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Website: www.lexkhoj.com

E-mail: lexkhoj@gmail.com

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EDITORIAL NOTE

LEXKHOJ is delighted to announce its first edition of the *Lexkhoj Research Journal of Law and Socio-Economic Issues* which is an international journal, publishing critical approaches to socio-legal study and multi-disciplinary analysis of issues related to law and socio-economic. The journal will strive to combine academic excellence with professional relevance and a practical focus by publishing wide varieties of research papers, insightful reviews, essays and articles by students, established scholars and professionals as well as by both domestic and international authors. Authors should confirm that the manuscript has not been, and will not be, submitted elsewhere at the same time.

The Journal provides a forum for in-depth analysis of problems of legal, social, economic, cultural and environmental transformation taking place in the country and world-wide. It welcomes articles with rigorous reasoning, supported by proper documentation. The Journal would particularly encourage inter-disciplinary articles that are accessible to a wider group of Social activist, economist, Researcher, policy makers, Professionals and students.

This quarterly issue of the journal would like to encourage and welcome more and more writers to get their work published. The papers will be selected by our editorial board that would rely upon the vibrant skills and knowledge immersed in the paper.

Needless to say, any papers that you wish to submit, either individually or collaboratively, are much appreciated and will make a substantial contribution to the early development and success of the journal. Best wishes and thank you in advance for your contribution to the Lexkhoj Research Journal of Law and Socio-Economic Issues.

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STATE POLICIES REGARDING RIGHT TO EDUCATION

**Atul ratna & Avantika Banarjee, Central University of South Bihar*

ABSTRACT

In the present scenario, education is perhaps the most important function of state as well as local government. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. The constitution of India had provision as to education only in the directive principle of state policy. It expressly indicated that the state has to make the policy for education. At present there are various provisions as to education in the fundamental rights, directive principles and fundamental duties. Thus, it has assumed the importance of education for a citizen as well as a country. To some extent it is a right of citizen and a duty as well.

National policy on education

Central government continues to play a leading role in the evolution and monitoring of education policy and the programs. The modified policy of national system of education brings uniformity in education, made adult education program as a mass movement etc.

Various other education policies:

- *Sarva Shiksha Abhiyan*
- *National early childhood care and education policy*
- a) *Secondary education*
- b) *Higher education*
- c) *Education of SC, ST and weaker section*
- d) *Minority education*

It is well said that “Padhega India tabhi to badhega India”. The significance of education in the individual’s life and the life of the nation is the same. It is not only an individual gets benefitted through education but also the society and the nation at large.

Introduction

Education is the most important function of any government whether it is at central level or at the state level. The compulsory school attendance laws and the huge amount of expenditure from the government for the sake of education demonstrate the importance of education in our democratic society. Education is required in each and every field. It is required in the performance of our basic responsibilities. Even in the arm forces, where physical fitness plays vital role, there also education is needed for the services. It is the foundation of good citizenship. In the current days, it is the most instruments in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally in his environment.¹

Now, if we want to compare the importance of education, then we can find it through our Indian constitution. Earlier the constitution of India had provision as to education only in the directive principles of the state. It was expressed that it's the duty of the state to make policy for the education. But now if we see, then we will find that there are various provision as to education is fundamental rights, directive principles and fundamental duties. Thus our constitution has assumed the importance of education for citizen as well as the country. So, here we can easily say to some extent that it's a right as well as duty of the citizen. And without education, no state or citizen can achieve progress.

Right to education as human right

Right to education is also one of the human rights. Article 26 of the Universal Declaration of Human Right, 1948, clearly states that-

1. Everyone has the right to education. No one should be deprived from this elementary part and parcel of life. Education shall be free, at least at the fundamental and elementary stages. Elementary education shall be compulsory to each and everyone. Technical and professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human right and fundamental freedoms. It shall promote understandings, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of united nation for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

So, education is also one of the human rights. And no one should be departed from their human rights.

¹ Oliver Brown v. Board of education of Topeka (U.S. Supreme Courts Report), Ashoka Kumar Thakur v. Union of India, AIR 2008 SC

National policy on education (NPE)

Now, if we talk regarding national policy on education, we have to compare the two phases i.e. before 1976 and after 1976. Before 1976, education was the exclusive responsibility of the state. But when in the year 1976, the constitution amendment act passed it included education in the concurrent list. And this was the most important step in the regard of education. Now, there was requirement of sharing of responsibility between the state and the union government in regard to the substantive, financial and administrative implication.

