

“Peace, Ethics and Development: Fundamental Right to Education” A Critical Study

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ABSTRACT

Education is the continue process, without education growth and development of the society is highly impossible. Education is not only essential for the moulding of the personality of an individual, even essential for organised system of every government. Evolution of education in all the primitive, medieval and modern society based on the moral, cultural, religious, ethical, social and political aspects. Education covers wide range of activity moreover the concept of education changes with the change of time and social order. Philosophy and education had a great intimate relationship and great philosophers are also educationalist their Philosophical views had more influences on the educational theory and practice. Main aim of education in primitive society is to attain the knowledge, which is complete in all its spares and free from all attachment, and establishment of peaceful society. Ultimate aim of education in individual perspective was to attain the Moksha (Solvation). Through this article author wants make the presentation on the role of morality, philosophy in the development of education. Role of State in realisation of education with the development of an individual personality, in along with the social, economic, moral, political and philosophical aspects of the nation. The international treaties and their role on implementation of education as a basic human right in whole world. The study mainly through light on the following aspects: How the education changes with the change in social obligation? How the development brought changes in the aim and object of the education? What is the role of education in attainment of universal peace, ethics and morality?

INTRODUCTION

“Right to Education” becomes the Fundamental Right after 55years of adoption of the Constitution,by the Amendment in 2005, incorporation of Art. 21A which confers free and compulsory education from the age of 6 years to 14 years of age and the remaining content of right is elected to the regulations made by the law. This Fundamental Right was bought in to force through special legislation in 2009 Right of Children to free and Compulsory Education Act. And no of the policies is made for the implementation. Thus it could be understood that the right become the real enforceability not by making a simple legislation, which also needs additional policies formulation for the enforcement. Most importantly as stated by Dr. Amartya Sen in his caveat reiterates that the need for comprehensive policy and program for the action that can supplement the legislation. Which means legislation is necessary but not sufficient means of implementing the fundamental right to education. It is clear that policy formulation is indispensable not only from the point of view of legislative process but also from the point of view of implementing that right. It follows therefore that State should develop a comprehensive policy and programs that will guide all action taken by the State in the field of school education.¹

The Recommendation of Constitutional Review Commission is extremely useful in this context.The Commission recommends that an independent National Education Commission should be set up every five years to report to Parliament on the progress of the Constitutional directive regarding compulsory education and on other aspects relevant to the knowledge society of the new century. The model of the Finance Commission may be usefully looked into.It also recommended that the Planning Commission should devote the section of socio-economic right including the right to education in all its plan.²

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¹Dr.Niranjanaradya&ArunaKashyp, *The ‘Fundamentals’ of the Fundamental Right to Education in India* 6(Bangalore: Centre for Child and the Law, NLSU)

² The National Commission to Review the Working of the Constitution was set up by Government Resolution dated 22 February, 2000 under the Chairmanship of Justice M.N. Venkatachaliah. The terms of reference stated that the Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can

The Fundamental rights can be implemented through the help of legislation and the legislation can be effectively enforced through the policies. In modern days the policies played important role in implementation of the goal and objects of the legislature. In this article the importance of policies in the implementation of the Fundamental rights (specially right to education) is discussed.

IMPORTANCE OF RIGHT TO EDUCATION

Indian civilization is known for its rich heritage and great contribution to the human life. Importance of education was known in India from ancient period. The main aim of the education during the Vedic period was to realise the self rather than gaining of knowledge or personal satisfaction.

A man without education is equal to animal. Education is essential for not only for the development of the individual personality it is essential for the realization of his consciousness and to help him to become the complete person. In the democratic country like India only the education can establish the informative and transformative government. Education and educated citizen is very essential for the development of the community, society and the nation. Education is a powerful tool for preparing our citizens in the knowledge society. Education will amalgamate globalization with localization, enabling our children and youth to become world citizens, with their roots deeply embedded in Indian culture and traditions.³

The most important and urgent reform needed in education is to transform it, to endeavour to relate it to the life, needs and aspirations of the people and thereby make it the powerful instrument of social, economic and cultural transformation necessary for the realization of the national goals. For this purpose, education should be developed so as to increase productivity, achieve social and national integration, accelerate the process of modernization and cultivate social, moral and spiritual values.”⁴

EVOLUTION OF EDUCATION IN INDIA

Before the 19th century in the ancient and medieval India, the education was a privilege available only to a chosen few. The education was considered as religious content and it was provided in the elitist medium of instruction which leads to the lack of social inclusiveness and practice of social exclusion.⁵ During the Buddhism and Jainism period the education got its new dimension, education was no longer conferred to any particular group or class of society this may be called as common education for all. During this period two well-known University *Takshila* and *Nalanda*, were established and contributed in many field science, art, mathematics, astronomy, physics, chemistry, medical science and surgery, fine arts, mechanical and production technology, civil engineering and architecture, shipbuilding and navigation, sports and games. Indian scholars like *Charaka* and *Susruta*, *Aryabhata*, *Bhaskaracharya*, *Chanakya*, *Patanjali* and *Vatsayayna* and numerous others made seminal contribution to world knowledge.⁶

respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features. The Commission submitted its report in two volumes to the Government on 31st March, 2002. Available at: <http://interstatecouncil.nic.in/ncrwc/> (visited on 16/10/2020 at 13.20)

