

The Right to Higher Education; Still a distant Dream

Dr.Hemlata Parmar

Abstract:

Higher Education is considered the last and Important Stage of academic learning. Higher Education leads to acquire analytical and problem Solving Skills and help humans to develop intellectual Curiosity and Character¹. It pushes the Students to identify and set career goals that make Students ready for professional setups India has one of the largest Education systems in the world in terms of higher Education network. Higher Education denotes the tertiary level Education that is given after 12 Years of Schooling. The Universities are classified as control Universities, State Universities, Private Universities, Deemed Universities, Institutes of National Importance apart from the Institutes of National Importance. The 86th Constitutional Amendment (2002) inserted Article 21A in the Indian Constitution which states: "The State shall provide free and compulsory education to all children of 6 to 14 years in such manner as the State, may by law determine." Right to pursue higher education is not a fundamental right in part III of Indian Constitution. This Research Paper discusses higher education system and how judiciary shows activism for this educational right.

Key Words: Right to Education, Higher Education , Judicial Activism

Introduction:

Education is strength of Nation. Indian Higher Education System is the third largest in the world next to the United States and China. After Independence, Indian Education system is progressing although there have been many challenges to Higher Education. Despite consistent efforts in enhancing the quality of higher education in India, Effective measures are required to make it internationally competitive. Economic success of the states is depended on higher education systems. In Indian Constitution Article 21 A was inserted through Eighty Sixth Amendment which is fundamental right for the children group of 6-14 years.² Article 45 talks about free and compulsory education within a period of ten years from the commencement of constitution.³ Entries 63, 64. 65 and 66 dealt with various issues regarding higher education. Entry 63 concerned the control of institutions like the National Library Calcutta, Universities (now often called 'Central Universities') like Banaras. Aligarh and Delhi. Entry 64 dealt with institutions of scientific and technical education which may be financed wholly or in part by the Government of India and / or declared by Parliament to be institutions of national importance (the Indian Institutes of Technology are in this category). Agencies and institutions

¹V.N.Shukla's Constitution of India, Thirteen Edition ,2017 EBC Publication , Mahendra Pal Singh page No.54

² Art 21-A Constitution of India , "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".

³ Art.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"

for professional, vocational or technical training or scientific or technical institutions could also be established by the Centre according to Entry 65.

National Education Policy:

The First National Policy was introduced in 1968 and this policy was based on child centred approach in primary education and launched operation “Black Board”. After that Government introduced new education policy 1986 which had 10+2 structure of school education. The Latest NEP 2020 pitches for 5+3+3+4 design corresponding to different age groups. Many challenges NEP 2020 is confronted at its initial stage of implementation in Early Childhood care and Education, Medium of instruction, Infrastructure development, Curriculum and Pedagogy, Teacher and Teacher training programmes. NEP would transform the education sector in the country as it focuses on making education sector in the country as it focuses on making education accessible, equitable, inclusive but only if implemented at all levels.

Constitutional Provisions

Article 21 A in the constitution of India to provide free and compulsory education of all children in the age group six to fourteen years as a fundamental right in such a manner as the state may, by law, determine.

Article 28 guarantees the freedom to attend religious instruction or worship in educational institutions.

Article 29: This article guarantees equitable access to educational institutions.

Article 30: Recognize minorities' freedom to create and manage educational institutions.

Article 45: The provision for free and compulsory education for children. It states 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 fourteen years”. This is one of the Directive Principles of State Policy to promote social and economic equality in the country.

Article 46: Discusses particular consideration for the advancement of education and economic interests of Scheduled Tribes, Scheduled Castes, OBCs, and the weakest sections of society.

Article 337: This article governs the particular provision of educational subsidies for the Anglo-Indian community.

Right to Education Act (2009)

The Government subsequently brought the Right to Education Act, 2009, which centres around inclusive education for all, making it mandatory to include underprivileged children in schools. Section 12(1)(c) of the act provided for a 25 percent reservation of seats in unaided schools for admission of children from economically weaker sections and disadvantaged groups. It

contained “No Detention Policy” which was deleted by The Right of Children to Free and Compulsory Education (Amendment) Act 2019. This Act prohibits the use of teachers for non-Educational purposes other than the elections to local governments, State legislatures and parliament and disaster assistance. It calls for the selection of instructors having the necessary entrance and academic credentials.

International Organizations in the field of Education:

On the basis of international recognition, Article 26 of the Universal Declaration of Human Rights and is regarded as basic human necessity. Many international events like Article 13 and 14, state that everyone has the right to elementary education. In 1960, UNESCO reaffirmed the right to education the Convention against discrimination in Education. Some multinational organizations that seek to promote education; UNESCO, UNICEF, The International Organization, The World Bank.⁴

Higher Education in India

Higher Education is basically divided in three categories; Universities, Colleges, and Stand alone institutions. There are 1113 Universities 43796 Colleges, Stand Alone Institutions with 4.14 crore students. Gross Enrolment Ratio is 27.3 with Gender Parity Index 1.05.⁵ UGC is the body which is responsible for coordinating, formulating and maintaining the standards in institutions of Education. There are various Professional Councils i.e. AICTE (All India Council for Technical Education), Distance Education Council (DEC), Indian Council for Agriculture Research (ICAR), Bar Council of India (BCI). Lack of Innovation, Investment in education, Pupil-Teacher ratio, Quality Education, Developing research culture are major concerns in Higher Education in India.

