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PAPER-III

LAW AND SOCIAL CHANGE

SEMESTER-II

TOPIC FOR PRESENTATION

RIGHT TO EDUCATION IN INDIA :
LAWS AND RECENT AMENDMENTS

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Introduction

Food, Clothing and shelter are the basic needs of human being. Man is social animal. He lives in groups right from ancient time. He has special culture and civilizations. Some customs and traditions he accepted for smooth running of daily life. Formal and informal Education has become the need and necessity for personal development and progress.

① Education is the most crucial investment in human development, and is an instrument for developing an economically prosperous society, for ensuring equity and social justice.

Right to Education is a fundamental and human right.

The Constitution of India imposes duty on the state to provide free and compulsory education to every child between the age of 6-14 years. It also imposes fundamental duty of the parents and guardians to send

① Dr. KRISHNA PAL MALIK - Right to Education
First Edition - 2010 (PREFACE)
Publisher :- ALLAHABAD LAW AGENCY
LAW PUBLISHERS
16/2 Mathura Road, PLOT NO. 33, Faridabad (Haryana).

their child or ward to the school.
The Government of India has enacted Right of children to free and Compulsory Education Act 2009.

② Definition of Literacy

The UNESCO has drafted a definition of literacy as the
“ability to identify, understand, interpret, create, communicate, compute and use printed and written materials associated with varying contexts.”

Literacy involves learning in enabling individuals to achieve their goals, to develop their knowledge and potential, and to participate fully in their community and wider society.”

The National Literacy Mission defines literacy as

“acquiring the skills of reading, writing and arithmetic and the ability to apply them to one's day-to-day life.”

Indian Census defines

“Literacy rate is the total percentage of the population of an area at a particular time aged seven years or above who can read and write with understanding.”

② Dr. KRISHNA PAL MALIK - Right to Education
First Edition - 2010 (p. 02)

Publisher :- ALLAHABAD LAW AGENCY, LAW PUBLISHERS
16/2 Mathura Road, Plot NO. 33, Faridabad (Haryana).

③ Origin and Growth of Literacy in India

Education under the supervision of a GURU was a favoured form of education for the nobility in ancient India.

The knowledge in these orders was often related to the tasks a section of the society had to perform.

The priest class (THE BRAHMINS) were imparted knowledge of Religion, philosophy, and other ancillary branches while the warrior class (THE KSHATRIYAS) were trained in the various aspects of war. The business class (THE VAISHYAS) were taught their trade and the lowest class of (THE SHUDRAS) was generally deprived of Education.

Secular Buddhist institutions cropped up along with monasteries. These institutions imparted practical education like medicine.

The important urban centres of learning were Taxila and Nalanda. These institutions systematically imparted knowledge and attracted a number of foreign students to study topics such as logic, grammar, medicine, metaphysics, arts and crafts.

③ Dr. KRISHNA PAL MALIK - Right to Education

First Edition - 2010 (p. 03)

Publisher: - ALLAHABAD LAW AGENCY, LAW PUBLISHERS
16/2 Mathura Road, Plot NO. 33, Faridabad (Haryana).

④ Literacy during British Raj.

With the arrival of the British Raj in India a class of Westernized elite was versed in the Western System of education which the British had introduced.

The number of primary schools grew from 82,916 of 1881-82 to 1,34,866 in 1946-47.

The number of students grew from 2,061,541 to 10,525,943

Literacy rate 3.2% in 1881 to 7.2% in 1931 and 12.2% in 1947.

POST - INDEPENDENCE

Following Independence in 1947, Maulana Azad, India's First Education Minister envisaged strong Central Government Control over education throughout the country, with a uniform educational system.

Since Independence the literacy rate grew from 18.33% in 1951 to 65.38 in 2001. Kerala had the highest literacy 90.92% while Bihar had lowest 47.53%

In 2011 census Kerala 93.90% and Bihar 63.80%

Population grew from 36 crores to 102 crores.

④ Dr. KRISHNA PAL MALIK - Right to Education First Edition - 2010 (P. 04)

Publisher: - ALLAHABAD LAW AGENCY, LAW PUBLISHERS
16/2 Mathura Road, Plot No. 33, Faridabad (Haryana).

Illiteracy in India

Illiteracy in India is characterized by wide gaps between the urban and rural populations. The rural population depends mainly on agriculture and the rate of illiteracy is high, while the urban population is more of the 'employee class' and also more educated.

Even amongst the male and female populations, there is wide disparity in literacy. The male 82.14% and female 65.46% in 2011 Census.

