

## **“A Critical Study of Constitutional Protection and Promotion of Education in India”**

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Education is very important for us, because it is the educations which make us really a man different from other creatures of the earth. It is universally accepted that education empowers the people for full development of human personality, strengthens the respect for human rights, and helps to overcome exploitations and the traditional inequalities of caste, class and gender.<sup>1</sup> Learning liberates from ignorance, superstition and prejudice that blind the version of truth.<sup>2</sup> According to Dr.S. Radhakrishnan, the process of education is the slow conquering of darkness of faults in our inward being. There are number of provisions in our constitution regarding protection and promotion of education. Not only is it given under fundamental rights but other parts like directive principles and fundamental duties also. Our courts have also shown their interest regarding education and have given landmark judgments regarding ensuring right of education.

### **Fundamental rights and education;**

Fundamental right which is given under part III of the Constitution of India has number of provisions ensuring education to the Indians. Article 15, 21, 21A, 28, 29 and 30 are directly related to education.

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<sup>1</sup> P.Ishwara Bhatt, Fundamental Rights; A Study of Their Interrelationship (Calcutta: Eastern Law House, 2004)305.

<sup>2</sup> Citing from Sanskrit Text, Per Mohan, J In J.P.Unnikrishnan V State of A.P. A.I.R. 1993 Supreme Court 2178.

**Article 15** Prohibition of discrimination on ground of religion, race, caste, sex or place of birth. First part of this article prohibits discrimination against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. But, state is empowered to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the schedule caste and schedule tribes.<sup>3</sup> It was added by first amendment in constitution of India for overriding the judgment of *Champakam Dorairajan*<sup>4</sup> case in which caste wise distribution of seats was struck down. This Article further permits reservation in educational institutes for the schedule caste and schedule tribe students. Private institutes are also under this sub clause. But, this provision is not applicable on minority educational institutions covered under article 30.<sup>5</sup>

But a question may arise regarding payment seats whether reservation policy should be strictly followed or not. If reservation for the Schedule Caste and Schedule Tribes is allowed in the payment seat, it will strike the fundamental purpose of reservation because the object of reservation is upliftment the candidates who are bracketed in the reserved category.<sup>6</sup> In the case of unavailability of the reserved category students candidate from unreserved category who possess less merit would take benefit of such payment seat. It was held *Sujat Ali V State of Gujrat* case<sup>7</sup>. In this case court held that absence of provisions for reservation for the Schedule Castes and Schedule Tribes in respect of the payment seats in medical college is proper and not ultra vires Article 15 (4) of the Constitution.

Reservation in educational institutions was given by 93<sup>rd</sup> amendment in Constitution of India. Article 15 is similar to (i) section 117 of the Commonwealth of Australia Constitution (ii) Article 3(3) of the West German Constitution and (iii) section (298) of the Government of India Act, 1935.<sup>8</sup>

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<sup>3</sup> Article 15(4) Of The Constitution of India.

<sup>4</sup> A.I.R. 1951 Madras 120.

<sup>5</sup> Article 15(5) Of The Constitution of India

<sup>6</sup> D.J.De, Interpretation & Enforcement Of Fundamental Rights (Calcutta: Eastern Law House, 2000)279.

<sup>7</sup> A.I.R.1996 Gujrat 170.

<sup>8</sup> H.K.Saharay, The Constitution of India (New Delhi: Eastern Law House, 2002), 124.

**Article 21** of the Constitution of India is very broad and it includes every right necessary for living a dignified life. No person shall be deprived of life or personal liberty except according to procedure established by law. In *Mohini Jain V State of Karnataka* case three judges bench of the Apex Court observed that the state is under a constitutional mandate to provide educational institutions at all levels for the benefits of citizens. Court also accepted that right to education at all level is concomitant to the fundamental rights. This judgment is very much relevant in present time because education has become too much expensive indirectly a large number of citizens are deprived from education.

**Article 21 A** was added by 86<sup>th</sup> amendment in constitution of India which says that 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.

**Article 28** deals with freedom as to attendance at religious instructions or religious worship in certain educational institutions. First part of this article prohibits religious instructions in any educational institution maintained by wholly by the state funds. This clause will not be applicable on the educational institute which has been administered by the state but has been established under any endowment or trust which requires that religious instructions shall be imparted in such institution.<sup>9</sup> But a person attending such institutions cannot be compelled to attend or participate in such instructions.<sup>10</sup> Recommending the students be acquainted with basics of all religions, the values inherited therein and also a comparative study of philosophy of all religion does not offend article 28.<sup>11</sup>

**Article 29** provides provision for conserving distinct language, script, or culture of the citizens of India. Further it says that no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them. Right to conserve one's language is a constitutional right.<sup>12</sup>

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<sup>9</sup> Article 28 (2) Of The Constitution Of India.

<sup>10</sup> Article 28 (3) Of The Constitution Of India

<sup>11</sup> Aruna Roy V Union India, A.I.R. SC 103.

<sup>11</sup> Brij Kishore Sharma, Introduction to the Constitution of India (New Delhi: Prentice Hall Of India, 2007)108. Of India, A.I.R. SC 103.

<sup>12</sup> Ibid pp.108.

Right to conserve the language of the citizens includes right to agitate for the protection of the language.<sup>13</sup> Article 29(2) would not be attracted where a person is refused admission because he does not possess the requisite qualifications or has not secured prescribed percentage marks or has not applied within the prescribed time.<sup>14</sup>

**Article 30** gives fundamental right to minorities to establish and administer educational institutions of their choice. This provision is applicable on religious or language minorities only. State shall not, in granting aid to educational institutions, discriminate against such an educational institution maintained by minority community on the ground that it is under the management of religious community.