Higher Education is considered the last and Important Stage of academic learning. Higher Education leads to acquire analytical and problem Solving Skills and help humans to develop intellectual Curiosity and Character

GROSS ENROLLMENT RATIOS									
	All Category			SC			ST		
Year	Male	Female	Total	Male	Female	Total	Male	Female	Total
2011-12	22.1	19.4	20.8	15.8	13.9	14.9	12.4	9.7	11
2012-13	22.7	20.1	21.5	16.9	15	16	12.4	9.8	11.1
2013-14	23.9	22	23	17.7	16.4	17.1	12.5	10.2	11.3

⁴ <https://prepp.in/news/e-492-right-to-education-article-21aindian-polity-notes>

⁵ aishe.gov.in/aishe/home#

2014-15	25.3	23.2	24.3	20	18.2	19.1	15.2	12.3	13.7
2015-16	25.4	23.5	24.5	20.8	19	19.9	15.6	12.9	14.2
2016-17	26.0	24.5	25.2	21.8	20.2	21.1	16.7	14.2	15.4
2017-18	26.3	25.4	25.8	22.2	21.4	21.8	17.0	14.9	15.9
2018-19	26.3	26.4	26.3	22.7	23.3	23	17.9	16.5	17.2
2019-20	26.9	27.3	27.1	22.8	24.1	23.4	18.2	17.7	18.0
2020-21	26.7	28.6	27.3	22.4	23.9	23.1	18.8	19.1	18.9

(Source: AISHE and UGC Annual reports of various years)

Judicial Activism for Educational Right:

Indian Constitution is a tool of Social Justice. Education is basic requirement for Social transformation and Constitution ensures by various articles. In Unnikrishan Case⁶, Supreme Court held Right to Education as a Fundamental right for the Children of the age 6 to 14 years. By 86th Amendment Act 2002, Article 21 A was introduced for all the Children in the age group of 6 to 14 years and in such a manner as the State may, by law determine. In Mohini Jain v. State of Karnataka and ors, 1992 case supreme court recognized the Right to Education as a part of Article 21, Right to Life and Personal Liberty but by considering directive principles of State Policy and Financial condition of State, Supreme Court made compulsory education only for 6 to 14 year child.

In Case of TMA Pai Foundation v. State of Karnataka⁷ Supreme Court upheld education as a fundamental right by eleven judge bench. The fact was “Academy of General Education” was an Education institution and it was founded by Dr TMA Pai in 1942 in Madras. Several institutions were founded under the name of institution. Its ownership was transferred to TMA Pai Trust which was basically formed in the memory of Dr. TMA Pai. The issue arose when Governor of Karnataka issued ordinance as “Karnataka Educational Institutions Ordinance, 1984” Government passed order fixing students strength and fixed percentage of

⁶ 1993 AIR 2178

⁷ (2002) 8 SCC 481

seats as government seats. The TMA Pai trust fell in to the category of Minority unaided Private Educational Institution as it was not receiving any aid from the State.

In Mohini Jain vs.State of Karnataka Applicant had applied for a Medical Course in Karnataka under the Government quota in 1991.College Management informed to pay sixty thousand for first year and bank guarantee for four years. She complained for capitation fees for four and half lakhs which was later refused by College Management. The Amount was not feasible to be paid by Mohini.Under Article 32 A Writ was filled for challenging the private medical colleges to charge very high tuition fees from the students other than those admitted via “Government Seats” and requested to grant right to free education. so basically three issues were filed Whether the Constitution of India guarantees the Right to Education,whether Private institutions charging higher fees violate the Right to Education and whether charging a capitation fee in educational institutions violate Article 14 which guarantees equality before the law.

Supreme Court held that Right to Education is not expressly mentioned as a fundamental right.Art.38,39(a),(f),41,45 of the Indian Constitutions make it clear that Constitution makes it obligatory for the state to provide education for Citizens. Article 21 was discussed and Universal Declaration of Human Rights by United Nations declared Right to Life encompasses more than “life and limb” including necessities of life, nutrition, shelter and literacy. Charging huge fees restricts to education to the lower strata society and makes it available only to richer section of the people, Poor student can not take admission .Further allowing high capitation fee violates Art.14 of the Constitution.

The Constitutional question whether the “Right to Life” in Article 21 of the Constitution provides a fundamental right to people of India .In Unni Krishan v.State of Andra Pradesh⁸ Petitions were made that higher education should be part of right to education. The main point was higher education should be included as fundamental right as Primary Education. Court disapproved the argument and appeal was dismissed. The Case was also based on the decision of Mohini Jain Case where the Court ruled that People have a Constitutional right to Education ,however the particular issue that the primary education referred to in article 45 not addressed in the case.

⁸ 1993 AIR 2178

Conclusion:

India is one of the fastest developing countries of the world. While the right to pursue higher (professional) education has not been spelt out as a fundamental right in Part III of the Constitution, it bears emphasis that access to professional education is not a governmental largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels. To maintain that growth there is need to increase the quality of Higher Education in India. In our Constitution Educational right was included in principles of State Policy as it was not possible to give enforceable effect; Economic Capacity of State was the barrier for this. Despite of Directive Principles of State, State failed to realize high expectation of framers of Constitution. Finally Court came ahead by interpreting educational right and after time in Mohini Jain and Unni Krishan Case it was recognized as fundamental right. This right was conducted with right to life. In absence of legislation the judicial dynamism has protected the right to education and gave hope to women and poor people.