Chapter 3, Fundamental Rights, Directive Principles and Fundamental Duties”, report of National Commission to review the working of Constitution, Value 1. Department of legal affairs Ministry of law, Justice and Company affairs the Government of India 2002, at Paras 3.20 1-2, 3.30. 1-2

available at: <http://lawmin.nic.in/ncrwc/finalreport/volume1.htm>, (visited on 14/09/2020)

The Commission has stated that it will examine the working of the present provisions in the Constitution as well as the applicable laws and practice and consider how better these objectives may be achieved. (see Press Note of the Commission dated March 23, 2000)

³ “Ministry of Human Resource Development National Policy on Education 2016 Report of the Committee for Evolution of the New Education Policy” p.1 https://www.academia.edu/36230895/Ministry_of_Human_Resource_Development_National_Policy_on_Education_2016_Report_of_the_Committee_for_Evolution_of_the_New_Education_Policy_Government_of_India (visited on 25/02/2020 at 21:33)

⁴ Report of the University Education Commission (Dr. S. Radhakrishnan Commission), 1948-49

⁵ Supra note 1, p 3

⁶ Supra note, p. 2

https://www.academia.edu/36230895/Ministry_of_Human_Resource_Development_National_Policy_on_Education_2016_Report_of_the_Committee_for_Evolution_of_the_New_Education_Policy_Government_of_India (visited on 25/02/2020 at 21:33)

‘During the Mughal period the rulers did not make any significant efforts to universalise the existing educational system, but tried to spread Islamic principles, laws, and social conventions education in India’. Any Muslim could acquire education at a ‘*Madrasa*’ and all higher education was imparted in Arabic by *Moulvis*. The *Maktabas* and *Madrasas* were first confined to Muslims, but later, Hindus and Muslims had begun to study each other’s language. Both the Hindu as well as Muslim educational institutions in pre-British India gave a greater thrust to religion than other matters.⁷ It further aimed at the achievement of material prosperity.⁸ One of the mile stone of Mughal education system was that the education institutions are made open to the every one irrespective of few class or communities.

IMPORTANT POLICIES FOR EDUCATION DURING BRITISH PERIOD

When British came to India as trades later became administrator, they realised the importance of common education for their smoother administration system. And they replaced Indian traditional system of education with the help of Christian missionaries which started providing common education to all in along with the preaching Christianity among the Indian natives. One important result of the great efforts by missionaries was to stir up governments both in England and in India to realise that it was their duty to do something for the education of the people under their rule. The Charter of 1698 clearly stated that it was the duty of English ministers of religion to give education along with their primary duty of spreading the Gospel. But the East India Company had realised the political significance of a policy of religious neutrality and therefore refrained from carrying out the directions of the Charter of 1698. However, the Company encouraged educational activity by establishing schools with liberal grants-in-aid.⁹ Thus number of schools were established by the British Government. Some of the British commission played important role in the evolution of education policies in India such as: Charles Grant and William Wilberforce,¹⁰ The Wood’s Despatch of 1854,¹¹ The Hunter

Commission 1882,¹² Report and the Sadler Commission’ 1917,¹³ Sri Gopalkrishna Gokhale¹⁴ Hartog Commission 1929¹⁵ Abbot and Wood Report, 1937¹⁶ Sargent Plan 1944¹⁷

⁷History of Education Policy in India, doc

http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000033SO/P000300/M013097/ET/145258955205ET.pdf

p. 3, (Date of visit 26/10/2018 at 19:14)

⁸ N. Jayapalan, *History of Education in India* 40 (New Delhi: Atlantic Publishers and distributors, 2000.)

⁹History of Education Policy in India, doc

http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000033SO/P000300/M013097/ET/145258955205ET.pdf

p. 4, (Date of visit 26/10/2018 at 19:14)

¹⁰ Missionary activists made recommendation to the East India Co for spreading the education in India. The main object of the recommendation was to promote Christianity and Western literature. The British Parliament added a clause in 1813 charter that Governor-General-in-Council less than one lakh for education and allowed the Christian Missionaries to spread their religious ideas in India

<https://www.jagranjosh.com/general-knowledge/development-of-education-during-british-period-in-india-1445314601-1> (Date of visit 30/08/2020 at 20:00)

¹¹ The main recommendation of committee was to establishment of organised system of education from primary to university, regional language education was promoted and it was also recommended to establish at least on primary school in every District or provide grants to the existing schools.

¹² The main recommendations were that for establishment of primary schools at regional level as well as it should be provided in mother tongue, the establishment of school at backward area, and importance also given to the co-curricular and practical subject. The local authorities were given responsibility, freedom of selection of books, decide the school hours and holidays according to the local needs.

¹³ Which acknowledged the neglect of in India, mark the early genesis of right to education in India.

¹⁴ In 1910 for the first time in Indian history made the resolution for the free and compulsory primary education throughout the country. And also made recommendation to establish separate Department at the Central Government. But it was passed in the year 1917 in the name of Shri Vittalbhai Patel Known as the Patel Act 18.

