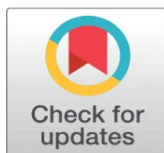


EDUCATION FOR ALL: READING ARTICLE 21A AND ARTICLE 30 OF THE CONSTITUTION OF INDIA

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ABSTRACT

Education is a basic human right which must be accessible to all. An inclusive education is a prerequisite for a just and democratic society. Since its independence, India has given enormous importance to education for all by enacting various acts and policies. However, even after seven decades of independence, a large number of populations particularly the backward sections of society have been deprived of education. Considering the argument, this article attempts to understand the access of education in the context of article 21A and article 30 of the Indian Constitution.

Keywords: Education, Indian Constitution, Article 21A, Article 30

1. INTRODUCTION

Education is one of most important aspects of human life. Access to education enables an individual to live a dignified life. The education system has gone through a long process of evolution from traditional *gurukul* system to modern-day institutions. Therefore, debates around educational access and justice have been a century old. The colonial government of 19th century was elite based where discrimination persisted everywhere. The national movement started by our national legends had struggled to counter the colonial system as well as to popularize an emancipatory educational system. Leaders like Mahatma Gandhi also stressed not only on socio-economic equality but also on the equal educational opportunities. There has always been a necessity for transformative as well as inclusive education for India that includes dalits, women, religious minorities and other marginalised sections of the society. An inclusive education is a prerequisite of a just society and a broad based democratic system. Moreover, right to education which is an internationally acclaimed right is recognized in the Constitution of India too. Considering these arguments, this paper attempts to look at the constitutional provisions in India related to education under Article 21A and Article 30. In the process of discussion, the paper also tries to make a comparative and critical analyse of the Article 21A and Article 30 to look into how inclusivity of education is reflected through these provisions.

2. CONSTITUENT ASSEMBLY AND DEBATES ON EDUCATION

After attaining independence India's first requirement was a self-rule constitution. For that purpose, constituent assembly was constituted in 1946. One of the important sources for the assembly to move on was the historic objective resolution presented by Jawaharlal Nehru. For a newly independent nation, a self-written constitution was quintessential. The framers of our constitution were concerned about the voting rights of the citizens and therefore discussed to include universal adult franchise. Because, to make democracy vibrant ultimate sanction of the people is necessary. Again, to empower citizens with right to vote, it is equally important to equip citizens with education so that they take a mature decision to make democracy pro-active. Realizing the importance of education the framers of the Constitution included the free and compulsory education for all children until they completed the age of 14 years under Directive Principles of State Policy which was to achieve within 10 years. But it was not achieved as targeted.

The provision for minorities or incorporation of minorities for their upliftment was raised in the Objective Resolution presented by Jawaharlal Nehru in the initial period of the commencement of the Constituent Assembly in December 1946. There were different committees in the Constituent Assembly. The Advisory committee on Fundamental Rights and Minorities which was headed by Sardar Patel had three sub-committees and one committee was entrusted for the task of minorities. H.C. Mookherjee, J.B. Kripalani, K.M. Munshi etc. were leading figures associated with the task of minorities. The opinion from different representatives of the Constituent Assembly was gathered by the sub-committee through questionnaire to discuss the different safeguards of the minorities. Based on this, the draft constitution has made certain arrangements for the minorities like –representation in the legislative bodies; educational rights etc. though different issues were raised in the assembly, but due to partition of the country, subtle changes in the provisions have been witnessed. With gradual discussion and modification finally our Constitution recognized the cultural and educational rights of the minorities under Article 29 and 30.

3. ARTICLE 30 OF THE CONSTITUTION OF INDIA

The colonial policy of divide and rule had actually sidelined the minorities for which the framers of our Constitution were cautious to address the minority issues. The draft constitution has debated about the minority rights in the Article 23 which later on take the shape of Article 30. Article 30 is an important part enumerated under the fundamental rights of the Indian Constitution. The provision of the article upheld the principle of equality as well as promotes the traditional values of co-existence, secular ethos of the country. The objective of Article 30 is to ensure equal treatment for the minorities. Article 30 of the constitution of India consists of two clauses. According to Clause 1, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. Clause 2 suggests that, the state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

The protection under Article 30 is extended only to the religious and linguistic minorities and does not extend to any sections of the citizens. The article refers to three categories of minority educational institutions. These are - (1) all minorities whether based on religion or language shall have the right to establish and administer educational institutions of their choice 1-A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by minority, referred to in clause (1), the state shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause 2) The state shall not in granting aid to educational institutions on the ground that it is under the management of a minority, whether based on religion or language. the first two categories of institutions are subject to regulatory powers of state while the third category of institutions are free to administer themselves but must abide by the general laws like contract law, industrial law, economic regulations etc.

4. ARTICLE 21A OF THE CONSTITUTION OF INDIA

Article 21A is one of the most crucial articles enshrined in the Indian Constitution. However, the article was not a part of the original constitution. It was included after the 86th amendment act, 2002. According to the provision under Article 21A – the state shall provide free and compulsory education to all children of the age group of six to fourteen years. Prior to this amendment, the Constitution in its original provision has included in Article 45 free and compulsory education for all children until they completed the age of 14 years under Directive Principles of State Policy which was to achieve within 10 years under Directive Policy of State Policy since the commencement of the Constitution. But this goal could not be achieved for a long as it was targeted. However, being a directive principle it was not enforceable by the court.

But the goal of providing education to children gained momentum only after the initiation of different education policies like National Policy of Education 1986. Although slow improvement was seen but to provide universal and quality education was still a distant dream. However, to uphold the principle of inclusiveness it is important to give access to education to all children irrespective of gender and social category to make them active and responsible citizen. So, in order to enforce this goal an exclusive provision regarding education has been included under the category of fundamental rights. By adding Right to education as a fundamental right, opens the scope for judicial intervention. Article 21 which entails right to life and liberty speaks about right to live with human dignity and all those aspects of life which help to make a man's life meaningful, complete and worth living. Education which is a foundation of human development is also added under this Article with the hope of creating a knowledgeable and enlightening society.

The 86th Amendment Act, 2002 changed the subject matter of Article 45 under Directive Principles of State Policy (DPSP) added to provide early childhood care and education for all children until they complete the age of six years. It also added new fundamental duty under article 51A that reads- 'It shall be the duty of every citizen of India to provide opportunities for education to his child or ward between the age of six and fourteen years.' Further to give effect to Article 21 A, Right to Education Act, 2009 has been introduced. Many important provisions have been included under this act. According to this Act all children whether male or female of the age group of six to fourteen years would receive compulsory education. The teacher students' ratio should be 1:30. It has also been mentioned that a child above six years of age if has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age. The Act has also granted responsibility to the Government and the concerned local authority to establish school in the areas if not established so far within three years from the commencement of the Act. The central government as well as state government will grant necessary fund for the implementation of this Act. The National Commission for Protection of Child Rights and the State Commission will monitor the implementation of this Act.

5. ARTICLE 30 & ARTICLE 21A: A CRITICAL ANALYSIS

Both the Articles reflect shed light on inclusiveness that talks about imparting education to all. Not depriving any child from education is a crucial character of a democracy. However, many scholars said that the essence of Article 30 is that it is intended to provide exclusive right to minorities to establish and administer educational institutions in their own way which is denied to non-minorities. Here the minority enjoys autonomy. This contradicts the Fundamental Rights included Article 15 that states that the state shall not discriminate against any citizen on grounds only of religion, race, sex or place of birth. Further few scholars have also questioned whether all minority religion gets equal treatment in exercising their rights under Article 30.

The question also arises regarding Article 21A as it is only extends to elementary education and not to the technical and higher education. But the major concern whether the target has been achieved or not even after that. Even after the implementation of Right to Education Act, 2009 for enforcing Article 21A, it has been found that from a national perspective the enrollment has been increased after the implementation of the Act; however there are discrepancies at the state level. There are problems in terms of infrastructure, teacher student ration etc. There is a lot of school which still could not achieve the norm of the Act.

6. IN CONCLUSION

Mahatma Gandhi once said that, for a person to be truly educated you have to have a united approach – by training the mind to think, the hands to acquire skills and the heart for human values and ethics – which embodies the mission and holistic concept of education. Therefore, the government should allocate maximum funds for overall development of education system. The New Education Policy 2020 which has also promised to bring transformative changes aims at universal access and early childhood education, reduce drop out etc. The NEP 2020, if all stakeholders executed in true spirit, would bring positive changes in ensuring education for all.

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CONFLICT OF INTEREST

None.

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