

Education In The Constitution Of India – A Critique

Gurpreet Kaur Brar (Asst. prof. guest faculty)

Dept. of Law, PURC, Sri Muktsar Sahib.

Mob. 9988600865, 9814200865.

Email- gurpreetbr0@gmail.com

Abstract:

Education is the root of modernization and human development. The provision of universal, free and compulsory education becomes the joint responsibility of the centre and the states. There are various provisions in the constitution of India which give strength to the spread of the education. Some important acts, schemes and policies are also made for the betterment of primary education. The right to education was not a fundamental right in India but the Right of Children to free and Compulsory Education Act is an effort to include this right in the Constitution as a fundamental one.

Keywords: Education, constitution, state, provisions.

Introduction: Education is a key to development of humanity. Future of any country depends on the nature of education system of the country. Education is the root of modernization and human development. Education is a process of learning and it continues throughout the life. The educational institutions which provides the education to the maximum number of children is the world largest single enterprise. So, expenditure on education is regarded as useful investment not only by the economists, but also by the educationists. Education works as a lever in raising financial and social status of the individuals. Economic condition of a country depends largely on the educational standards of its people since primary education is the foundation and should be the maximum or basic acquisition for the majority. It promotes mobilization and encourages people to participate in development activities. Education makes people skilled towards jobs and creates productive efficiency.

History of Education in India: In ancient India, the whole system of education ran on the specific system of institution called gurukul system of education.¹ In vedic period, the teacher or guru used to give knowledge to their pupil on the basis of vedic literature which consisted of eight different forms which are four vedas, six vedangas, four upavedas, four brahmanas, one hundred and eight upanishads, six systems of philosophy, bhagwad Gita, and three smritis.² Ancient educators considered knowledge as the third eye of man which gives him insight into all worldly and non-worldly matters.³

Education after Independence: In 1947, the subcommittee on Fundamental Rights in its report recommended that education in Clause 23 should be an entitlement of every citizen.⁴ Draft Article 36 was phrased as a right and set out that every citizen is entitled as of right to free primary education and it shall be the duty of the state to provide free education to the citizens. In the ensuing debate, Pandit Lakshmi Kanta Maitra objected to the coupling of a directive principle and a fundamental right in the same provision⁵ and suggested that Article 36 must be deleted from the list of fundamental rights.⁶ The constitution makes the following provisions under Article 45 of the directive principles of state policy that the state shall endeavour to provide within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of

¹Meaning of the Gurukul System of Education-It was a system of education in which the student resided with his teacher in his home and received education. J.C. Aggarwal (2008), 'Development of education system in India', Shipra publications, 115-A, Vikas Marg, Shakarpur, Delhi-110092 (India), P-35

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³Chauhan Dr. C. P. S. (2004), 'Modern Indian Education Policies, Progress and Problem', Kanishka Publisher, Distributors 4697/5-21A, Ansari Road, Daryaganj New Delhi-110002, (ISBN- 8173916160), Pp- 2-3

⁴"Clause 23- Every citizen is entitled as of... right to free primary education and it shall be the duty of the State to provide within a period of ten years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of fourteen years." Available at: <http://righttoeducation.in/faq/category/frequentlyasked-questions/history-act#t304n321>. Last accessed February 28, 2013.

⁵Pandit L. K. Maitra, November 23, 1947, Volume VII, Constituent Assembly Debates: "Part IV deals with directive principles of State policy, and the provisions in it indicate, the policy that is to be pursued by the future governments of the country. Unfortunately, in article 36, this directive principle of state policy is coupled with a sort of a fundamental right, i.e. "that every citizen is entitled.....etc." This cannot fit in with the others. Here a directive principle is combined with a fundamental right. Therefore, I submit that the portion which I have indicated, should be deleted."

⁶November 23, 1948, Volume VII, Constituent Assembly Debates. Available at: <http://parliamentofindia.nic.in/ls/debates/vol7p11.htm> Last accessed February 28, 2013

fourteen years.⁷The provision of universal, free and compulsory education becomes the joint responsibility of the centre and the states. The well-known Kothari Commission (1964-66) recommended that central government should undertake the responsibility in education for the equalization of educational opportunities with special reference to the reduction of inter-state differences and the advancement of the weaker section of the community.

Education in the Constitution:There is diversity of languages in our country. After the dawn of independence, the mother- tongues have received special emphasis as medium of instruction and subjects of study. In the constitution of India, it has been laid down that the study of one's own language is a fundamental right of the citizens. Secondary Education Commission (1952-53) recommended that the mother tongue or the regional language should generally be the medium of instruction throughout secondary school stage subject to the provision that for linguistic minorities, special facilities should be made available. Kothari Commission (1964-66) has also said that at college and university stage, mother-tongue should be the medium. The medium of instruction at school level is already mother-tongue. There are three important legal modes through which education is regulated in India in which the first is the constitutional status of education as a principle or right, secondly is the statutory basis for the regulation and provision of basic education and third is the executive competence to provide for basic education. There are various provisions in the constitution of India which give strength to the spread of the education which are-

- ❖ Article 28⁸ provides freedom as to attendance at religious instruction or religious worship in educational institutions.
- ❖ Article 29⁹ provides equality of opportunity in educational institutions.

