



Landmarks In The Journey Of Right To Education In India

Saravjeet Kaur¹ and Pinki Malik²

¹Principal, Guru Teg Bahadur Kanya Mahavidyalya, Tarori, Karnal (Haryana).

²Assistant Professfor University College of Education , Kurukshetra University, Kurukshetra.

ABSTRACT:

In ancient and medieval, education was privilege only to a chosen one. The British introduce modern education in to India but only confined to higher strata of society the right to education found an ornamentary place in Indian Constitution, earlier several policies developments were introduced but right to education was not given legal status in India. Spurred by Unnikrishanan Case judgment and public demand to enforce the right to education, successive governments worked towards making it a legal right and Article 21-A was inserted in Indian Constitution. It took many years to the right of children to free and compulsory education to be entered in the legal statute books on 1st April 2010 it is hoped that all the concerned will come together to ensure its effective implementation.

KEYWORDS:-

Social inclusion, Social exclusion, Landmarks, Heritages, Wood's Dispatch, Imperial, Social cohesion, Social segregation, legal status, Statute, Skeletel legislation, Constitution, Amendment, social Category etc.

INTRODUCTION

The celebrated statesman of 21st Century Nelson Mandela argues, "Education is the most powerful weapon which you can use to change the World". So education is the basic right which must be granted to all for the proper development of the Nation because it enhance the functional ability of the citizens of that country and thus is directly proportional to the welfare of the people Education in India has a history stretching back to the ancient urban centers for learning at Taxila and Nadanda. The right to education originates from the apparent motion that it is obligatory for the State to provide education to its citizens. It is ironical that Indian politicians took a long period to give education as a fundamental right to the children of India. Even though nearly all educationally developed Countries attained their current educational status by legislating free and compulsory education. Britain did so in 1870. India has dithered and lagged behind in introducing such legislation for a long time. This paper has been designed to provide a perspective of

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landmarks in the journey of the demand for free and compulsory education and it attempts to trace various developments in the pre Constitutional as well as post Constitutional era upto the birth of the Right to Education Act. (2009).

II PRE CONSTITUTIONAL LANDMARKS:-

A reading of Indian education history reveals that it was notorious for its lack of social inclusiveness.¹ The legendary tale of Ekalavya from the India Epic of Mahabharata showcases such social exclusion.² Till the 19th Century A.D., education was largely considered a privilege restricted to persons at the higher end of the caste and class spectrum. Religious content of education, coupled with its elitist medium of instruction were two factors that contributed to such exclusion. A small reprieve came when the dominance of classic vedic education was overthrown by Buddhism and Jainism and education was no longer confined to hermitages.⁴ The Muslim rulers of the Indian Sub-continent also did not consider education as a function of the State. In short, in ancient and medieval India, education was thus a privilege available only to a chosen few.

The British introduced modern education into the India subcontinent. However, being largely confined to higher classes, this system of education also excluded the masses.⁵ The neglect of education by the British was also acknowledged by Woods Dispatch⁶. The demand for a law on free and compulsory education which was made during freedom struggle, sought to break the above mentioned heritage of an inequitable and neglected education system. In their evidence placed before the Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothiba Phule demanded State sponsored free education for all children for at least four years. This demand was indirectly acknowledged in Commission's recommendations on primary education.⁷ The Hunter Commission (1882) recommended that schools should be open to all castes and classes⁸. Thereafter, in 1906 the first law on compulsory education was introduced by the State of Broda providing for compulsory education to boys and girls in the age group of 7 to 12 years and 7 to 10 years, respectively.⁹ In 1911, Gopal Krishna Gokhale moved a Bill for compulsory education in the Imperial legislative Assembly, albeit unsuccessfully and in the midst of still resistance¹⁰. The Legislative Council of Bombay was the first amongst the Indian provinces to adopt a law on compulsory education¹¹. Gradually, other Provinces followed suits as control over school education was transferred to Indian Minister under the Government of India Act. 1919¹². However, even though Provincial Legislatures had greater control and autonomy in enacting laws, progress in universalizing education was poor due to lack of control over resources¹³.

The idea of compulsory education was reiterated in 1937, at All India National Conference on Education held at Wardha, where Gandhiji mooted the idea of self supporting 'Basic Education' for a period of 7 years through vocational and manual training. This concept of self support was floated in order to counter the Government persistent excuse of lack of resources¹⁴. The next landmark in the history of free and compulsory education in India was the Post War Plan of Education Development of 1944, also called the Sergent Plan, which recommended free and compulsory education for 8 years. (6 to 14 Years age group). Despite the consistent demand for free and compulsory education during the freedom struggle, at the time of drafting the Indian Constitution, there was no unanimous view in favour of a fundamental right to education¹⁵. The Constituent Assembly debates also revealed that an amendment was moved to alter the draft Article relating to free and compulsory education. By this time, the term 'entitled' was removed from the draft Article to ensure that education remained a non-justiciable policy directive in the Constitution.¹⁶

III POST CONSTITUTIONAL LANDMARKS :-

The free and compulsory education made its way into the Indian Constitutional as a Directive Principle of State Policy Under former Article 45, where States were required to ensure the provision of free and compulsory education to all children till the age of fourteen years within a period of 10 years of the commencement of the Indian Constitution¹⁷. Until 1976 State governments were largely held responsible for providing school education in particulars. This led to widely different outcomes across states, reflecting not only historical legacy but also the ability and willing of State governments to provide resources for school education. Governments in the poorer and more backwards states tended to have fewer fiscal resources to enable quality. This tended to reinforce existing spatial inequalities. Education was

enlisted as a legislative item originally in the State List. It was subsequently transferred to the Concurrent list by means of a Constitutional Amendment in 1976. It was realized that unless a Central law was enacted governing free and compulsory education, the entire purpose of transferring education from the State list to the Concurrent list through the Constitutional Amendment would be defeated. Apart from this the need for a Central level legislation can also be justified from the point of view of creating a common language in field of school education. It was expected that in order to ensure there is a uniform standard for school education across all States, the Central government was desired to direct its effort at enacting a skeletal legislation. But even after 1976, quality schooling was simply not made a policy priority even at the Central government level due to unfavorable political situation in the Country. The period spanning between 1950 to the Judgement in Unnikrishan's Case in 1993 saw several policy developments. The Kothari Commission (1964-68) reviewed the status of education in India and made several recommendations including a common school system with a view to eliminating inequality in educational opportunities¹⁸. Immediately, thereafter, National Policy on Education (1968) was formed as the first official document evidencing the Indian Government commitment towards school education system. It sought to adopt a common school system in order to promote social cohesion¹⁹. Interestingly, it even required special schools to provide a proportion of free studentships to prevent social segregation in schools. Nevertheless, it retained the status of free and compulsory education as a directive principle²⁰. Subsequently, the National Policy on Education(1986) have reaffirmed the goal of universalization of school education²¹, but, once again this policy document did not discuss or aim to alter the legal status of free and compulsory education in India. The first official recommendation for the inclusion of a fundamental right to education was made in 1990 by the Acharya Ramamurti Committee²². Thereafter several political as well as policy level changes influenced the course of free and compulsory education. The Country witness an increased international focus on its initiative regarding free and compulsory education after its participation in the World Conference on Education for All in 1990.

A great legal breakthrough was achieved in 1992 when the Supreme Court of India held in Mohini Jain Vs. State of Karnataka²³ that the right to education is concomitant to fundamental rights enshrined under part III of the Indian Constitution. The Supreme Court in 1993 held free education until a child complete the age of 14 years to be a right (Unnikrishnan and other Vs. State of Andhra Pradesh and Others) by stating that : “The citizens of this Country have a fundamental right to be education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child /citizen of this Country has a right to free education until he complete the ago of 14 years. Thereafter his right to education is subject to the “limits of economic capacity and development of the State”. Spurred by the Unnikrishnan judgement and a public demand to enforce the right of education, successive governments from 1993 worked towards bringing a Constitutional amendment to make education a fundamental right that led to 86th amendment in December 2002 which inserted new Article 21-A in the Indian Constitution.

From 1990 to the year 2000, the governments had been experimenting with educational programmes and spent over Rs. 2 lakh crore in that decade. Yet at the end of that period the result was a miserable. The next 10 years upto to 2010 the government launched another ambitious programme called Sarv Shiksha Abhiyan (SSA) for universalization of elementary education in India and spent over Rs.3 lakh crores. But UNESCO's Educational Index Report placed India at exactly the same position as of the 2001²⁴. Obviously we have a major problem on hand and we definitely need to find a clear and workable solution. All this led to 86th Amendment Act (2002) via Article 21-A (Part III) which sought to make free and compulsory education a fundamnet right for all children in the age 6-14 years. A first draft of the legislation envisaged in the Article 21-A, Free and Compulsory Education for Children Bill 2003, was prepared and comments and suggestions were invited from the public at large. Subsequently taking into account the suggestions received on this draft, a revised draft of the Bill entitled Free and Compulsory Education Bill 2004, was prepared and posted on the [http:// education.nic.in](http://education.nic.in) website. In June 2005 the Central Advisory Board an Education (CABE) committee draft the Right to Education Bill and submitted to the Union Ministry of HRD and the same sent it to National Advisory Council (NAC) headed by Mrs. Sonia Gandhi. After NAC the Bill was sent to Prime Minister for his observation. In July 2006, the Finance Committee and Planning Commission rejected the Bill citing the lack of funds and a Model Bill was sent to State for the making necessary arrangements. States had already cited lack of funds at State levels. Thus, the Bill had

earlier faced resistance from the law and Finance Ministeries on issues involving the States financial contributions. The Planning Commission also expressed its inability to workout the money. The State Governments said they were unwilling to supply even part of the funding . The Central Government was, therefore, forced to think of footing the entire Bill itself.