Not only the government, but every literate citizen should contribute in battling with illiteracy.

Our MOTTO should be "EACH ONE TEACH ONE."

Recent Literacy Rate of Neighbouring Countries
 China 93.3%, Sri Lanka 90.8%, Burma 89.9%
 Iran 82.4%, Nepal 56.5%, Pakistan 54.2%
 Bangladesh 53.5% and India 74.04%.

<u>Sex-wise Literacy in INDIA.</u>			
<u>Census Year</u>	<u>Persons %</u>	<u>Male %</u>	<u>Female %</u>
1951	18.33	27.16	08.86
1961	28.30	40.40	15.35
1971	34.45	45.96	21.97
1981	43.57	56.38	29.76
1991	52.21	64.13	39.29
2001	65.38	76.90	54.50
2011	74.04	82.14	65.46
GOA	87.40	92.80	81.80

Literacy of Scheduled Castes and Scheduled Tribes

As per 2001 Census, the literacy rate of scheduled Castes 54.69% and scheduled Tribes 47.10%.

Literacy of females was much lower. Bihar, Jharkhand, Uttar Pradesh and Rajasthan showed very low rates.

Educational Status in India

All State Governments have abolished tuition fees in all Government schools up to upper primary level education. Schools run by local bodies and private aided institutions have also mostly made it free. However unaided institutions do charge fees.

Other costs of education, such as text-books, stationery, school uniforms, transport, etc. are borne by states mainly for primary school children belonging to Scheduled Castes, scheduled Tribes categories and girls.

Every Country dreams of a fully literate population, even though it has to be ensured through legislative measures. The Indian Constitution provides for making elementary education free and

compulsory for all children six to fourteen years of age specially emphasizing weaker and backward sections of the society.

The position of free and compulsory education was reviewed by the Central Advisory Board of Education at its 35th meeting held on 2nd and 3rd May 1970 in Delhi. The creative and supporting resolution for compulsory primary education was adopted.

CAUSES OF DROP-OUT

- (i) Various aspects of violence in institutional sittings.
- (ii) Corporal punishment in schools
- (iii) Sexual abuse in and during the journey to school.
- (iv) Discrimination in schools
- (v) Children are kept to take care of their younger siblings.
- (vi) Children are kept to take care of their home-hut.
- (vii) Poor quality of education, migration and child labour etc.
- (viii) poor economic conditions at home.
- (ix) Medium of Instruction and difficult syllabus.
- (x) Backward attitude of parents and guardians.

National Policy on Education

The National Policy of Education adopted by Parliament in 1968 laid down the goals and objectives of the country's educational development.

In 1986, it had served several measures (DFEP) District Primary Education Programme, (SSA) Sarva Shiksha Abhiyan, Setting up Navodaya Vidyalaya and other Selective Schools in every district, advances in female education, inter-disciplinary research and establishment of open universities. Mid-day Meal Scheme was introduced.

CESS TAX BY GOVERNMENT

In the budget 2004-05 the Central Government has made the provision for 2% Additional Tax, on Service Tax, (w.e.f. April 2004) which will be used for the child education. This was introduced to increase the sources of income for implementing compulsory and free education in India.

RIGHT TO FREE EDUCATION - std. I to VIII

The Right of children to free and Compulsory Education Act 2009 is passed in both the Houses and comes in force with effect from 1st April 2010

⑤ Legislative History of Right to Education in India

Shahuji Maharaj of Kolhapur (Maharashtra) and the State of Baroda (The Gaekwad State, now in the state of Gujarat) were having compulsory Education Act before Independence.

After Independence almost all the States and Union Territories have enacted their own primary education Act in the absence of any Central Act, as education is the subject of concurrent List (List III).

- (i) Bombay Primary Education Act, 1947.
- (ii) Himachal Pradesh Compulsory Primary Education Act, 1953
- (iii) Saurashtra Primary Education Act, 1956
- (iv) Kerala Education Act, 1959
- (v) Punjab Primary Education Act, 1960
- (vi) Delhi Primary Education Act, 1960
- (vii) Gujarat Compulsory Primary Education Act, 1961
- (viii) Karnataka Compulsory Primary Education Act, 1961
- (ix) Andhra Pradesh Primary Education Act, 1961
- (x) Kerala Primary Education Act, 1961
- (xi) Assam Elementary Education Act, 1962
- (xii) West Bengal Urban Primary Education Act, 1963
- (xiii) Rajasthan Primary Education Act, 1964

⑤ Dr. KRISHNA PAL MALIK - Right to Education
First Edition - 2010 (P. 54)

Publisher :- ALLAHABAD LAW AGENCY, LAW PUBLISHERS
16/2 Mathura Road, PLOT NO. 33, Faridabad (Haryana).

