
“RIGHT TO EDUCATION”: EPENSION OF RIGHT O LIFE AND PERSONAL LIBERTY UNDER ARTICLE 21**Dr. Bhavana Sharma****Research Scholar Singhania University****Pacheri beri, Jhunjhunu, Rajasthan****Research Guide :Dr. Chitra Singh****Retd.Asso. Prof of Law Merrut Callege Merrut****ABSTRACT**

Part III of Indian Constitution guarantees 6 Fundamental rights under Article 12 to 35. Under Article 21 of Indian Constitution we have “Right to Life and Personal Liberty” as one of the cherished Fundamental Right and is wide enough to cover every fundamental right which is required to live a life with dignity,

According to Article 21 “No person shall be deprived of his life and personal liberty except procedure established by law”.

Means an individual can be deprived of his life and personal liberty only under a law passed by legislature and by laying down a procedure for such deprivation.

A person can be deprived of his life and personal liberty if two conditions are satisfied-

firstly, there must be a law and

secondly, there must be a procedure prescribed by that law, **provided that the procedure is just, fair and reasonable.**

Supreme Court act as a final Interpreter of Indian Constitution, under this power Supreme Court has expended the Scope of Article 21, and through the different case laws included the “Right to Education” as a Fundamental Right.

The basic guideline for such expansion are-

- Life means dignified life and therefore whatever falls to be essential for upholding the dignity of life will become an implied fundamental right
- Personal liberty means not mere freedom of movement but much more

In the year of 2002 by 86th Amendment Act Parliament inserted a new Article i.e Article 21A

According to which it is the duty of State to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine.

Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty, So International human rights law also guarantees the right to education. The Universal Declaration on Human Rights, adopted in 1948, proclaims in its article 26: "everyone has the right to education".

Since then, the right to education has been widely recognized and developed by a number of international normative instruments elaborated by the United Nations, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the UNESCO Convention against Discrimination in Education. It has been reaffirmed in other treaties covering specific groups (women and girls, persons with disabilities, migrants, refugees, indigenous people, etc) or contexts (education during armed conflicts).It has also been incorporated into various regional treaties and enshrined as a right in the vast majority of national constitutions.

Human right education is considered as one of the major tools to stop the violations against human rights. Education is the most important human rights, we need to develop this right and also we have to think about the education trainer or teacher for quality education.

The purpose of this paper is to aware the people and inform them that the right of education is not only considered as a fundamental right but it is also available to the human beings in the form of human rights.

This study is Multi-disciplinary, comparative, exploratory and analytical in approach. Thus I propose to carry out Doctrinal Research Methodology for this purpose.

INTRODUCTION:

All human beings are born free and equal in dignity and rights. It has been rightly proclaimed in the American declaration of independence that “all men are created equal, that they are endowed by their Creator with certain unalienable rights....” Similarly, Indian Constitution has ensured and enshrined Fundamental rights for all citizens irrespective of caste, creed, religion, colour, sex or nationality. These basic rights, commonly known as human rights, are recognized the world over as basic rights with which every individual is born.

The principle of universality of human rights is the cornerstone of international human rights law.

This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. In spite of the fact that this declaration has no legal bindings and authority, it forms the basis of all laws on human rights. The necessity of formulating laws to protect human rights is now being felt all over the world. According to social thinkers the issue of human rights has become very important after the conclusion of World War II. It is important for social stability both at national and international level. Wherever there is breach of human rights there is conflict at one level or the other.

In view of the increasing importance of the subject it becomes necessary that the subject of human rights be recognized by educational institutions as an independent discipline. Course contents and curriculum of the discipline of human rights may vary according to the nature and circumstances of a particular institution but generally it should include the rights of a child, rights of minorities, rights of the destitute and the disabled, right to live, convention on women, trafficking of women and children for sexual exploitation etc.

Since the formation of the United Nations the promotion and protection of human rights has been its main focus. The United Nations has created a wide range of mechanisms for monitoring violations of human rights. The conventional mechanisms include treaties and organizations, U.N. special reporters, representatives and experts and working groups.

Human rights apply in a surprisingly broad range of contexts – they’re not just about war and conflict. Sometimes human rights can offer you protection in a situation where you may not even realise that you need rights.