⁷Jagannath Mohanty, (2002), 'Primary and Elementary Education (Policy and Programme, Growth and Development, Organization and Management, Sociological and Psychological Aspects, Democracy and Education)', Published by Deep and Deep Publication PVT. LTD. F-159 Rajouri Garden, New Delhi-110027 (ISBN- 8176293725), P- 106

⁸The Constitution of India, Article 28. (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. (3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

- ❖ Article 30¹⁰ accepts the right of the minorities to establish and administrate educational institutions.
- ❖ Article 45¹¹ provides the state shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of 14 years.
- ❖ Article 46¹² provides for special care to the promotion of education and economic interests of the scheduled caste, scheduled tribes and the weaker sections of society.
- ❖ Article 337¹³ provides for special provision with respect to educational grants for the benefit of Anglo-Indian community.
- ❖ Article 350A¹⁴ article relates to facilities for instruction in mother tongue at primary stage.
- ❖ Article 350B¹⁵ provides for a special offer for linguistic minorities.

⁹The Constitution of India, Article 29. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

¹⁰The Constitution of India, Article 30. (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. 1[(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a 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, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language

¹¹The Constitution of India, Article 45. The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

¹²The Constitution of India, Article 46. 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.

¹³The Constitution of India, Article 337. During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State 2*** for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948. During every succeeding period of three years the grants may be less by ten per cent. than those for the immediately preceding period of three years: Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease: Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent. of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

¹⁴The Constitution of India, Article 350A. It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

- ❖ Article 351¹⁶ article relates to the development and promotion of the Hindi language.

The seventh schedule of the Indian constitution contains legislative powers under three lists viz. the union list, the state list and the concurrent list. The unionlist contains 97 subjects where the following entries are related to education-

- ❖ Entry 13¹⁷ provides educational and cultural relations with foreign countries.
- ❖ Entry 62¹⁸ states the institutions known at the commencement of the constitution as National Library, The Indian Museum, the Imperial War Museum, the Victoria Memorial, and Indian War Memorial. Any other such institutions financed by the government of India wholly or in part and declared by the parliament by law to be an institution of national importance.
- ❖ Entry 63¹⁹ states institutions of national importance. The institution known at the commencement of this constitution as the BHU, AMU and Delhi University etc. declared by parliament by law to be an institution of national importance.
- ❖ Entry 64²⁰ states the institution of scientific and technical education financed by the government of India wholly or in part and declared by law to be institutions of national importance like IITs and IIMs.

¹⁵The Constitution of India, Article 350B. (1) There shall be a Special Officer for linguistic minorities to be appointed by the President. (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

¹⁶The Constitution of India, Article 351. It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

¹⁷The Constitution of India, Seventh schedule, (Article 246) List I, Union List, Entry 13. -Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

¹⁸The Constitution of India, seventh schedule, (Article 246) List I, Union List, Entry 62.- The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance

¹⁹The Constitution of India, Seventh schedule, (Article 246) List I, Union List, Entry 63. -The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the [Delhi University; the University established in pursuance of article 371E;] any other institution declared by Parliament by law to be an institution of national importance.

- ❖ Entry 65²¹ provides union agencies and institutions for professional, vocational or technical training, including the training of police officers, the promotion of special studies or research and scientific or technical assistance in the investigation or detection of crime.
- ❖ Entry 66²² provides coordination and determination of standards in the institution of higher education or research and scientific and technical institutions.

The state list consists of 66 entries, out of which the following is the entry related to education:

- ❖ Entry 12²³ provides that all libraries, museums and other similar institutions controlled or financed by the state, ancient and historical monuments and records other than those declared by or under law made by the parliament to be of the national importance.

The concurrent list comprises 47 entries. Among them the following are related to education:

- ❖ Entry 20²⁴ deals with economic and social planning.
- ❖ Entry 25²⁵ deals with education, including technical education, medical education and universities subject to provision of entries 63, 64, 65, 66 of list (union list).

Education by Executive action: Some important acts, schemes and policies are also made for the betterment of primary education-

²⁰The Constitution of India, seventh schedule, (Article 246) List I, Union List, Entry 64.- Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

²¹The Constitution of India, seventh schedule, (Article 246) List I, Union List, Entry 65.- Union agencies and institutions for— (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.

²²The Constitution of India, Seventh schedule, (Article 246) List I, Union List, Entry 66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

²³The Constitution of India, Seventh schedule, (Article 246) List II, State List, Entry 12.- Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those 4[declared by or under law made by Parliament] to be of national importance.

²⁴The Constitution of India, Seventh schedule, (Article 246), List III, Concurrent List, Entry 20.- Economic and social planning.

²⁵The Constitution of India, Seventh schedule, (Article 246), List III, Concurrent List, Entry 25.- Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.

- ❖ National Programme of Mid-day Meals in Schools was centrally sponsored scheme launched in 15th August 1995 with a view to enhancing enrolment, retention and attendance and simultaneously improving nutritional levels among children.²⁶
- ❖ Rastriya Madhyamik Shiksha Abhiyan (RMSA) was launched in March 2009 with the objectives of enhancing access to secondary education and improving its quality.
- ❖ Model Schools Schemewas launched in November 2008 with the objectives of providing quality education to talented rural children by setting up of 6000 high quality model schools as a benchmark of excellence at block level at the rate of one school per block.²⁷
- ❖ Saakshar Bharat (SB) was launched on 8th September 2009 by prime minister of India Dr. Manmohan Singh, which is mainly focus on female literacy. It has been included as one of the Flagship Programmes.²⁸
- ❖ Jan Shikshansanasthans (JSSs) is the programme that provides vocational training to non-literates, neo-literates, as well as school drop-outs by identifying skills. In the selection of beneficiaries, priority is given to women, SCs, STs, OBCs, minorities, and other economically weaker section.²⁹100
- ❖ Sarva Shiksha Abiyan (SSA) waslaunched in 2001 with the goal of i) All 6-14 age children in school/EGS (Education Guarantee Scheme) centre/ Bridge course by 2005, ii) Bridge all gender and social category gaps at primary stage by 2007 and at elementary level by 2010, iii) Universal retention by 2010 and iv) Focus on elementary education of satisfactory quality with emphasis on education for life. The SSA especially focuses on girls (SCs and STs) and children of weaker section.

²⁶Misra and Puri (2012), 'Indian Economy', Himalayan Publishing House Pvt. Ltd., Ramdoot, Dr.Bhalerao Marg, Girgaon, Mumbai-400004, (ISBN-9789350519035) P- 143

²⁷Economic Survey 2012-13, op cit Pp- 284-285

²⁸Report to the people on education 2010-2011 (2012), Ministry of Human Resource, Development Government of India, New Delhi, India, P-8

²⁹Report to the people on education 2010-2011 (2012), Ministry of Human Resource, Development Government of India, New Delhi, India, P-18

- ❖ National Programme for education of Girls at Elementary Level (NPEGEL) is a holistic effort to address obstacles to girls' education at micro level through flexible, decentralized processes and decision making.³⁰

These are the major constitutional provisions to direct the legislative and executive machineries to work for the betterment of education in India.

Education initiative by Indian Judiciary: In 1993, Indian Judicial system, in *Unni Krishnan v. State of Andhra Pradesh* case,³¹ has endeavoured to declare right to education as part of right to life. The right to education has been articulated as a fundamental guarantee by the supreme court in the case of *Mohini Jain*.³² The Ramamurti Committee report which reviewed the national policy on education 1986, in 1990 observed that the continued failure of the state to realise the goals under Article 45 as a teasing reality³³ and recommended the introduction of a fundamental right to education. The supreme court's interventions in 1992³⁴ and 1993³⁵ realized this recommendation by declaring a right to elementary education. But there are no reported cases where petitioners have approached the supreme court directly to implement the right to education in a manner that has any impact on the enrolment rates in primary education between 1993 and 2010.³⁶

Education by Amendment: The Constitution (Eighty Third) Amendment Bill³⁷ was introduced in 1997 to insert Article 21 A under Part 3. In 2002, Indian parliament also provided right to education to its budding citizens through a constitutional amendment,² and

³⁰Misra and Puri op cit (2012), Pp-43-4

³¹AIR 1993 SC 2178.

³²SCC Vol.3 p 666, 1992

³³Report of Committee for Review of National Policy on Education, 1996, dated December 26, 1990 at pages 119-120. Available at: <http://www.teindia.nic.in/Files/Reports/CCR/Ramamurti-committee-report.pdf>. Last accessed February 28, 2013.

³⁴*Mohini Jain v State of Karnataka* (1992) 3 SCC 666

³⁵*Unnikrishnan J. P. v State of Andhra Pradesh* (1993) 1 SCC 645

³⁶18 There are only 3 cases in which the Supreme Court has issued writs of mandamus in the context of the right to education. In *Avinash Mehrotra v Union of India*, (2009) 6 SCC 398, the Court held that the right to education means the right to safe education. In *Election Commission of India v St Mary's School* (2008) 2 SCC 208 the Supreme Court held that the Election Commission must ensure that election duty for teachers must be restricted to non-teaching days and holidays. In *State of Himachal Pradesh v H. P. Recognised and Aided School Management Committee & Ors.* (1995) 4 SCC 507, the Supreme Court held that because the State is under an obligation to provide education to all children below the age of fourteen years, the State is therefore under an obligation to disburse grants-in-aid to middle school which are aided by the government.