¹⁵ This commission gives more preference to the primary and mass education as compared to the secondary and University education. And also recommended for the four years’ duration of primary education. Highlighted the problem of wastage and stagnation in education at the primary level. It recommended the policy of consolidation instead of multiplication of schools. There should be qualitative development and rural uplift must be the object of primary education. Liberal and scientific curriculum must part of primary education.

<https://www.civildaily.com/prelims-spotlight-important-british-commissions-and-committees/> (visited on 30/08/2020 at 20:20)

¹⁶ Emphasises on scientific curriculum and well organised primary education. Teacher training and vocational education also got importance in the report. Along with the academic development art, physical trainings were also become part of the school.

British Education creates consciousness in the society which started reacting for the nation's quest for freedom and choice of best mode to attain the same. The great leaders of freedom movement realised the fundamental role of education in attainment of independence and its significance in the development of the nation in all its perspective. To attain free and compulsory uniform education to mass irrespective of their caste, class and sex to create active and aware citizenry, many of the Freedom fighters made the lot of efforts and struggled for it and made important contribution to national education before independence. This journey also led to fight like *Gopal Krishan Ghokale, Raja Ram Mohan Roy, Pt. Madam Mohan Malviya, Mahatma Gandhi*¹⁸, *Dr. B. R. Ambedkar*¹⁹, *Jyothirao Phule, Arvind* and other freedom fighter advocated for universal education. The Wardha Scheme of Education, 1937²⁰ and the Sargent Scheme of Education 1944, can be said to be the landmark developments in the history of free and compulsory education in India. In the Wardha Scheme of Education many of the educationalists, national leaders, Social reformers and Education ministers of the provinces took part. Which gave rise to the fundamental concept of "Basic education" and advocated its importance, the Sargent Scheme can be said to be the first attempt to formulate a National Education Policy. Having the dream of providing upright education for ideal citizenship, with the psychological, physical and spiritual development. The scheme also wants to establish the society which is free from the evil and defects. All these developments paved the way for the recognition of primary education as a fundamental among masses and is essential not only for the individual development but overall development of the nation as a whole.

DEVELOPMENT OF RIGHT TO EDUCATION POST-INDEPENDENCE OF INDIA

International instrument for Realisation of Right to Education

The natural, harmonious and progressive human development can be constantly achieved only through the proper education. The systematic education can only create a perfect personality of the individual, and that complete knowledge is major instrument of conversion of the wealth and which is reason for the growth of nation. To attain overall development of human resources the efforts were made in the national as well as international level. Establishment of UNESCO in 1945, UDHR in 1998²¹, ICESCR²² are the major instrument to recognize right to education as human right. Along with these agreements no of international treaties are played important role in realisation of educational right for complete development of human resources.

Policies for implementation of Right to Education

After independence in 1947 to establish educated society, the State has set up two important goals, (1) to provide Universal free and compulsory education to all and (2) develop all primary education institutions. For the attainment of these goal two committees were established for conduct the surveys for assessing the possibilities of providing primary school within the easy walkable distance from the home of every child. The committee has in the chairmanship of Shri. G. Ramachandran conducted the survey and submitted its report in 1956. As a result, National Institute of Basic Education was established in 1956. Later on the National Council of Educational Research and Training was set up as autonomous organisation in September 1961²³. Along with this no of commissions and committees were established to reconstruction of education in the independent India. Later commissions Universal Education Commission²⁴ and the Secondary Education Commission,²⁵ the recommendation made by these commissions played important role in the field of education after independence. During the period of *Jawaralal Nehru* the Resolution on Scientific Policy was undertaken for the development of technology, science and scientific research was received special emphasis. Primary education really got its reconstruction only after the

¹⁷ Made the recommendation for creation of separate Department for education at State as well as Centre. The age was fixed for every stage of education like Pre-primary, Primary and Secondary, also recommended for the mother tongue education till high school level. Educational provision is made for the physically and mentally handicapped children.

¹⁸ Gandhiji formulated the scheme of Basic Education seeking to harmonize intellectual and manual work. Through which the independent self-reliable nation can be established.

¹⁹ Ambedkar emphasized the need of proper and compulsory education to the children, then only it was possible to relieved from the drudgery work.

²⁰ With the inspiration of Mahatma Gandhiji article in the Harijan many of the educationist who took part in the freedom straggle started thinking in that line. Accordingly they called All India National Conference on 22nd and 23rd October 1937. That Conference also known as Wardha Education Conference.

²¹ Art. 26 state about the educational rights.

²² Art. 13 and 14 of International Covenant on Economic, Social and Cultural Rights guarantees about the free and compulsory education to all.

²³ A. Biswas, and S.P. Agarwal, *Development of Education in India- A Historical Survey of Educational Documents before and after Independence* 837 (New Delhi: Concept Publishing Company, 1994)

²⁴ (1948-49) the Commission was established to develop the higher and technical education.