Human rights give you greater freedom to choose the kind of life you lead, acknowledging that people have different relationships and beliefs and enabling them to pursue what suits them without harming others. Human rights work in practical and straightforward ways, bringing common sense into situations where bureaucratic procedures and systems lose sight of people and their individual needs.

Human rights are not a privilege that may be granted to a chosen few or a discretionary gift or reward. They are the means and measure that, when fulfilled, will: ensure that human needs are met, human potential realized, equal opportunity is available to all, benefits are equitably shared and the weakest are included and protected. The central notion of equity permits special groups like women, children, minorities and those who have traditionally suffered disadvantage or are vulnerable, to be specifically protected to ensure that their equality of status and opportunity are guaranteed.

However, human rights are not just moral imperatives or noble ideas. They are concrete standards complemented by legal recognition in widely diverse societies. Human rights standards provide a precise

yet constantly evolving legal regime, which also provide remedies and cast obligations – especially on those who wield power over the outcomes of people’s lives.

Since the State is well recognized as the principal entity mandated to secure the well being of all, it is also seen as the primary duty-holder with the key responsibility of **respecting, protecting, promoting** and **fulfilling** the human rights of all people.

ROLE AND IMPORTANCE OF EDUCATION AS A HUMAN RIGHT:

Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. The right to education ensures access to quality schools and to an education that is directed towards the full development of the human personality. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty. Six major human rights principles considered as fundamental for guaranteeing the right to education are:

- **Individual Rights:** Every individual child must have equal access to a quality education adapted to meet his or her needs.
- **Aims of Education:** The aims of education must be directed toward the development of each child’s personality and full potential, preparing children to participate in society and to do work that is rewarding and reasonably remunerative, and to continue learning throughout life
- **Dignity:** Schools must respect the inherent dignity of every child creating an environment of respect and tolerance in the classroom, preventing practices and disciplinary policies that cause harm or humiliation to children, and promoting self-confidence and self-expression.
- **Equity:** There must be equitable distribution of resources in education across communities according to need.
- **Non-Discrimination:** The government must ensure that the human right to education “will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”
- **Participation:** Students, parents and communities have the right to participate in decisions that affect their schools and the right to education.

Education is a powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens. Education makes us aware about our civil and political right often called as the first generation rights and the social, economic and cultural rights as the second generation rights. Without proper education one cannot be introduced with these essential philosophic and there basic rights and obligations.

The concept of expanding human rights through education is now popularly present and travelled to encompass as the third generation rights itself. So it is very important that we know what is the role of education in promotion and protection of human rights.

Being a tool to spread awareness and information and assimilating, creating and disseminating knowledge amongst its recipients, education can play a crucial role at each of levels for promotion and protection of human rights.

A comprehensive education in human rights consists of two components: knowledge and information on human rights and the mechanisms that protect these inalienable rights. It is important that education also impart the skills needed to promote, defend, and apply human rights in daily life. Education about human rights is distinct from other types of values education. For example, citizenship education or education for democratic citizenship (EDC) is a set of practices and activities aimed at making young people and adults better equipped to participate actively in democratic life by assuming and exercising their rights and responsibilities in society.

The need of promoting & protecting all human rights is important in order to secure full & Universal enjoyment of these rights cannot be fulfilled without mass awareness and sensitivity to human rights issues. The grand agenda of global peace & prosperity is possible only with people understanding & imbibing the human rights values.

Awareness is important in order to resolve the human right conflicts. The Vienna Declaration adopted by General Assembly in 1993 incorporates a separate section on role of education protection and promotion of human rights. For example, gender is a social construction, not a biological one, and discrimination on this basis is consequently difficult to assess and address. The human rights protection and promotion of gender equality requires more than numerical equilibrium, it also requires conceptual equilibrium, and a conscientious effort to redress inequality, as it exists.

RIGHT TO LIFE AND PERSONAL LIBERTY VIS A VIS RIGHT TO EDUCATION:

Constitution of India provides (After 44th Amendment Act 1978) six Fundamental Rights under Part III, Articles 12 to 35. These rights are guaranteed by the Constitution against the State as define under Article 12 of Indian Constitution.

- Right to Equality :Article 14 to 18
- Right to Freedom : Article 19 to 22
- Right against Exploitation : Article 23 to 24
- Right to Freedom of Religion : Article 25 to 28
- Cultural and Educational Right: Article 29 to 30
- