



Human Rights And The Indian Constitution: The Legal Foundation Of The Right To Education

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Abstract:

Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, race, religion, language, or another status. The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly on 10th December 1948. It consists of a Preamble and 30 Articles dealing with civil, economic, social, political and cultural rights. Indian Constitution is the largest written Constitution in the world, recognized as the supreme law of the land, which provides various Human rights for all the citizens and envisions a framework for the protection and promotion of the right to education. This Constitution was adopted on 26th November 1949 and came into effect on 26th January 1950, which contains a Preamble, six Fundamental Rights in Part III and some Directive Principles of State Policy in Part IV. The fundamental objective of this paper is to examine the Constitutional provisions related to Human Rights and the legal foundation of the Right to Education in India.

Keywords: Human Rights, Right to Education, Indian Constitution, Constitutional Provisions

Introduction

Indian Constitution was adopted by the Constituent Assembly on 26 November, 1949 and came into effect on 26 January 1950. It is the largest written Constitution in the world. The Preamble of the Indian Constitution has provided the human rights in the form of justice, liberty, equality, fraternity and brotherhood. The basement of the Constitution includes Fundamental Rights and Directive Principles of State Policy in Part III and Part IV. J.C. Johari said that, "Fundamental Rights constitutes the Magna Carta of the essential freedoms of the Indian People." There are six types of fundamental rights in the Constitution. These are (i) Right to Equality (Articles 14-18), (ii) Right to Freedom (Articles 19-22), (iii) Right against Exploitation (Articles 23-24), (iv) Right to Freedom of Religion (Articles 25-28), (v) Cultural & Educational Rights (Articles 29-30), (vi) Right to Constitutional Remedies (Article 32, 226). The Directive Principles of State Policy included in Part IV from Articles 36 to 51. Article 226 and set up of Human Rights Commission on national and state level also safeguards the human rights provided by the Constitution of India. Human rights are rights inherent to all human beings, whatever our place of birth, nationality, sex,

ethnicity, race, religion, language or any other status. These rights are interrelated, interdependent and indivisible. The Universal Declaration of Human Rights was adopted by the General Assembly on 10th December 1948 just after the adoption of Indian Constitution. The Constitution of India guarantees almost all the human rights contained in the Universal Declaration of Human rights, 1948 and in the International Covenant on Economic, Social and Cultural Rights in 1966.

In terms of human rights, the Indian Constitution is one of the world's most comprehensive and progressive legal frame works. Education plays an important role in the promotion of social justice by ensuring equal opportunities for all the citizens. The Indian Constitution recognizes education as a Fundamental Right and makes educational opportunities available to all, particularly to marginalized communities.

Human Rights and the Indian Constitution

1) Preamble of the Constitution:

The Constitution of India begins with a Preamble, which is based on the 'Objectives Resolution' by Pandit Nehru on December 13, 1946 and adopted by the Constituent Assembly on 22 January, 1947. The Preamble of the Indian Constitution includes four objectives of the constitution i.e. social, economic and political justice; freedom of thought, expression, faith, belief and worship; equality of status and of opportunity; and fraternity. The Preamble works as a mirror of the Indian Constitution and each objective is closely related to human rights.

2) Fundamental Rights of the Constitution:

The fundamental rights are similar to the provisions of the Universal Declaration of Human Rights (1948).

Right to Equality:

Article 14: Equality before law and equal protection of law to all persons within the territory of India.

Article 15: Prohibition of Discrimination

Article 16: Equality of opportunity in matters of public appointments or public services.

Article 17: Abolition of untouchability.

Article 18: Abolition of titles (other than military and academic).

Right to Freedom:

Article 19: All citizen shall have to –

- a) Freedom of speech and expression
- b) Freedom to assemble peacefully and without arms
- c) Freedom to from associations and unions
- d) Freedom to move freely throughout the territory of India
- e) Freedom to reside and settle in any part of India
- f) Freedom to practice any profession or to carry on any occupation, trade or business.

Article 20: Protection in respect of conviction for an offence.

Article 21: Protection of life and personal Liberty.

Article 21(A): Right to Education.

Article 22: Protection against Arrest and Detention in Certain Cases.

Right against Exploitation:

Article 23: Prohibition of traffic in human being, beggar and forced labour.

Article 24: Prohibition of Employment of Children in dangerous employment areas.

Right to Freedom of Religion:

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

Article 26: Freedom to manage religious affairs.

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

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

Cultural and Educational Rights:

Article 29: Protection of interests of minorities.

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

Right to Constitutional Remedies:

Article 32 provides effective provisions for the protection and enforcement of Fundamental Rights. Citizen of India can file a writ petition in the Honourable Supreme Court. It empowers the Supreme Court to issue writs for this purpose. The writs are of five kinds: Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari. The Right to life and Personal Liberty cannot be suspended at any circumstances. Under Article 226, the people can even move High Courts for the enforcement of Fundamental Rights.