²⁵ (1952-53) the Commission was established to develop the secondary education.

end of Third Five Year Plan. On the advice of Government in 1964-66 another commission²⁶ was established for the national pattern of education and on the general principles and policies for the development of education at all stages and in all aspects.²⁷ Regrettably, in reality it was found that first legislature has totally ignore and failed to implement the aspiration of Constitutional framers. Even though goal was specially mentioned in the Constitutional provisions due to lack of political interest and aspirations there has been gross violation of the children rights. After analysing government statistics Central government in India do not appear to have focused on education as a national priority. Between 1951 -55 public expenditure on education was less than 1% of the total domestic product(GDP) of India. During 1955-56 the first time more than one percent of total GDP spent on education but this figure stayed between 1% to 2% and till 1979.²⁸ After the study of national annual budget by Dr L. C. Jain a social activist noted that during 1951- 61, Article 45 'lay under a lid' there was "not to be found a passing reference to education let alone to Article 45 in the budget speeches."²⁹ It was increasingly evident that even three decades after the time limit set in Article 45, neither the Central Government nor the various State Government were making much progress towards the attaining the goal set out by the draftsmen of that provision of the Constitution.³⁰

In 1968 the first official Policy³¹ was made by the Indian government for the development of primary education and try to implement it common school system to strength and access to the education and pave the way to social development. But due to lacking of detailed strategy, legal force, financial and organisation support the policy could not properly have implemented. The goal set by the drafts men of the Constitution need to be achieved by 1960, because of many factors this target again revised to 1970, then to 1976, again in 1988 present targeted to adopted in the policy frame after 65 year plans in 1990.

Matters did not improve significantly over next three decades. After the emergency an important change occurred in 1976, when, the education was added to the concurrent list after removing it from the State list.³² The Educational Right has been reinforced by new 20point program and announced by Prime Minister in 14th January, 1982.³³ These moves were made to give more power to Central Government in the matter of providing educational services on the national basis, but it did not result in any marked changes in the immediate aftermath.

The National Policy on Education 1986 (revised in 1992) the Resolution stressed the role of education in promoting national progress, a sense of common citizenship and culture, and in strengthening national integration. The policy envisaged a National system of education which implies that " up to a given level, all students, irrespective of caste, creed, location or sex, have access to education of a comparative quality."³⁴ The policy also states that "Sports and Physical education are an integral part of the learning progress, and will be included in the evaluation of performance . A nation- wide infrastructure for physical education, sports and games will be built into the educational edifice."³⁵ The policy also stress on the introduction of Yoga for the integrated development of body and mind. it is also stated that special cash incentives must be provided to the achievers in the extra-curricular activities especially Yoga and Sports. With all these objects also this policy not discussed about the shifting the free

²⁶ Indian Education Commission also known as Kothari Education Commission.

²⁷ The Commission has observed that the existing system of education is unrelated to the life and there is a wed gap between it and national development. it also recommended that education must be related to the life, needs and aspiration of the people.

²⁸ Department of Education, Government of India, Selected Educational Statistics 2000- 2001 2
<http://www.education.nic.in/htmlweb/ edustats-03.pdf>

²⁹ L.G.Jain, "Are Our Budget Makers Faithful to the Constitution? A Tour of Budget, 1947-2001", National Centre for Advocacy Studies, 2001.

³⁰ Vijayshri Sripati and Arun K. Thiruvengadam, Constitutional Amendment Making the Right to Education a Fundamental Right, 152 Constitution, Vol. 1, ch. 3 (2002), <http://lawmin.nic.in/ncrwc/finalreport/v1ch3.htm> (last visited on 14/10/2020)

³¹ The National Policy on Education 1968: A system of 12 years of School Education, popularly known as 10 + 2 system has been adopted. The 10 years' school is considered in three segments primary, middle and secondary. The primary and Middle together constitute elementary education.

³² Constitution (Forty-second Amendment) Act on Indian Parliament, Dec 18, 1976,
<http://ondiacode.nic.in/coiweb/amend/amend42.hmt>. (Last visited on 14/10/2020)

³³ "Point 16 of 20 point programme reads as follows: Spread universal elementary education in the age group of 6-14 with special emphasis on the girl, and simultaneously involve students and voluntary agencies in programs for the removal of adult illiteracy "

³⁴ NEP Draft 2016.

https://www.mhrd.gov.in/sites/upload_files/mhrd/files/nep/Inputs_Draft_NEP_2016.pdf
(Last visited on 3/3/2020)

³⁵ NEP 1986 cited at 8.20 p.143,144

Available at: https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/npe.pdf
(Last Visited on 20/07/2020)

and compulsory education from non-enforceable right (DPSP) to enforceable one (F.R). Along with the national policies various state government brought different schemes for implementation of the education as a basic right. In 1990 Government has come out with the goals for universal primary education by 2010. The goal of universal and quality education is mainly emphasised by the Supreme Court in two historical judgments in 1993.³⁶

As the result of these developments in 2002 the Indian Parliament enacted 86th Constitutional Amendment Act inserted Art. 21 A and Art. 51A (k) and amended Art.45 in the Constitution. As a follow up legislation in terms of Art. 21-A of the Constitution of India, the Parliament enacted Right to Children to Free and Compulsory Education Act 2009 (RTE), which came in force on the 1st day of April, 2010.³⁷ The Act is a landmark in the history of education related legislation in India. The Act introduces a revolutionary change in enforcement of primary education in India. However, it was not made possible to implement the law as it was dreamed out by the legislature.

There are many important objects intended by the NEP 1986 were not supported by any legislations. It was only after the adoption of the National Plan and Action for Children, 2005 which took policies mainly on the pre-primary education.