- (xiv) Orissa Education Act, 1969
- (xv) West Bengal (Rural) Primary Education (Temporary) Provisions Act, 1969
- (xvi) Uttar Pradesh Basic Education Act, 1972
- (xvii) Karnataka Education Institutions (Prohibition of Capitation Fee) Act, 1984
- (xviii) Tamil Nadu Compulsory Education Act, 1994 (w.e.f. July 1998)
- (xix) GOA Children Act, 2003, etc.

Besides these states,

Bihar, Haryana, Jammu and Kashmir, Madhya Pradesh, Maharashtra, Chandigarh, Pondicherry and Andaman and Nicobar Islands are also having similar Acts.

These Acts have THREE PARTS

- (i) State Governments can notify the areas in which the Act can be implemented.
- (ii) Penalties for not sending children to schools, including fines and imprisonments,
- and, (iii) Power in a vested authority to grant exemption from the legislation.

These Acts remain un-enforced due to various socio-economic and cultural factors as well as administrative and financial constraints.

The Central Government has been of the opinion that compulsion should be on the state rather than on parents.

It has, therefore suggested many measures. Involvement, decentralisation of planning to Panchayat Raj Institutions, motivation to children to attend schools regularly, improvement of infrastructure and facilities in schools, development of locally relevant curricula, improvement in quality of text-books, teacher-training, child-centred learning and adoption of minimum levels of learning.

The Central Government has also initiated centrally sponsored schemes of Operation Blackboard. Non-formal Education and establishment of District Institutions of Education and Training in 1987-88. It launched a National Programme of National Nutritional support to primary Education in 1995-96 for provision of Mid-day Meals.

Parents can not be penalized for being too poor to send their children to school. Some assistance and guidance should be provided for parents.

Right to Compulsory education

The word 'compulsion' is not to be related to the student or the parents.

The word 'compulsion' has to be understood in relation to the state and the obligation of the state to provide for free education.

The Supreme Court has held that so many children drop out of, or are absent from, school before they turn "fourteen" "free education" alone cannot solve the problem.

The Statement of Objects and Reasons for Article 21-A states that the Constitution of India in a directive principle contained in Article 45, has made a provision for free and compulsory education for all children up to the age of fourteen years.

We could not achieve this goal even after sixty years of adoption of this provision.

⑥ EDUCATION AS FUNDAMENTAL RIGHT

“ Education is the Teacher
of the Teacher
Education is GOD incarnate
Education secures honour
at the Hands of the State
not money
A man without Education
is equal to animal.”

⑦ In Unni Krishnan, J.P. v. State of Andhra Pradesh The Supreme Court observed that the Right to Education which is implicit in the right to life and personal liberty guaranteed by Article 21 of the Constitution and the State can not deprive the student his Right to Education.

Nevertheless such Rights along with other SOCIO-ECONOMIC RIGHTS are FUNDAMENTAL for the Governance of the country which was the intention of the founding fathers of the Constitution like Dr. B. R. Ambedkar, Dr. Rajendra Prasad, Pandit Nehru and others of the time.

⑥ SANSKRIT POET BHARTRAHARI in 'Neeti-Shatakam' Human Right and Education (p. 610)

⑦ JUSTICE PALOK BASU - Law Relating to Protection of Human Rights under the Indian Constitution and allied Laws (p. 614) Second Edition - Reprint 2009 Publisher: Modern Law Publications Allahabad - 211001

⑧ After India achieved its independence, as a part of dream of MAHATMAJI we have accepted Universalisation of Elementary Education as our NATIONAL GOAL.

Therefore when the Constitution of India was drafted, in the chapter of DIRECTIVE PRINCIPLES OF STATE POLICY in part IV of the Constitution ARTICLE 45 was envisaged

which lays down that state shall endeavour to provide EARLY CHILDHOOD CARE and Free and Compulsory Education for all Children until they complete the age of 14 years.

Human Right —
Primarily the Right to Education engages the HEART as well as the MIND. It is divine Gift from ALMIGHTY GOD.

⑧ PRAVIN H. PAREKH - Human Rights (P. 210)
Education for All - By Mr. H. B. Das
First Edition - 2008 Former Special Judge
C. B. I. ORISSA
Publisher :- Universal Law Publishing Co. Pvt. Ltd.
Delhi - 110033

⑨ "RIGHT TO EDUCATION - challenges students for new thinking. It helps to develop the communication skills and critical meditation essential for progressive Democracy. It creates perspective for justice and dignity."