The Bill was approved by Union Cabinet on July 2009²⁵. The Rajya Sabha passed the Bill on 20th July, 2009²⁶ and Lok Sabha on August 4, 2009²⁷. It received Presidential assent and was notified as law on September 3, 2009²⁸ as the Children Rights to Free and Compulsory Education Act. The law came into effect in whole of India except the State of Jammu and Kashmir from April 1, 2010, the first time in the history of India a law was brought into force by a speech by the Prime Minister. In his speech, Manmohan Singh, stated that, “We are committed to ensure that all children , irrespective of gender and social category have access to education. An education that enables them to acquire the skills knowledge values attitudes necessary to become and active citizens of India.”²⁹

IV CONCLUSIONS

In ancient and medieval India, education was privilege available only to a chosen one . The British introduced the modern education into India but only confined to higher strata of society. Bombay State was the first, amongst the Indian Provinces, to adopt a law on compulsory education, but overall progress in universalizing education remained poor due to lack of control over resources. Wardha Plan and Sargent Plan also suggested the free and compulsory education. But, despite the consistent demand for free and compulsory education during freedom struggle , at the time of drafting of Indian Constitution , no unanimous view emerged in favour of fundamental to education. The provision of free and compulsory education found a ornamental place in the Directive Principles of State Policy . The period between 1950s to 1993 saw several policy developments in form of the National Policy on Education (1968) and National Policy in Education (1986), but the right to compulsory and free education was not given the legal status in India. Until 1976 State governments were largely held responsible for providing school education in particulars. This led to widely different outcomes across States. The Constitution amendment was made and subsequently the 'Education' subject was transferred to the Concurrent list in 1976. But even though there was a little real progress because ensuring universal quality schooling was simply not made a policy priority even at the Central government level. The Indian government witness on increased International focus on its initiative regarding free and compulsory education after its participation in the World Conference on “Education for All” in 1990.

The Supreme Court in 1993 held free education until a child completes the age of 14 years to be a right (Unnikrishan and others Vs. State of Andhra Pradesh and Others). Spurred by the Unnikrishanan Judgment and a public demand to enforce the right to education , successive governments from 1993 worked towards bringing a Constitution amendment to make education a fundamental right. It led to the 86th constitutional amendment in December 2002 which inserted new Article 21-A in the Indian Constitution. The Governments both at Union and State levels had been experimenting with various educational programmes and the results remained miserable. In the next decade Union government launched another ambitious programme popularly known as saw Shiksha Abhiyan (SSA) with huge investment but could not find a clear and workable solution for school education. Article 21-A said that it would come into force in such manner as the State may, by law, determine. So it was made contingent on a law that the State may bring in. But it took another eight years to since the 86th amendment was passed and seventeen years for the right to education be enforced since the unnikrishan judgement that too for the restricted age group of 6-14 years. Right to Education Act entered the legal statute books only on first April 2010. The Act effectively shifted the discourse on univerlisation from provision to entitlement. The shift has also been norms based and supply oriented planning to need based and entitlement oriented planning. It also seeks to remedy the structural deficiencies that have pushed children out of school.

Most Acts lead to no real change due to limited implementation and administrative deficiencies. To make sure that this may not happen with the Right to education Act (2009), it is hoped that activists, civil society members and concerned stakeholders should all come together to ensure its effective implementation by conducting social audits , creating awareness and pulling up the State governments when they fail to deliver. The Right to education Act (2009) offer a great opportunity to correct the anamoly of poor school educational outcomes, and can deliver on the long standing commitment of providing basic

and quality education to the so called 'demographic dividends of the Country'.

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9. See "Elementary and Adult Education in India-Historical Perspective", Report of National Development Committee on Literacy, Planning Commission, 1993 available at <http://www.education.nic.in/cd50years/Y/3P45/3P450401.htm>; herein after cited as Literacy Committee Report 1993.Ibid, p. 18
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- 11.Literacy Committee Report, Supra note 22, see also weiner, id.
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14. See for instance the views of Sir S. Radhakrishnan during the Constituent Assembly Debates, Vol.I, December 11, 1946, available at <http://parliamentofindia.nic.in/Isdebates/VolIP.3.html>.
15. See the amendment moved by Pandit Lakshmi Kanta Maitra during the Constituent Assembly Debates. Constituent Assembly Debates Vol.7, November 23, 1948 available at <http://parliamentofindia.nic.in/Isdebates/vol.7p11.htm>.
16. Articles 45 (as originally enacted) reads as follows : "The State Shall endeavour to provide, within a period of 10 years from commencement of this Constitution, free and compulsory education to all children until they complete the age of 14 years."
- 17.J.P. Naik, The Main Recommendations of the Education Commission; A Summary, NCERT, New Delhi, 1969, pp.9-10; herein after cited as Kothari Commission Recommendations Summary.
18. National Policy on Education, 1968, para 4(4) herein cited as NPE 1968.
19. See, National Policy on Education 1968, para 4(1).
20. See, National Policy on Education 1968, para 2(2).
21. Acharya Ramamurti Committee Report, Govt. of India (at paras 6.1.2 and 6.1.3)
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