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BIRTH RIGHT OF CHILDREN: RIGHT TO EDUCATION UNDER CONSTITUTION OF INDIA

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Abstract

Children are the future of any nation. For any nation, children are considered its most important possession because they are its future. And education is considered an important factor in the development of those children. For many years, education has been considered something that cannot be given without cost. It is considered that only those people can get educations that have the means to attend them. It is considered a dream for many children to get an education without any difficulties. In their opinion, there is no path to achieving this dream. In today's world where there is constant race is going on and all are fighting to achieve something, large number children are still deprived of this basic right, the children are still living in the dark. The Constitution of India after Independence came as a light in there darkness, it became the path to achieving the dream of many children. Even though there were no direct provisions in the original Constitution that mentioned the right to education as a fundamental right, it was still present in Part IV of the Constitution as a directive principle of state policy. The Constitution of India contains Fundamental Rights, which are given to every citizen of the state irrespective of any kind of discrimination. While the Directive Principles of State Policy are the guidelines for the government to fulfil those mentioned in them for the sustainable development of the country, It was after a long struggle that education was given the status of a fundamental right after the 86th Constitutional Amendment in 2002.

Keywords: Constitution of India, Right to Education, Fundamental Right, Article 21A

"Education is the most powerful weapon which you can use to change the world." –

Nelson Mandela¹

In this era, it is important to give special care and prominence to the education of children because the welfare of the entire nation and its development and growth depend on the well-being of the children. Many countries in the world have given the exclusive right to education to the children by making it both compulsory and free at the same time. The right to education is now recognized throughout the world. The United Nations also mentions that, for the development of the children, education is the most important and primary stage of their development, along with health and other important factors. Therefore, India did not fall behind by neglecting it; these rights of the children to education were given to them even after many years of struggle by amending the Constitution in 2002. The 86th Constitutional Amendment of 2002 not only gave the right to education as a fundamental right for the children as free and compulsory, but the amendment also included another provision in Part IVA of the constitution that contains fundamental duties by adding Article 51A (k), which states that every parent or guardian has a duty to provide each and every possible way to provide for the education necessary for their children.

One can infer that education balances the ultimate phenomenon of human existence. For the development of not only the nation but also of human beings, education holds far more importance at present. India has been considered a country with rich intellect people in the world, whether that person is in India or any other part of the world. For the enrichment of the children's education, it is the obligation of the government as well as the society. As we know, the overall development of children will automatically lead to the betterment of society at large. Like how Mahatma Jyotiba Phule described true education in his thoughts as making the whole world a little better than it was before².

Right to Education as Human Right

The Right to Education is recognized by many international laws in the form of agreements, treaties, and regional law, and many other conventions. The Universal Declaration of Human Rights has declared that right to education is a Fundamental Human rights. It is guaranteed to each and every person without any discrimination on the basis of caste, creed, color, race, languages, etc. the right to education is an indispensable human right, it is absolutely necessary

¹ <https://www.centralofsuccess.com/education-quotes-nelson-mandela>

² <https://topx.mybharat.me/18-quotes-by-jyotirao-govindrao-phule>

for the upliftment and development of the marginalized people due to their inefficiency due to poverty, and other economical and social backwardness.

UNESCO has mentioned on many occasions that there are many reasons why children should be given free and compulsory education by all nations. According to UNESCO, quality education aims to ensure the development of children into a fully-rounded human being. It is the first of their life. It is also one of the most important tools in giving opportunities to socially excluded children and adults out of poverty and into a better society. UNESCO data shows that if all adults completed secondary education, globally the number of poor people could be reduced by more than half³. It also helps in promoting the gender equality and helps to curb any type of discrimination between girl child and male child. For this human right to work there must be equality of opportunity, universal access, and enforceable and monitored quality standards.⁴

The Universal Declaration of Human Right, 1948 is considered to be the first ever document to include education as a human right. Article 26 of the UDHR says that **‘Everyone has the right to Education’**. Since the adoption of UDHR many other member countries has made many implementation in their domestic laws to give each and every person education. With the UDHR other many international instruments and conventions also recognize the importance of education by enacting provision for education as human right.

The International Covenant on Economic, Social and Cultural Rights, 1966 has given special importance under article 13 on the right to education. It recognizes the universal right to education without discrimination of any kind and sets forward a framework to achieve the full realization of these rights, determining: free compulsory primary education, generally available and accessible secondary education by the progressive introduction of free education, equal access to higher education on the basis if capacity, measures to literacy and quality improvement.⁵

The International Convention on Civil and Political Rights, 1966 guarantees in its Article 18 the freedom of thought conscience and religion in teaching and recognizes the liberty of parents

³ <https://en.unesco.org/news/what-you-need-know-about-right-education>

⁴ ibid

⁵ <https://www.right-to-education.org/page/united-nations-instruments>

to ensure the religious and moral education of their children in conformity with their own convictions.⁶

The Convention on the Rights of Child, 1989 also recognizes the right of child for the Education compulsorily under Article 28 which guarantees free and compulsory primary and secondary education for all on the basis of equal opportunity. Many other conventions have adopted the principle of equal footing for right to education but most importantly Universal Declaration of Human Rights is the heart of United Nations to provide great emphasis on Human Rights which also includes Right to Education as Fundamental Human Rights.

Right to Education in Indian Constitution

The Indian Constitution is a paramount law of the nation. After independence, India made many attempts to provide and improve the education system. Many commissions were established to study the education system in India. And many changes were made to facilitate the reports of those commissions. When the Constitution was drafted, the matter relating to education was added to Part IV of the Indian Constitution, which contains the Directive Principles of State Policy. The Indian Constitution is divided into many parts, of which parts III, IV, and IVA contain Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties, which are considered to be the most important. The Indian Constitution did not provide a provision that could make education a right when it was implemented. It was after the Constitutional amendment in the year 2002, which provides that education is a fundamental right under Article 21A. It did not mean that there was no provision regarding education in the original Constitution. Since Article 45 comes under Directive Principles of State Policy, it is a guideline given to the state for the future development of legislation. The Indian Constitution has recognized the importance of education for social transformation as well as sustainable development as a whole. The preamble of the Constitution affirms a determination to secure liberty of thought, expression, belief, faith, and worship; equality of status and opportunity; and to promote among the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation⁷. Article 21A exclusively talks about the right to education; apart from article 21A, articles 15, 29(2), 30, 38, and 45 are other provisions in the Indian Constitution that mention the rights of children.

⁶ ibid

⁷ Dhawan, M L *Issues in Indian Education*, Isha books, Adarsh Nagar, Delhi- 10 033, (2(N16)

- **Article 21A:** In the new Article 21A, which was added to the Indian Constitution after the 86th Constitutional Amendment in 2009, it states that *the state has an obligation to provide free and compulsory education to children of ages 6 to 14 years*. In 2009, the Right to Education Act was passed in accordance with Article 21A.
- **Article 15:** It is mentioned in Article 15 that the discrimination on the grounds of religion, ethnicity, caste, sex, or place of birth, is prohibited by of the Indian Constitution. At the same time, Article 15(3) says that the state may take specific measures for women and children.⁸
- **Article 38:** It states that any social order that promotes the welfare of the people is secured by Article 38 of the Indian Constitution.
- **Article 45:** The Indian Constitution makes sure to provide free and compulsory elementary education to all children up to the age of 14 years⁹.
- **Article 29(2):** Article 29(2) of the Indian Constitution provides that people seeking education can take an admissions course at a state-funded education institution without any discrimination, and they can also seek financial aid from the state for an education institution.
- **Article 30:** Minority linguistic and religious groups are protected by Article 30 of the Indian Constitution. They have the right to create and run any institution they want.¹⁰

After the 86th Constitutional Amendment Act in the year 2002 of the Constitution, it has given a comprehensive Fundamental Right to the children by making education free and compulsory for each and every child from the age of six to fourteen years old. It is mentioned in Article 21A that it is the fundamental right of each and every child between the ages of six and fourteen that they be provided with free and compulsory education. However, the situation for the amendment of the Constitution and for giving exclusive rights to children did not arrive easily. The path for these changes was made by the decisions given by the Honorable Supreme Court in two important judgements, one of which is *Unnikrishnan V. State of Andhra Pradesh*¹¹, which stated that the right to education directly flows from Article 21 which talks about the right to life and personal liberty, and *Mohini Jain v. State of Karnataka*¹², in which the court constituted that without education, a man's life has no reason or meaning, for without

⁸ Jain M P *Indian Constitutional Law* 5th edition wadhwa publication, Nagpur 2006

⁹ Basu, D D *Introduction to the Constitution of India*, 23rd Edition, Lexis Nexis

¹⁰ *ibid*

¹¹ AIR 1993 SC 2178

¹² AIR 1992 SC 1858 1867

education, living life is the same as a life of an animal. Article 21A lays down an obligation on the state to provide free and compulsory education to children from the age of 6 to 14 in such a way as the law shall determine¹³. In this article, education is made free and compulsory. It directly indicated that the education should be provided without any fees and should be compulsory, which cast an obligation on the state and local authorities to take important measures to provide education to children from ages 6 to 14 years. Many landmark judgments followed that, validating the importance of the Indian Constitution and its role. In *Ashoka Kumar Thakur vs. Union of India and others*¹⁴, the Supreme Court had said that "it has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country."