DIRECTION ISSUED BY
SUPREME COURT
FOR RIGHT TO EDUCATION

A writ petition was filed before the Supreme Court to enact law for the implementing the 86th Constitutional Amendment
(Ashok Kumar Thakur v Union of India)
(2008) INSC, 614.

The Court has urged the Government to implement the following.

The Central Government should enact legislation that :-
(a) provides low income parents and guardians with financial incentives such that they may afford to send their children to school.

⑨ SERGIO BARADAT AND SWARANJALI GHOSH
Teaching of Human Rights (P.211)
Volume-I First Edition - 2009
"The Objectives of Human Rights Education"
Publisher :- Dominant Publishers and Distributors
Delhi - 110051.

(b) penalizes criminally, those who receive financial incentives and despite such payment, send their children to work.

(c) penalizes employers who prevent children from attending schools.

(d) The penalty should include imprisonment. The State is obliged under Article 21-A to implement free and compulsory education in toto.

(e) until we have accomplished for children from six to fourteen years the object of free and compulsory education, the Government should continue to increase the education budget and make earnest efforts to ensure that children go to schools and receive quality education.

(f) The parliament should fix a deadline by which time free and compulsory education will have reached every child. This must be done within six months, as the right to free and compulsory education is perhaps the

most important of all the fundamental rights.

For without Education, it becomes extremely difficult to exercise other fundamental rights.

(10) "In a landmark judgement in Mohini Jain v State of Karnataka popularly known as the 'Captivation Fee Case' SUPREME COURT has held that the RIGHT TO EDUCATION is a FUNDAMENTAL RIGHT under Article 21 of the Constitution; which cannot be denied to a citizen by charging higher fee known as the captivation fee.

The Right to Education flows directly from RIGHT TO LIFE."

Air, water, food are essential elements for living of human being similarly Education is essential for mental, psychological and spiritual growth.

Education only shows the accurate path of prosperity and salvation.

(10) Dr. GURBAX SINGH - Law Relating (P.55) to Protection of Human Rights and Human Values

First Edition - 2008

Publisher :- PRADEEP NIJHAWAN FOR VINOD PUBLISHING HOUSE PVT. LTD. 1561 CHURCH ROAD, Kashmere Gate, Delhi-110006

Eighty-sixth Amendment Act, 2002

This amendment Act has added a new Art. 21-A after Art. 21; which makes the right of education of children of the age of 6 to 14 years a fundamental right.

It also substitutes Article 45 which is as follows:-

⑩ "The State shall endeavour to provide early childhood care and education for all children"

It also added a new Fundamental duty to part IV of the Constitution.

The task of providing education to all children gained momentum after the NATIONAL POLICY OF EDUCATION (NPE) was announced in 1986.

In partnership the Government of India with the State Governments has made strenuous efforts to fulfil this mandate and, though significant improvement were seen in various educational indicators, the ultimate goal of providing universal and quality education still remains unfulfilled.

⑪ Dr. J. N. PANDEY - The Constitutional Law
Forty Eighth Edition of India (p. 803)
- 2011
Publisher: - CENTRAL LAW AGENCY
30-D/1 - Moti Lal Nehru Road - ALLAHABAD - 2

(12) NINETY-THIRD AMENDMENT ACT, 2005

Statement of Objects and Reasons :-

Greater access to higher education including professional education, to a larger number of students belonging to the socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes, has been a matter of major concern.

The reservation of seats for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes (OBCs) in admission to Educational Institutions is derived from the provisions of clause (4) of article 15.

It is laid down in Article 46, as a directive principle of State Policy that the State shall promote with special care the educational and economic interests of the weaker sections of the people and protect them from social injustice.

Clause (1) of Article 30 provides the right to all minorities to establish and administer educational institutions of their choice. It is essential that the rights available to minorities are protected in regard to institutions established and administered

(12) M.V. PYLEE - Constitutional Amendments in India (p. 350)

Third Edition - 2010

Publisher :- Universal Law Publishing Co. Pvt. Ltd.

- Delhi - 110 033.

by them. Accordingly, institutions declared by the State to minority institutions under clause (1) of Article (30) are omitted from the operation of the proposal.

It enacted by Parliament in the Fifty-Sixth Year of the Republic of India as follows:-

Short Title and Commencement

This Act may be called Ninety third Amendment Act, 2005

It shall come into force as on such date as the Central Government may by notification in the Official Gazette, appoint.