While the responsibility and the duty of the state in education remain unchanged, the union government took the greater responsibility in this regard. Basically the union government took three steps-

1. Study and monitoring of the educational requirement of the country.
2. Maintaining quality and standard of teaching profession at all level.
3. Accepted responsibility of reinforcing the national and integrated character of education.

The central government continues to play a leading role in the evolution and monitoring of educational and monitoring of educational policy and programs. And the two most notable are national policy on the education (NPE) 1986 and the programs of action (POA), 1986 as updated in 1992. And the main Moto of these policies were to –

- Bring uniformity in education
- Making adult education programs as a mass movement
- Special emphasis on the education of the children
- Providing universal access
- Retention and quality in elementary education
- Establishment of pace-setting schools like Navodyavidyalayas
- Vocationalisation of secondary education
- Synthesis of knowledge and research in higher education
- Opening and starting more open universities in the state
- Strengthen of the AICTE
- Encouraging sports, yoga, and physical fitness
- Adopting of affective evolution methods
- A decentralized management structure for the popular participation in education

So, these were the various strategies which were laid down for implementing the policy.²

Fundamental right to education

The 86th constitutional act, 2002 laid down that free and compulsory education shall be provided to each and every children of age 6-14 year in such manner as the state may

²India 2011 a reference annual, publication division, ministry of information and broadcasting, govt. of India

determine³. And it was incorporated in article 21-A of Indian constitution. According to section 3 of this act, every child of age 6-14 years shall have a right to free and compulsory education in the neighborhood school till completion of elementary education. The state has made law according to this provision i.e. right of education of free and compulsory education act, 2009 and it came into effect on 1st April 2010.

Now I would like to explain the title of the act “free and compulsory education”. Free education includes those children who has been admitted by his/her parents in the school supported by appropriate government for pursuing and completing the elementary education. They shall not be liable to pay any fee or the expenses which may prevent him from completing and pursuing education. And the term “compulsory education” casts an obligation on an appropriate government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in 6-14 age groups. With this, India has moved forward to a right based framework and this impose an obligation on local and the central government to implement this fundamental child right as mentioned in article 21-A of Indian constitution, in accordance with the provision of RTE acts.⁴

The various policies which came in the regard of education—

A. SarvaSikshyaAbhiyan (SSA)

For bridging the social and gender categorical gap in the elementary education and improving the quality of learning this SSA became operational. It became operational in the year 2000-2001. This SSA includes opening of new schools and alternate schooling facilities, construction of school and additional classrooms, toilets and drinking water, provisioning of teachers, periodic teacher training and academic recourse support, textbook and support for learning achievement.

And after passing of the RTE Act, changes have been incorporated into the SSA approach, strategies and norms.⁵ India is yet to achieve the goal of universalisation of elementary education or 100 percent enrolment and retention of children with the schooling facilities in all habitation. Through the government has taken marvelous step through SSA. Despite the government’s step to achieve this goal through sarvashikshyaabhiyan, which has special focus on girls education, student belonging to the disadvantaged family still do not attend the classes regularly.⁶

B. National early childhood care and education policy (ECCS)

ECCS has been included through the amendment article 45 which directs that state shall endeavor or to provide early education care and education for all children until they complete the age of 6 years. This has also been addressed in section 11 of RTE act, which states that,

³ Inserted by the Constitution (86th amendment) act,2002

⁴ <http://mhrd.gov.in/rte>

⁵ <http://mhrd.gov.in/schemes>

⁶ Khasnabis rattan; chattarjee Tania, enrolling and retaining slum children in formal school, june 2, 2007

with a view to prepare children above the age of 3 years for the elementary education and to provide early childhood care and education for all the children until they complete the age of 6 years, the appropriate government may make provision for providing free pre-schooling for such children.

This policy talks regarding the hostile development of the children. The policy lays down the way forward for a comprehensive approach towards ensuring a sound foundation, with focus on learning, for every Indian child.⁷

C. Right to education after 14 years of age

Right to education after 14 years depends upon the state's economic capacity and development.

i. Secondary education

It is the most important part and crucial stage in the hierarchy of education as it prepares the students for higher education and the world of work. And the right to education after 14 years depends upon the state's economic capacity and development. Article 41 of the Indian constitution states that, the state shall within the limit of its economic capacity and development make provision for securing the right of education.