The expression minority has been used in two senses-one based on religion and the other on the basis of language.<sup>15</sup> Compensation will be paid if the state seeks to acquire the property of a minority educational institution. The type of institution they would like to establish is left on minorities. The power of state to determine medium of education cannot take away the right of the minorities to give education through languages.<sup>16</sup> An institution retains its minority character as long as it continues to achieve two objectives, viz. (i) to enable such minority to conserve its religion and language, and (ii) to give a thorough, good, general education to children belonging to such minority.<sup>17</sup>

The power of government to take over management of an institution which has failed to carry out directions of the government was declared void on the ground that it robbed the minority of its right.<sup>18</sup> An institution established for commercial purpose can lay no claim for being protected under Article 30(1).<sup>19</sup>

### **Directive Principles of State Policy and Education**

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<sup>13</sup> Jugdev Singh V Pratap Singh A.I.R. 1969 Sc 183.

<sup>14</sup> Brij Kishore Sharma, Introduction to the Constitution of India (New Delhi: Prentice Hall Of India, 2007)109.

<sup>15</sup> Dr. Durga Das Basu, Introduction of the Constitution Of India (Nagpur: Lexis Nexis Butterworths Wadhwa, 2008), 124.

<sup>16</sup> D.A.V.College V State Of Panjab A.I.R. 1971 S.C. 1731.

<sup>17</sup> P.A.Inamdarv State of Maharashtra A.I.R.SC 3226.

<sup>18</sup> Brij Kishore Sharma, Introduction to the Constitution of India (New Delhi: Prentice Hall Of India, 2007)108.Of India, A.I.R. SC 109.

<sup>19</sup> Id. At 110.

Directive Principles of State Policy have been borrowed from the Irish Constitution which had copied it from the Spanish Constitution.<sup>20</sup> These are mere ideals and objectives only. The object behind directive policies is that while formulating their policies, these objectives or ideals must be borne in mind by the Union as well, as State governments. These are important for making a state welfare state. Article 41, 45 and 46 of this part is related to education.

**Article 41** authorizes government to make effective provision for education within its economic capacity. Without making the right “the right to education” under Article 41 a reality the fundamental right under chapter III shall be beyond the reach of large majority which is illiterate.<sup>21</sup> It is given under Article 21 A but it is confined to the age of fourteen years only. **Article 45** imposes duty on the state to promote with special care the education for all children till the age of six years. **Article 46** provides for special care to the promotion of education and economic interests of the scheduled caste, scheduled tribes and the weaker sections of society.

### **Fundamental Duties and Education**

Fundamental duties were added by 42<sup>nd</sup> amendment of Indian constitution in 1976 with new article 51 A. these are duties of every citizens of India. Article 51 A (k) which was inserted by 86<sup>th</sup> amendment in India constitution imposes duty on the guardians and parents to educate their children between age of six and fourteen years.

### **Distribution of Legislative Power and Education**

Constitution of India is federal in nature. It means that power is distributed in centre and state. For avoiding any clash three schedule are given under Indian constitution. Central, state and concurrent list. Central Government can make law on the subject given under and State Government can enact law on the subjects under state list but on the subject of concurrent list both Central and State governments can make law.

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<sup>20</sup> K.R.Mahesh Kumar, R.Y.Tyagrajan And Manoj Sharma, Indian Constitution (New Delhi: Anmol Publications Private Limited, 2011)224.

<sup>21</sup> H.K.Saharay, The Constitution of India (New Delhi: Eastern Law House, 2002), 369.

Since education in concurrent list therefore centre as well as state governments can make law regarding it but in case of dispute between central and state law, law made by the central government will prevail. Entry 55 of concurrent list states that education includes technical education and university education subject to the provisions of entries 63,64,65 and 66 of list I, vocational and technical training to labor.<sup>22</sup> Entries 63, 64, 65 and 66 of list I of Central list are relating to central universities, institutions of national importance, coordination and determination of standards in institution for higher research and scientific and technical institutions.<sup>23</sup>

### **Miscellaneous Provisions and Education**

Article 351 was inserted by the 7<sup>th</sup> amendment of the constitution in India. It says that state shall provide adequate facilities for instruction in the mother tongue at the primary stage, at the primary stage of education to children belonging to linguistic minority groups.

### **Conclusion**

A number of provisions are given in constitution of India to ensure education to Indians. Besides provisions given under constitution of India our judiciary has also shown activist approach in protection and promotion of education. Still the position of education in India is not satisfactory. There are various issues regarding this right. First of all Indian constitution seeks to ensure education for the children of the age six to fourteen years only. Indian constitution is not worried about the persons are more than sixteen years. It seems that this right has been given partially. Second issue is that education means quality education; it does not mean to become literate only. Third issue is that education is becoming more and more expensive day by day; it is proving that right of education given under Indian Constitution is on papers only. Real position is something different. A poor man cannot think for giving satisfactory education to his child in India. Fee of I.I.T.and I.I.M. and like institutions are so high that none can dare to think to study in these institutes. Poor people are indirectly deprived of right of education which is violation of Article

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<sup>22</sup> N.K.Chaudhary, Indian Constitution and Education (Delhi: Shipra Publication, 2009), 90.

<sup>23</sup> Ibid.

14 and 21. Our legislature should think seriously about quality education for all. They should ensure quality education for all at reasonable expenses.