National education policy 2016 emerged as a result of past experience and the concerns and imperatives, that have emerged in the light of changing in national development, goals, societal need as well as dynamic of local National regional and global realities and changes including thinking learning need of children youth and adults.

Inspired by the thought of the father of the nation, policy bring into focus the role of education, in inculcating values, providing skills and competencies of citizens, and enabling them to contribute to the nation well-being. It recognises long-term economic growth and the development of the nation critically depend upon quality of products of the education system and that an education system built on premises of quality and equality is central to sustainable development and to achieving success in emerging knowledge economy and Society. The main vision emphasises that the quality education creates the enabled children and youth to become global citizens, with their deep rooted tradition and culture, which is main reason for the amalgamation of globalisation with the localisation.³⁸

The National Education Policy 2020, was adopted on the basis of the recommendation of the committee for drafting the National Education Policy (Chair: Dr. K. Kasturirangan) 2019. This policy provides for the restructuring of education system.

Foundation Stage; Three years (3yrs – 6yrs) pre-primary, and two years 1st and II Standard (at the age 6yrs-8yrs).

Primary Stage: class 3 to 5 (at the age of 8yrs-11yrs)

Middle Stage: Class 6 to 8 (at the age 11yrs-14yrs)

Secondary Stage: classes 9-12 (at the age 14yrs- 18yrs)

The main aim of the policy is to achieve Foundational literacy and numeracy, reforms in curriculum (which must develop the skill of critical thinking, discussion and analysis based learning), Medium of instruction (Vernacular or regional language must be medium of instructions until the completion of grade 8.), ensure universal coverage and inclusivity, Assessment of the Students(not only through the examination), effective governance of School (school complex concept must be introduced, Which must include all the stages of education), School regulation (done through self-regulation in along with the accreditation system), and Teacher training and management(their potentiality must be enhanced through proper and periodic training. And a national curriculum framework for teacher education will be formulated by the National Council for teacher education in consultation with the NCERT).

CONSTITUTIONAL PROVISIONS AND RIGHT TO EDUCATION

The framers of the Indian Constitution were well aware of importance of educated people in realisation of democracy. It took lot of discussion in the CAD regarding the enforcement of educational right but due to economic

³⁶ *Mohini Jain Vs. State of Karnataka* AIR 1992 SC 1858; (1992)3 SCC 666 and *Unni Krishnan Vs. State of Andhra Pradesh* AIR 1993 SC 2178; (1993) 1 SCC 645

³⁷ Report of the Committee on Development of a Policy Framework for Implementation of the Right of Children to Free and Compulsory Education ACT 2009 in Schools in the NCT of Delhi. March 3, 2010 National Council of Educational Research and Training Aurobindo Marg, New Delhi [http://righttoeducation.in/sites/default/files/Report%20of%20the%20Committee%20on%20development%20of%20a%20policy%20framework%20for%20implementation%20of%20RTE school 0NCT delhi.pdf](http://righttoeducation.in/sites/default/files/Report%20of%20the%20Committee%20on%20development%20of%20a%20policy%20framework%20for%20implementation%20of%20RTE%20school%20NCT%20delhi.pdf)

³⁸ Some Inputs for Draft National Education Policy 2016 http://www.languageinindia.com/oct2016/Inputs_Draft_NEP_2016_1.pdf

instability after independence it was finally decided to incorporate these provisions in non-enforceable part of the Constitution,³⁹ for that reason only in framing of Art 45⁴⁰ (draft Art. 35) they put the time limitation of ten years, unlike any other Directive Principles. In another Article 41⁴¹ also secures educational right in accordance within the economic capacity of the State. The Constitution is also contented with innumerable other provisions that have a bearing on education.⁴² Art. 46⁴³, Art. 47,⁴⁴ But in accordance with the Art.37,⁴⁵ Directive principles cannot be enforced in the Court of law as a matter of right. Furthermore, in the realm of fundamental rights as provided and protected in the part III of the Constitution in Art.28⁴⁶ and Art.30⁴⁷ educational rights. There was another important debate was taken place among the framers of the Constitution about whether education shall be shifted either the Union or concurrent lists so that central government would enact laws on education.⁴⁸ Along with these provisions the citizens can perform Fundamental Duties as provided in part IVA⁴⁹ of the Constitution only he is well equipped with the proper education. In modern days many of the International Laws and treaties, conventions and agreements put the more responsibilities on the different nations who were parties to the contract must try to implement the same. Accordingly educational rights also got more importance by the different agreements and Art.51(c)⁵⁰ of the Indian Constitution imposes responsibility on the Government to implement the same. All the above provisions of the Constitution clearly indicate a commitment to giving Indian children in this freedom and dignity and recognising their essential contribution to building a democratic nation.⁵¹ In 1993 after two historical judgements⁵², there was pressure on the government to make the education as a fundamental right. As a result of this through the Constitutional amendment in 2002 and Art. 21A was incorporated and made the education from 06 years to 14 years as a fundamental Right, and also amended Art. 45 of DPSP, and Art.51 (A) (K) of Fundamental duties.

