increasingly vulnerable to natural disasters. From earthquakes to floods and famines, forest fire, hurricane, tsunami, mankind is even more threatened by the forces of nature. Disasters can strike at anytime, at any place. Nearly some millions of people worldwide may have been killed in past 20 years due to natural disasters such as landslides, earthquakes, floods, cyclones, tsunamis, hurricanes, etc. ninety percent of the natural disasters and ninety five percent of the total disaster related deaths world wide occurs in developing countries in which India has the second largest share.

Meaning of Disaster:

The term disaster owes its origin to the French word “Disaster” which is a combination of two words ‘des’ meaning bad and ‘aster’ meaning star. Thus the term refers to ‘Bad or Evil star’. A disaster can be defined as “A serious disruption in the functioning of the community or a society causing wide spread material, economic, social or environmental losses which exceed the ability of the affected society to cope using its own resources”. A disaster is a result from the combination of hazard, vulnerability and insufficient capacity or measures to reduce the potential chances of risk. A disaster happens when a hazard impacts on the vulnerable population and causes damage, causalities and disruption.

Kinds of Disasters:

Disasters and crises are generally classified as natural and man-made which were shown in the following table:

<table>
<thead>
<tr>
<th>Major Natural Disasters:</th>
<th>Minor Natural Disasters:</th>
<th>Minor Manmade Disaster:</th>
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<tbody>
<tr>
<td>- Flood</td>
<td>- Cold wave</td>
<td>- Road / train accidents, riots</td>
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<td>- Cyclone</td>
<td>- Thunderstorms</td>
<td>- Food poisoning</td>
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<td>- Drought</td>
<td>- Heat waves</td>
<td>- Industrial disaster/ crisis</td>
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<td>- Earthquake</td>
<td>- Mud slides</td>
<td>- Environmental pollution</td>
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<tr>
<td>Major Manmade Disaster:</td>
<td>Minor Manmade Disaster:</td>
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<tr>
<td>- Setting of fires</td>
<td>- Road / train accidents, riots</td>
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<td>- Epidemic</td>
<td>- Food poisoning</td>
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<tr>
<td>- Deforestation</td>
<td>- Industrial disaster/ crisis</td>
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<tr>
<td>- Pollution due to prawn cultivation</td>
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<tr>
<td>- Chemical pollution.</td>
<td>- Environmental pollution</td>
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<td>- Wars</td>
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</table>

10 karinganj.nic.in/disaster.htm.
Right to Education-International Scenario:

There were some international declarations and conventions on Right to Education like The Universal Declaration of Human Rights-1948 "right to free and compulsory elementary education and states that education should work to strengthen respect for human rights and promote peace. Parents have the right to choose the kind of education provided to their child. The Fourth Geneva convention-1949, Conventions relating to the status of refugees-1951, The Convention on the Rights of the child-1989, world conference on education for all-1990, World Education Forum in Dakar, Senegal-2000, Millennium Development Goals-2001, Human Rights Council-2008.

Constitutional and Judicial Perspective and Right to Education in India

The constitution of India makes substantial provisions for Right to Education of children in all situations including in emergency periods also the constitution makers were aware of Right to Education as the basic need and therefore incorporated the Right as one of the Directive Principles. Newly substituted Article 45 provides for provision for early childhood care and education to childhood below age of six years. It says 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 speaks about promotion of education and economic interest of Scheduled caste, scheduled tribes and other weaker sections. It says that 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 caste and scheduled tribes and shall protect them from injustice and all forms of exploitation. Article 41 relates to right to work, to education and to public assistance in certain cases. It directs the State to ensure the people within the limits of its economic capacity and development. In fundamental duties Clause (k) has been inserted in Article 51-A by the Constitution (Eighty-Sixth Amendment) Act, 2002 Article 51-A (k) imposes a fundamental duty upon every parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years. Article 21-A says 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. The first case relating to the concept of education is Re Kerala Education bill gave a broad power to the government to control private schools. In state of A.P. Vs Narendra Math the court tried to include the said right in to the right of personal liberty. The court replies that the right to education meant the liberty to apply for admission. This liberty according to the court was validly curtailed ‘according to procedure established by law’ by the admission test. Thus the court has adopted a restrictive view to right to education. The question of the fundamental right to education, its scope and limitation came before Supreme Court in Mohini Jain’s case. The court framed the general issue for consideration is, is there a right to education guaranteed to the people of India under the Constitution? Justice Kuldip Singh speaking for the court, examined the ‘education’ mentioned under Article 41 and observed "The directive principles which are fundamental in the governance of the country cannot be isolated