The 86th constitutional amendment, passed in 2002, also added two other articles, Article 51A (k) and Article 45, to the Constitution. While Article 51A (k) talks about the obligation of the parents and guardians of children to provide necessary opportunities for education from the age of six to fourteen for their children, Article 45 of the Constitution comes under the ambit of Part IV, which lays down the Directive Principles of the State Policy. It gives the guiding principles to the state while making any legislation to follow these directives. They are the obligations that the state and the central government have to fulfil by enacting laws on the matters given in Part IV. Article 45 states that it is the duty of the state to provide early childhood care up to the age of six years old. Overall, the Indian Constitution made it possible to give the children what they need and deserve, i.e., a right to have free and compulsory education.

The Right to Free and Compulsory Education Act, 2009

The provision of the right to education in the Indian Constitution paved the way for the long-awaited legislation known as the Right to Free and Compulsory Education Act, 2009. The act came into force after a few years of the 86th Constitutional Amendment Act, 2002, on April 1, 2010. The Act follows closely with the provisions of the Indian Constitution so as not to violate the Fundamental Rights of the Child given under Article 21A. The Right to Free and Compulsory Education Act, 2009, gives an emphasis solely on the development of the children, with provisions closely following the object of providing free and compulsory education as given under Article 21A of the Indian Constitution.

¹³ www.lawyersclubindia.com

¹⁴ (2008) 6 SCC 1

Some of the key elements of the Children's Right to Free and Compulsory Education Act 2009¹⁵ are:

- Every child between the ages of six and fourteen has the right to free and compulsory education.
- The government schools shall provide free education to all children, and the management of them shall be managed by the School Management Committee.
- Under Section 12(1)(c), it is given that private schools shall admit at least 25% of the children from economically weaker sections into their schools without any fees.
- The Act also makes provision for non-admitted children to be admitted to a class according to their age.
- The Act also prohibits any kind of physical punishment or mental harassment in school from teachers.
- The Act prohibits the screening procedures for the admission of children, which are given under Section 13.
- It is mentioned in the Act that it prohibits any types of capitation fees and that the schools have to provide necessary books, uniforms, and other necessary tools for the children without any kind of fee.
- The schools should have proper recognition from the appropriate government; without recognition, the schools cannot exist. No school shall be established or recognised if it does not fulfil the criteria, norms, and standards given under Section 18 of the Act.
- The act prohibits private tuition by teachers who are already employed at the school.
- The punishments are provided in the Act for the breach of any provisions given in the Act¹⁶.

The act comprises many other provisions for the better growth and development of the children by giving them the necessary primary education. The early development of the child is the most important phase of their life. The parliament made sure that the Right to Free and Compulsory Education Act closely follows the provision 21A. As the focus of Article 21A is solely on the age group of 6 to 14 years, the states are required to abide by the provisions of the Indian Constitution. Education is a great cohesive force in developing the integrity of the nation. Since the Constitution is considered the father of all laws in a country, all legislation has to be made in accordance with it so as not to violate any provision of the Constitution. Similarly, the Right

¹⁵ Right to Free and Compulsory Education Act, 2009

¹⁶ *ibid*

to Education Act is also followed with the same objective of giving children free and compulsory education while at the same time abiding by the provisions of the Constitution. In the end, both laws follow the same principle, i.e., to provide people with their basic human as well as fundamental rights.

Conclusion Remarks

The right to education for children is an internationally recognized right, and many nations have recognized that for the development of their nation, it is utmost important to focus on the proper growth and development of children by providing necessary education to them. India, a member country of these international organizations, has also recognized that education is fundamental to human rights. It is guaranteed to each and every person without any discrimination on the basis of caste, creed, color, race, language, etc. The right to education is an indispensable human right; it is absolutely necessary for the upliftment and development of marginalized people due to their inefficiency due to poverty and other economic and social backwardness.

The Indian Constitution has made it possible to give these children the right to education by guaranteeing it as a fundamental right under Article 21A. The Indian Constitution played a vital role in providing for early education and the development of children. At present, article 21A is recognized as a fundamental right in the Constitution, making amending it an achievement in the history of Indian legislation. Since the children are the future of the nation for their sustainable development, it is the duty of each and every parent, teacher, guardian, and the state to ensure that the children are getting the necessary opportunity for the Right to Education given by the Indian Constitution. And the objective of Right to Free and Compulsory Education Act, 2009 is the dynamic change made possible by the Constitution.