All the effort of the law making in along with the Constitutional Amendment for recognising education as a fundamental right can be achieved through the proper policies in this respect. The role of policies in realising this fundamental right can be done only through sincerity, commitment and proper policy measures. The pandemic situation in Covid- 19 made the Fundamental Right to education as a myth rather than the real. More than half population of the students, especially, economically backward class, socially backward class and rural class students are deprived of the online education or distant education because of lack of facilities like gadgets, internet, electricity and like aspects. The online education made more work pressure on the teacher and made the student more abusive. They become irregular, low attention, fear of technology, and more attached to the gadgets, less active physically as well as mentally. It is the responsibility of the State to bring such scheme and policies which

³⁹C.A.D Vol. VII., New Delhi: Lok Sabha Secretariat, 538 to 540 (2003)

⁴⁰Art. 45 reads: "The State shall endeavour to provide within a period of ten years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of fourteen years."

⁴¹Article 41 reads: "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 case of unemployment, old age, sickness and disablement, and in other cases of underservant want."

⁴²Anuradha Saibaba Rajesh, "The Fundamental Right to Primary education in India: A Critical Evaluation", Indian Journal of International Law, Vol (50)1-4 issue 2010, p 91-111

⁴³Art. 46 reads; "The State shall promote with special care the educational and economic interest of the weaker section of the people, and in particular, of the Schedule Caste and Schedule Tribes, and shall protect them from social injustice and all form of exploitation."

⁴⁴Art. 47 provides- Duty of the State to raise the level of nutrition and the standard of living and improve public health.

⁴⁵Art. 37 reads: "This provisions contained in this Part shall not be enforceable by any Court"

⁴⁶Art. 28 provides freedom as to attendance as religious instruction or religious worship in certain educational institutions.

⁴⁷Art. 30 grantees: Right of minorities to establish and administer educational institutions.

⁴⁸Maulana Asad who was the first Union Minister of education strongly opposed living the education enter into the States. He also argued that it was necessary to give this power to the central government so that uniform or National standard for education would be established. However, the other members of the constituent assembly believed that India is multi linguistic country and which requires the decentralization of education policy through which every State can develop their script and culture. Education in mother tongue only the Mode to achieve the object. See Granville Austin, "The Indian Constitution: Cornerstone of a Constitution" London: Clarendon Press 1966.

⁴⁹Ins.by the Constitution (Forty-second Amendment) Act 1976, s.11 (w.e.f. 3-1-1977)

⁵⁰Art.51 (c) provides, "Foster respect for International Law and treaty obligations in the dealings of organized people with one another."

⁵¹Shantha Sinha, *Emphasizing Universal Principles towards Deepening of Democracy Actualising Children's Right to Education*" 2569 Economic and Political Weekly June 18, 2005,

⁵²*Mohini Jain Vs. State of Karnataka* AIR 1992 SC 1858; (1992)3 SCC 666 and *Unni Krishnan Vs. State of Andhra Pradesh* AIR 1993 SC 2178; (1993) 1 SCC 645

enable them to handle such unexpected situation without any difficulty. And the students should not have deprived of their enjoyment of Fundamental Right to Education.

JUDICIAL CONTRIBUTION TOWARD RIGHT TO FREE AND COMPULSORY EDUCATION

In a democracy the primary purpose of education is to provide an individual with the widest opportunity to develop his potentialities to the full. This direct link between education, national development and prosperity exist only when the national system of education is properly organized from both qualitative and quantitative points of view. India is in transition from a society in which education is a privilege of a small minority to one in which it could be made available to the masses of the people. The concept of Right to Education developed as a Fundamental Right due to keen interest taken by the Judiciary in two historical judgments,

*Mohini Jain and others V. State of Karnataka and others*⁵³, and *Unni Krishna and others V. State of Andhra Pradesh and others*⁵⁴.

The three main issues addressed in these cases are

1. Whether the Constitution of India guarantees a fundamental right to education to its citizens?
2. Whether there is a fundamental right to establish an education institution under Article 19(1)(g)?
3. Does recognition or affiliation make the educational institution an instrumentality?

In deciding the matter Supreme Court states as Article 21 reads as follows: "Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law." It would be clear that it acts as a shield against deprivation of life or personal liberty several unremunerated rights fall within Article 21 since personal liberty is of widest amplitude. If really Article 21, which is the heart of fundamental rights, has received expanded meaning from time to time there is no justification as to why it cannot be interpreted in the light of Article 45 wherein the State is obligated to provide education up to 14 years of age, within the prescribed time-limit.⁵⁵

"'Right to life' is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. 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. The State Government is under an obligation to make endeavour to provide educational facility at all levels to its citizens."⁵⁶

If life is so interpreted as to bring within it right to education, it has to be interpreted in the light of directive principles. The Court has uniformly taken the view that harmonious interpretation of the fundamental rights vis-a-vis the directive principles, Thus, it has been concluded that the right to free education up to the age of 14 years is a fundamental right, partially overruled the *Mohini Jain's* case. It was held that right of free education is available only to the children up to the age of 14 years, but after the obligation of the state to provide education is subject to the limits of its economic capacity and development.⁵⁷

It was further observed that "right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual [and] has been recognized not only in this country since thousands of years, but all over the world. Without education being provided to citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved, the Constitution would fail."⁵⁸In the same case Justice Reddy observed that the quality of education in Government schools was extremely poor and that the schools were woefully inadequate to the needs of the children.