There are various schemes, as targeted to make secondary education of good quality, accessible, affordable to all the young people of age group 14-18. And these are:-

- Rastriyamadhyamikshikhyaabhiyan
- Model school schemes
- Girls hostel scheme
- Inclusive education for disabled at secondary level
- National incentive to girls
- Appointment to language teacher
- National merit cum means scholarship

In addition to these, various school schemes are also implemented. These are KVS, Navodaya Vidyalaya Sangathan, Central Tibetan school administration, Indo-Mangolian school etc.⁸

ii. Higher education

There is no corresponding right to higher education. But under article 21-A, it is mandatory obligation for state to provide free and compulsory education to all children of 6-14 years. And in order to achieve it, the state has to pay more emphasis on allotting funds for the primary education. Article 41 simply states that the state shall, within its economic capacity and development make provision for securing right to education.

⁷<http://wed.nic.in/schemes/ECCE>

⁸ <http://mhrd.gov.in/secondaryedu>

Accordingly the University Grant Commission (UGC), a statutory body came into existence in 1956. The UGC has been vested with two responsibilities that are to provide fund and coordination, determination and maintenance of standard in institution of higher education. The central and state governments have established a number of colleges, universities, institution to provide higher education.

iii. Education for SC,ST and weaker sections

Article 46 of Indian constitution states that, the state shall promote with special care and economic interests of weaker section and in particular of SC and ST. The Supreme Court directed central government to prescribe appropriate guidelines laying down true scope of expression “weaker section of society”.⁹

The students who belongs to weaker section of the society and unable to pursue their education, scholarship are boon for them. These are incentives and encouragement for the meritorious students who are incapable to pursue higher studies for some or another reason. There are various scholarships such as—merit based, need based, student specific, carrier specific, college specific.

The government of India has launched the schemes for providing subsidy for the period of moratorium i.e. course period plus one year or six month after getting job, whichever is earlier. It also provides loan for the economically weaker sections from scheduled banks under the educational loan scheme of the Indian bank association, for pursuing any of the approved courses in the technical and professional streams, from recognized institution in India.¹⁰

Pre-metric and post-metric scholarship, Rajeev Gandhi national fellowship, national overseas scholarships have been prepared for the education of SC, ST and OBC. Thus, the state has promoted the educational interest of the weaker sections of the people, and in particularly of SC and ST.

iv. Minority education

Our constitution has guaranteed to the minorities the right to establish and administer the educational institution of own choice. The national commission for minorities’ educational institution was established to advice the central government on the protection of the constitutional rights of the minorities. There are various merit cum means scholarship, pre metric and post metric schemes have been implemented by the government of India for the minority education. Maulana Azad national fellowship scheme has also been made. The Maulana Azad foundation has also been established in order to plan for the benefit of educationally backward minorities and weaker section in general and to facilitate

⁹Shantistar builders, M/S. v. Narayan khimalaltotame, AIR 1990 SC 630

¹⁰ <http://socialjustice.nic.in>

establishment of residential schools, especially for the girls in order to provide and promote modern education to them.¹¹

Conclusion

There are two clauses as justiciable and non-justiciable. So, fundamental rights are justiciable and DPSP¹² are non-justiciable. The DPSP are made non-justiciable for the reason that the implementation of many of these rights would depend on the financial capacity of the state. So, merely it's a non-justiciable by judicial process doesn't mean that they are of subordinate importance.¹³ Article 41, 45, 46 are part of DPSP and provided in part IV of Indian constitution. These are not enforceable by the courts but they are still fundamental in governance of the country.

Here, I would also like to focus light on the doctrine of Parens Patriae. It is the obligation of the state to protect and take into custody the rights and the privileges of it are for discharging its obligation¹⁴. And it's the obligation of the state to provide education and that's why it must implement all the rules and schemes properly.

Here the concept of purposive construction is required. Though article 41, 45, 46 are part of DPSP, and it's only the duty of government not enforceable by the courts. But when these DPSP also affects the fundamental rights, then it is binding on the state to enforce it. So, it is barred on state to follow it. It is well said that "padhega India, tabhi to badhega India". So, the individual and the nation both get benefitted through the education. So, as the right to free and compulsory education has shifted from DPSP to fundamental rights. In the same way, article 41, 45, 46 should also be shifted.

¹¹ http://www.minorityaffairs.gov.in/maef_equity

¹² Directive principles of state policy

¹³ Ashokakumarthakur v. UOI, AIR 2008 SC, Para 173

¹⁴ Charanlalsahu v. UOI, AIR 1950 SC 1480