3) Directive Principles of State Policy:

The Directive Principles of State Policy, as contained in Part IV of the Constitution covering Articles from 36 to 51, underline the philosophy of democratic socialism with a touch of Gandhian idealism as incorporated into the fundamental law of our country. The Directive Principles of State Policy are similar to the provisions of International Covenant on Economic, Social and Cultural Rights in 1966. Article 37 provides that the Directive Principles are 'fundamental in the governance of the country' and that 'it shall be the duty of the state to apply these principles in making laws.' These constitutional directives were not intended to be merely principles but were to be treated as positive mandates and part and parcel of the human rights provisions of the Constitution. The Directive Principles of State Policy provide socio-economic justice, and also works as guiding principle for state. These Principles can be classified into four broad categories - (i) Socialist or Economic Principles, (ii) Liberal Principles, (iii) Gandhian Principles and (iv) General Principles.

Human Rights and the Right to Education

The Universal Declaration of Human Rights (UDHR) was adopted by the General Assembly on 10th December 1948. It consists of a Preamble and 30 Articles dealing with civil, economic, social, political and cultural rights. Article 26 of the Universal Declaration on Human Rights (UDHR), 1948 provides that, "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". In addition, it states, "Parents have a prior right to choose the kind of education that shall be given to their children". Under the Convention on the Rights of the Child (CRC), 1989 the states are required to recognise the right of the child to education in a progressive manner, particularly by making primary education free and compulsory for all. The right to education does not mean a right to a similar kind of education for all individuals, but to a minimum standard of quality education for all.

The Legal Foundation of the Right to Education in Indian

In *Mohini Jain vs. State of Karnataka case (1992)*, the Supreme Court of India established the Right to Education as a Fundamental Right under Article 21 of the Constitution. The Supreme Court held that Article 21 guarantees the Right to Life and Personal Liberty, as well as the Right to Education. The Right to Life and Personal Liberty cannot be meaningfully exercised without the Right to Education. This case led to the 86th Constitutional Amendment Act 2002, which introduced Article 21A, makes free and compulsory education for children in the age group of between 6 and 14 years. Another significant verdict was delivered by the Indian Supreme Court in *Unni Krishnan vs. State of Andhra Pradesh case (1993)*, clarifying the constitutional Right to Education. The Supreme Court clarified that the right to free and compulsory education for children under 14 is a Fundamental Right, which is subjected to the economic and capacity and development of the State. The most significant amendment to the constitution for the inclusion of education as a Fundamental Right was 86th amendment in the year 2002. In 2009, the Right to Education (RTE) Act was passed, establishing education as a Fundamental Right for children between the age group of 6 to 14 years. As a result, elementary education was made free and compulsory. Everyone has the right to education. In India, Right to Education is a Fundamental Right with right to quality education to all children.

Constitutional Provisions of the Right to Education in India

The Government of India passed 'The Right to Children to Free and Compulsory Education Act' or 'Right to Education Act' in 2009, for free and compulsory education to all children up to 14 years, under the Article 21A of the Indian Constitution. The right came into force on 1st April 2010. In the Constitution of India, free and compulsory education was included in Article 45 of the list of "Directive Principles of State Policy". But, throughout our country, universalizing elementary education has been made possible by the implementation of Article 21A by the "Right to Education Act, 2009". "The Right to Free and Compulsory Education Act 2009" or RTE Act 2009 provides a legal justiciable framework for the children in the age group of between 6 and 14 years for the purpose of ensuring access to free and compulsory elementary education.

Article 21A: "*Right to education*—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." This article of the Constitution clearly states that elementary education as a Fundamental Right of all children between the age group of 6 to 14 years.

Article 41: “*Right to work, to education and to public assistance in certain cases*—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.” This provision under the list of "Directive Principles of State Policy" of the Indian Constitution promotes socio-economic equality in the country.

Article 45: “*Provision for early childhood care and education to children below the age of six years*—The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.” Before the enactment of Article 21A, Article 45 of the Constitution laid down the Directive Principles of State Policy to provide free and compulsory education for all children under the age of 14. The Government of India has included this provision under the list of "Directive Principles of State Policy" through the 86th Amendment of December, 2002 and passed by the Parliament in July 2009.

Article 46: “*Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections*—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.” This provision under the list of "Directive Principles of State Policy" of the Indian Constitution highlights the constitutional concern for social justice and the upliftment of marginalized communities in India. According to this article of the Constitution, the State shall promote specially the educational and economic interests of the weaker sections of society. A democratic nation like India, where people are divided by religion, language, caste, race, culture, and socio-economic factors, needed safeguards for the country's different minorities.

Article 51A(k): The 86th Constitutional Amendment Act, 2002 not only introduced Article 21A to make education Fundamental Right in Part III but also amended Article 51A in Part IVA (Fundamental Duties) to emphasize the responsibility of citizens in ensuring education. In addition, this amendment added clause(k) to Article 51A, states that “It Shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or ward between the age of 6 and 14 years.”

Conclusion

Education plays a crucial role in protecting and promoting human rights in India. The Right to Education is an important tool for transforming society, ensuring equality and democracy. Through various provisions of the Indian Constitution, education is ensured as a fundamental right and promoted as a means of promoting social justice, specifically for marginalized communities. Human Rights and Right to Education helps in every way to save people from discrimination and to live a peaceful life in the society. There are some private schools that offer high quality education, which are not easily accessible to poor and backward children because of their high fees. In remote areas, inadequate infrastructure and qualified teachers prevent quality education for children at elementary level. Being a fundamental and human right, the state must provide education to all without discrimination on the basis of socio-economic status.

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