Mr. P.P. Rao, learned Senior Advocate, rightly submitted that when you lack a school building, teachers, books and proper facilities, your schooling might be "free" but it is not an "education" in any proper sense. Adequate number of schools must be established with proper infrastructure without further delay. In order to achieve the Constitutional goal of free and compulsory education, we have to appreciate the reality on the ground. A sizeable section of the country is still so poor that many parents are compelled to send their children to work. The State must carve out innovative policies to ensure that parents send their children to school. The Mid-Day Meal Scheme will

⁵³ (1992) 3 SCC 666

⁵⁴ (1993) 1 SCC 645

⁵⁵ *Unni Krishna V. State of Andhra Pradesh* (1993) 1 SCC 645 para 166

⁵⁶ *Mohini Jain v. State of Karnataka* ((1992) 3 SCC 666) p. 679-80 (para 12)

⁵⁷ *Unni Krishna V. State of Andhra Pradesh* (1993) 1 SCC 645 para 166

⁵⁸ *Supra* note 57

go a long way in achieving this goal. But, apart from Mid-Day Meals, the Government should provide financial help to extremely poor parents.⁵⁹

A Before *Mohini Jain* case

The importance of education has come to be recognised in various judicial decisions.

As observed in *Brown v. Board of Education*⁶⁰ that: "Today, education is perhaps the most important function of State and Local Governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later profession training, and in helping him to adjust normally to his environment.

Deciding the term life in *Bandhua Mukti Morcha v. Union of India*⁶¹

"... It is the fundamental right of every one in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin* case⁶² to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, education facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State- neither the Central Government nor any State Government- has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21, more so in the context of Article 256 which provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State."

In addition to free education and/or other financial assistance, they should also be given books, uniforms and any other necessary benefits so that the object of Article 21A is achieved. Time and again, the Supreme Court, in a number of judgments, has observed that the State cannot avoid its Constitutional obligation on the ground of financial inabilities.⁶³

*Spottswood T. Bolling v. Sharpe*⁶⁴ in which it was held that due process clause of the Fifty Amendment of the American Constitution prohibited racial segregation in the District of Columbia. Incidentally the Court made a remark:

'Although the Court has not assumed to define "liberty" with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objective, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause.'

As was rightly observed by *Gajendragadkar, J.*⁶⁵ "Education is enlightenment. It is the one that lends dignity to a man "...Education seeks to build up the personality of the pupil by assisting his physical, intellectual, more and emotional development."

B. Judicial development after Constitutional Amendment

⁵⁹ibid

⁶⁰ 98 L Ed 873: 347 US 483 (1954)

⁶¹ (1984) 3 SCC 161: 1984 SCC (L&S) 389): (pp 183-84, para 10

⁶² (1981) 1 SCC 608: 1981 SCC (Cri) 212

⁶³*Hussainara Khatoon & Others (III) v. Home Secretary, State of Bihar, Patna* (1980) 1 SCC 98, 107 at para 10)

⁶⁴ (98 LEd 884: 347 US 497 (1953)) (at p. 887)

⁶⁵*University of Delhi v. Ram Nath* ((1964) 2 SCR 703, 710: AIR 1963 SC 1873: (1963) 2 LLJ 335): (SCR p. 710)

In number of cases implementation of Right to Education and relation between Art 21A and 19 (1)(g) came before the Supreme Court

In the case of *TMA Pai Foundation V. State of Karnataka*⁶⁶ Court held that restriction imposed in *UnniKrishana* case is unreasonable and violates Art 19(1)(g) right to establish and administer an institution includes the right to admit students; right to set up reasonable fees structure; right to constitute a governing body; right to appoint staff and right to take disciplinary action. Through this judgment first time the concept of education considered as occupation under Art.19(1)(g) of the Constitution. The majority held that Art.19 (1) (g) and Art. 26 confer rights to all citizens and religious denominations respectively to establish and maintain educational institutions. In addition to that Art. 30 (1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice.

A constitution Bench of five Judges was constituted to clarify the doubts/ anomalies in the above judgment by the Court in *Islamic Academy of Education V. State of Karnataka*.⁶⁷ Considered the question whether educational institutions are entitled to fix own fee structure. The court held that there can be no fixing of a rigid fee structure by the Government. Each institute must have freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution and to provide facilities necessary for the benefit of the students. They must also be able to generate surplus which must be used for the betterment and growth of the educational institution.

In *Modern School V. Union of India*⁶⁸ the Supreme Court held that “ A citizen has right to call upon the state to provide educational facilities within the limits of the economic capacity and development.”

*Avinash Malhotra V. Union of India*⁶⁹ Court gives direction for the safety of the infrastructure and security of the students against fire and Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipment.

In *Ashoka Kumar Thakur's case*⁷⁰ Educating a child requires more than a teacher and a blackboard, or a classroom and a book. The right to education requires that a child study in a quality school, and a quality school certainly should pose no threat to a child's safety. Further observed as under: “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 Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education.”