11 Substituted by the constitution, (86th-Amendment) Act 2002 for Article-45
12 AIR 1958 S C 956
13 AIR 1971 S C 2560
14 AIR 1992 S C 1858
from the fundamental rights guaranteed under part III. The directive principles have to be read into the fundamental rights. Both are supplementary to each other. The state is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under part III could be enjoyed by all. Thus, the learned judge advocated for inclusion of the right to education into fundamental right. This interpretation of the directive principles which is non-justifiable, made it enforceable through the court, an organ of the state came forward to ensure this basis principles, when the other two organs of the state, i.e., Legislature and Executive failed to achieve those objectives. Once it is settled that the right to education is concomitant to the fundamental rights enshrined under part III of the constitution because those rights cannot be fully enjoyed unless a citizen is educated and well aware of the rights enshrined in the constitution for that matter not only this right but all the other rights, Justice Bhagwati in a famous case Francis Coralie Vs Union of Territory of Delhi¹⁳ held that the right to life included the rights to live with dignity including the facilities for reading writing and expressing oneself in diverse forms. In another case Bandhua Mukti Morcha Vs Union of India ¹⁴. He further extended the right to live with human dignity, to include educational facilities as well. Accordingly 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 bye the Right to Education. In Mohini Jain's case Kuldp Singh. J opined that "the state is under a constitutional mandate to provide educational institutions at all levels for the benefits of the citizens". The main intention of the learned judge behind the above observation might have been that all citizens of India should get education and also the opportunity to acquire education. This will imply that every citizen of this country can call upon the state to provide him education at all stages. This interpretation which is very broad has been laid down by the Apex court by supplementing Article 21 with the directive principle under Article 41 The above proposition in Mohini Jain's case was rejected by the court in Unni Krishnan's case on the ground that the right to education which is implicit in the right to life and personal liberty guaranteed by Article 21, must be construed in the light of Directive Principles in part IV of the Constitution. In Unni Krishnan's case the court has laid down that Right to Education understood in the context of Article 45 and 41 means every child/citizen of this country has a right to free education until he completes the age of 14 years and after a child/citizen completes 14 years his right to education is circumscribed by the limits of the economic capacity of the state and its development. Thus Unnikrishnan's case triggered a number of controversies and thus resulted in several new litigations. The apex court reconsidered the whole issue involved in T.M.A. Pai foundation VS Karnataka²⁹ the question whether the citizens could claim fundamental right to establish and administer educational institutions was answered by the court in the affirmative. In P.A. Inamdar Vs State of Maharashtra ³⁰ the supreme court delivered an unanimous judgement by 7 judges declaring that the state can’t impose its reservation policy on minority and non minority unaided private colleges, including professional colleges. Though this case relates to Right to establishment, administration and admission to professional colleges the honourable Apex court gave a comprehensive meaning to education. Till constitution Eighty-Sixth

¹³ AIR 1981 SC 746 753
¹⁴ AIR 1984 SC 802-811-812
²⁹ AIR (2002) 1 S C C 481.
³⁰ AIR (2005) 1 S C 3220.
Amendment Act\textsuperscript{19}, right to education was not a specially guaranteed fundamental right under the constitution. It was only in Unnikrishnan vs State of Andhra Pradesh\textsuperscript{20} When had, widely interpreting Article 21, recognized right to education as one of the aspects of personal liberty. It imposes a duty upon the state to make out the steps for the achievement of the Right to education. Education is the source of many rights and without which many other objectives cannot be achieved.