Amendment of Article 15

In Article 15 of the Constitution after Clause (4), the following Clause shall be inserted, namely:-

⑬ or Nothing in this Article or in sub-clause (g) of clause (1) of Article 19 should prevent the state from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled Tribes in so far as as such special provisions relate to their

⑬ M.V. PYLEE - Constitutional Amendments

in India (P. 351)
Third Edition - 2010

Publisher :- Universal Law Publishing Co. Pvt. Ltd. Delhi - 110033.

⑩ Salient features of the Right of the Children to Free and Compulsory Education Act, 2009.

(i) Free and Compulsory education to all children of India in the 06-14 age group.

(ii) No child shall be held back, expelled, or required to pass a board examination, until completion of elementary education.

(iii) A child who completes elementary education (up to class VIII shall be awarded certificate).

(iv) Calls for a fixed student-teacher Ratio.

(v) Will apply to all of India except Jammu and Kashmir.

(vi) Provides for 25 per cent Reservation for economically disadvantaged communities in admission to class One in all private schools.

(vii) Mandates improvement in quality of education.

(viii) School Teachers will need adequate professional Degree within five years or else will lose job.

(ix) School infrastructure (where there is problem) to be improved in three years, else recognition cancelled.

⑩ Dr. KRISHNA PAL MALIK - Right to Education
First Edition - 2010 (P. 60, 61)
Publisher :- Allahabad Law Agency, Law Publishers
16/2 Mathura Road, Plot NO. 33, Faridabad (HARYANA).

(x) Financial burden will be shared between State and Central Government.

ASSESSMENT OF +VE and -VE ASPECTS

After making so many efforts, the Right to Education, is still in the words of STATUTE only.

The Standard of any country can be measured by the rate of literacy, especially of the age group of 06 to 14 years.

Unfortunately, In India, after LEGISLATION by almost all the states and providing compulsory education in some states from 1960s, we could not achieve the expected result.

The Central and State Government also have made many attractive and innovative schemes to send the poor children to school.

The main programmes are:-
SARVA SHIKSHA ABHIYAN (SSA),
MID-DAY MEAL, CESS TAX, DRESS
DISTRIBUTION, GIVING TEXT-BOOKS & NOTE-BOOKS,
SCHOLARSHIPS ETC.

But, so many efforts could make only little improvement.

In such conditions it is found that the defect is within the system, implementation, observation of the scheme etc.

To make 100% literacy it is necessary that every one of us should play a positive role, without any greed at political, academic or professional level.

It is not only the States, Educational Institutions, or local Self Government Bodies, but all of us should come together hand in hand to fight illiteracy in the country, by helping such unprivileged children.

(17) Every Asset can be shared by shares, but education of the individual cannot be shared as an asset.

Moreover, if other assets are distributed it decreases, but, if education is distributed to others it always increases and develops." It is everlasting treasure for society.

(17) Dr. KRISHNA PAL MALIK - Right to Education
First Edition - 2010 (P. ONE)
Chapter-1. Rate of Literacy and Government Policies
Publisher:- Allahabad Law Agency, Law Publishers.
16/2 Mathura Road, Plot NO. 33, Faridabad (HARYANA).

CONCLUSION :-

Dr. Tapan Biswal rightly said in his conclusion of 'HUMAN RIGHTS': -

(18) "Poverty and ignorance on the part of large majority of the victims prevent them from getting justice. Above all, unless a number of key tasks such as literacy, poverty reduction are achieved, 'HUMAN RIGHTS' would remain a MIRAGE for large majority.

In short, they go along with economic well-being."

Similarly the position of RIGHT TO EDUCATION IN INDIA.

We saw in the villages, if children do not work as CHILD LABOUR; they will have to starve without food. They remain hungry without food for days together. Who will give them food? Parents are extremely poor. POVERTY IS HOW? One should experience.

We can not express it in words. EDUCATION IS REALLY LUXURY FOR THEM.

There is vast difference between theory and practice. WE CAN CHANGE INDIA; IF WE BRING CHANGE WITHIN US.

(18) Dr. Tapan Biswal - HUMAN RIGHTS
First Edition - 2006 (P. 138) GENDER AND ENVIRONMENT
Publisher :- VIVA BOOKS PVT. LTD. NEW DELHI - 110 002.



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06. JUSTICE PALOK BASU - Law Relating to Protection of Human Rights under the Indian Constitution and allied Laws
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- 110 019.
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Publisher :- Eastern Law House, New Delhi
- 110 002.