It also observed that for implementation of Right to Education Parliament needs to take positive steps by enacting the law for implementation of duty under Art 51A(k) it becomes clear that parents would be responsible for sending their children to school. Article 51A read with 51A(k) is reproduced as under: "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, as the case may be, ward between the age of six and fourteen years." Thus, Article 21A read with Article 51A(k) distributes an obligation amongst the State and parents: The State is concerned with free education, parents with compulsory.

C. Right to Education during Pandemic

During the pandemic situation the main responsibility of the State towards children are food security, health and proper education. For the security of the food state took very important measures by supplying essential to them to their residence and for protection of health lock down and all the education institutions were closed and bought the social distance properly. The very big challenge to the State is providing proper education to all irrespective of their economic, social and habitant aspects. India is the country were providing education through online mode to everyone is impossible task because of many problems like poverty, lack of facilities such as electricity, internet supply, and availability of required gadgets.

⁶⁶ AIR 2003 SC 355

⁶⁷ AIR 2003 SC 3724

⁶⁸ AIR 2004 SC 2236

⁶⁹ MANU/SC/0555/2009

⁷⁰ *Ashoka Kumar Thakur v. Union of India & Others.* (2008) 6 SCC 1

The UN Sustainable Development Goals, a blueprint for creating a more just world, has named “quality education” as its fourth goal. One target of that goal is ensuring that by 2030, all children have the means to complete a “free, equitable, and quality primary and secondary education.”⁷¹

The Delhi High Court held that online education was covered under the Right to Education (RTE) Act and therefore, the private schools were providing the same as part of their responsibilities under the statute and not as a voluntary or social service. The mode, manner and method of imparting education have evolved from time to time and if universal good quality education has to be achieved in future, the model and method of education have to undergo a complete revolution." The bench further said that the schools were free to choose their mode and method of imparting education provided they fulfil the minimum statutory requirement. "Consequently, the concept of synchronous face-to-face real-time online education, like any other alternate means/methods of dissemination of education, in that sense, is covered under the RTE Act, 2009,".

The Karnataka High court held that the government of Karnataka does not have the power to ban the online education during the pandemic situation because this is only mode left with the authority to provide education. The bench said the government did not have powers under the Karnataka Education Act, 1983, to impose ban or restrictions on online education. The bench noted. “By enacting a law, reasonable restrictions could have been imposed on exercise of fundamental rights. But the Karnataka Education Act, 1983, cannot be the law which permits the state government to do that. And that impugned orders are not issued in exercise of any statutory power.” However, the court clarified that school authorities have no right to make online education compulsory for students or charge any extra fee for the same. The court added that the state government will have to take steps to ensure that those students not studying in “elite schools” and those in government schools were not deprived of education during this pandemic. The government will have to create infrastructure to give education in such types of schools during this period.⁷²

The Delhi High Court also stated that “No direction can be issued, to unaided/private schools, not to charge tuition fees during the period of the lockdown, consequent on the COVID pandemic, and to source the funds, for meeting expenses relatable to salaries of their staff, maintenance of their establishment, and providing of online education, from the monies available with their parent trusts/societies.”⁷³

With regarding to collection of tuition fees the Supreme Court made the following observations: “The situation in each district, leave alone each State, differed from one another, and the apex court could not pass an “omnibus” order. Problem with every State is different. Parties are involving jurisdiction of this court as an omnibus case. But these are fact-intensive situations in each State and district”⁷⁴

During the pandemic situation in along with the State and educational institutions, it is the main responsibility and duty of parents and guardian under Art. 51A(k) to make maximum efforts to provide proper education to their wards.

CONCLUSION

Right to Education has been given a new dimension with judicial activism which made non-enforceable right into enforceable Right through Constitutional Amendment. Later the Court took the view that providing education is an occupation and tuition fees can be utilized for the improvement and development of the institution. Right to Education is the responsibility of the Government. Every government should make an effort to reaffirm right of education and it shall be imposed as public responsibility and financial barriers should be eliminated so that all children, can go to the school irrespective of their financial condition. International treaties must be properly implemented with cooperation of international institutions. Private and public participation and minority institutions

⁷¹ Arnold R. Grahl, “Facing the challenges of COVID-19, Rotary clubs and partner organizations are finding new ways to support access to education”

<https://www.rotary.org/en/educating-in-a-pandemic-and>

⁷² Providing Online Education In Pandemic Responsibility Of Private Schools Under RTE Act: Delhi High Court <https://www.ndtv.com/education/providing-online-education-in-pandemic-responsibility-of-private-schools-under-rte-act-delhi-high-court>

⁷³ Education | Press Trust of India | Updated: Sep 19, 2020 8:30 am IST | Source: PTI.

Coronavirus: Karnataka High Court stays ban on online classes for school students, Jul 09, 2020 · 12:30 pm <https://scroll.in/latest/966940/coronavirus-karnataka-high-court-stays-ban-on-online-classes-for-school-students>

⁷⁴ Naresh Kumar vs Director of Education &Anr on 24 April, 2020

<https://indiankanon.org/doc/94344571/>



too plays important role in the proper implementation of the RTE and regular monitoring mechanisms are necessary for ensuring quality education. Even during pandemic situations also. As stated by *Swami Vivekanada*, “The goal may be distant, but one should be awake, arise and stop not till the goal is reached.”