**Impact of Natural Disaster on Education:**

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual image of the future. A man without education is no more than an animal. In every emergency situation, whether natural disaster or man made disaster or disaster caused due to conflict situation or otherwise, education especially pre-primary, primary and secondary schools suffer large scale devastation and irregularity, this is because of poor infrastructure and inadequate focus on educational system at a period of crisis. This is a worldwide phenomenon which is however essentially seen in developing or underdeveloped poor countries where educational system is grossly wretched. When a disaster occurs, immediate rescue operation, supply of food relief and rehabilitation of affected people become the top most agenda in the administration of relief operation. It leaves education of children in the lowest rung. Severe damage to school buildings as the buildings is used as shelter homes for the victims of disasters.

There are various forms by which the educational system is temporarily (sometimes it is permanent in nature) goes beyond the control and also does not attract attention. The emergency situation not only causes devastation in terms of damage to educational infrastructures like building, furniture, books, learning kits but also creates trauma and behavioural problems among students. Further, due to the involuntary separation from both family and community protection during emergency situation a child’s risk of exposure to violence, physical abuse and even death greatly increases. These upshots the deprivation of rights and entitlements conferred on children by national and international laws and policies. One of the significant aspects of rights of children which are mostly affected during an emergency situation is enjoyment of Right to Education.

Here are some of the examples which affected the education rights of the children when a disaster occurs. The fact is that 60 children lost one educational year without getting proper schooling just because these unfortunate children could not produced there birth certificate to the school authorities in a new school where they have been sent for education by an orphanage called Diocese Home, Kendra Para. When education is considered as Fundamental Right and comes within the extended meaning of Right to Life, denial of education for complete one year is just another example of deprivation of entitlement. There is a fire tragedy on 16-07-2004 in kumbakonam (Tamilnadu) by which 93 children was died in a school for this fire accident all were aged between eight and ten years. Lot of damage to school buildings, use of school buildings for temporary shelter, supply of relief material which causes temporary suspension of classes. Causing physical disability among

\textsuperscript{19} Inserted by the constitution (86th- Amendment) act -2002 21-A, stating “The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law, determine”.

\textsuperscript{20} A.I.R. 1993-SC-2178.
students and causing trauma related behavioural disorder around educational institutions. Non operationalisation of classes for a long period of time. Irregular attendance of teachers. Increase in child labour. It has affected other systems of education like Pre-primary and Non-formal Education centres.

Suggestions for Protection of Education Rights in Event of Natural Disasters:

Some suggestions can be made for protection of education rights of children when a disaster occurs there is a need to convergence approach so that nutritional surveillance, health and education of children are addressed as a part of response service

- Immediate repair of school buildings.
- Regularising teaching staff to conduct classes.
- Mobilising students for attending classes and thereby reducing dropouts.
- Making special arrangements for teaching and learning materials.
- To provide the students with educational kits including books as per the suggested syllabus.
- Motivate parents to ensure that their children are attending schools regularly.
- Making arrangement for reduction of trauma sustained by students as well as teachers in some cases.
- Providing children with facilities and opportunities, which offer them right to leisure.
- To ensure fullest co-operation of the concerned communities, special drive may be launched at the grassroots level.
- To free educational institution wherever it is occupied by different agencies particularly Government for purposes of storage and relief administration. Similarly where the school is still being used temporary shelter, it should be liberated from such occupation.
- As a matter of mobilizing students, mid-day meal programme or any other type of supplementary feeding should be resumed as has been done earlier.
- Educational fees to be waived.

Conclusion:

So when a disaster occurs the right of the child to education shall be protected and the return of children, whether displaced or not, to schooling should be facilitated as early and as quickly as possible after the disaster. Education should respect their cultural identity, language and tradition. There should be more systematic efforts to link emergency education with the themes of various human rights and humanitarian law protecting the rights of children. The 86th Constitution Amendment Act 2002 added Article 21-A, stating "The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law, determine." Right to education is a compelling right it cannot be allowed to melt into paleness. It has to have the lighting of a fire. One should bear in mind that owes to the future generation, for in education there is an inherent of future growth.

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