³⁷The Constitution (Eighty-sixth Amendment) Act, 2002.

then Right to Education Act was also passed.³⁸ The right to education is not a fundamental right in India but the Right of Children to Free and Compulsory Education Act is an effort to include this right in the Constitution as a fundamental one. It will support the fundamental right of the children from age 6 to 14 years under article 21A of the constitution to get free elementary education and the eleventh fundamental duty under Article 51A that were introduced by the 86th Constitution (Amendment) Act, 2002, along with Article 45 under the category of directive principles of the state policy. Education is the individual right of every child. Article 21A of constitution of India is a positive right to have an elementary education provided to all children of India, irrespective of caste, class or creed or religion etc. Every child has a right which cannot be waived off as doctrine of waiver does not apply on fundamental rights in general. But in case of Article 21A, target citizens are minor children between the age of 6 to 14 years. Hence, the state has even more positive duty to enforce children's right to have education. Most important aspect of article 21A is the nature of education ensured in, is basic education of elementary level. It is not supposed to be any religious education or any kind of specialised education. When we made education a constitutional right, at par with the right to life, it hardly befitted the spirit of the constitution to take such a minimalist approach to child rights.

Limitations by Right to Education: By limiting free education between Classes 1 and 8, the state is offering low educational standards to all children, a decision that impacts the poorest badly. This selection of the 6-14 age groups is arbitrary and actively countermands the country's promise to its children, of making education available, accessible and acceptable. For growth and development, the country definitely needs a strong base that can comprise of skilful work force and educated youth. For those households with incomes below the official poverty line, the only hope for a future lies in education and resultant empowerment. Instead of the equitable education based on mutual dignity that the amendment envisaged, such a provision shuts out the poor as a class and further deepens class barriers. Poverty is the main reason for the low enrolment and high drop-outs in different level in schools. The economically poor parents are not in a position to match up the demanding expenditure of education. The quality of school is one of the important factors

³⁸The Right of Children to Free and Compulsory Education Act, 2009

which influence the enrolment of student in different level. School quality includes quality education, well developed infrastructure, proper facility of library, sufficient teachers, playground, facility of drinking water and separate toilets for girls and boys. Landes and Solmon's pioneering work examines the impact of compulsory schooling legislation during the 19th and early 20th century on differential levels of schooling across states and time. They conclude that compulsory schooling laws did not cause the observed increases in the levels of schooling and instead they argue that compulsory schooling laws were the result of relatively high levels of schooling.³⁹ The problems of endogeneity and multicollinearity have been explored in subsequent work and it appears that only where we assume that legislation is exogenous does it have measurable impact on levels of schooling.⁴⁰

Worldly status of Education: The right to education is recognised as a human right by the United Nations and is understood to establish an entitlement to free, compulsory primary education for all children, an obligation to develop secondary education accessible to all children, as well as equitable access to higher education and a responsibility to provide basic education for individuals who have not completed primary education. The world's most developed economies such as the US, the UK and France allocate 6-7 per cent of their national budgets on public education and health. India by contrast allocates just 3 per cent for education and around 1 per cent for health.

Conclusion: Aims give us direction to work. Every individual wants to achieve certain goals in life. Educational aims are varied. The aim of education is the acquisition of knowledge, skills and attitudes. It helps to adjust properly in one's own environment. Knowledge helps the man to overcome the nature and satisfy human wants. The theoretical knowledge will never meet our basic needs of life. We need bread and butter to fill up our belly. We can get it if education is vocationalised. Gandhiji realized it in 1937 when he introduced Basic Education. Vocational aim develops the social efficiency of the individual. The Indian concept of education believes in self-realization. Swami Vivekananda said that we want that education by which character is formed, strength of mind is increased, the intellect is expanded and by which one can stand on one's own feet. India is a democratic country. Even

³⁹Landes and Solmon (1972).

⁴⁰Linda Edwards (1978).

citizen must have to realize the duties and responsibilities carefully. So, the aim of education is to train carefully the future citizens. Training should be provided to develop the qualities of the individual such as capacity for clear thinking, receptivity of new ideas, clarity in speech and writing and true patriotism. The central government needs to make adequate financial provisions for the purpose. Vigorous efforts are needed to achieve the target of 100 percent education because the responsibility for universal elementary education lies with the central government, the state governments, the local bodies and voluntary organisations.

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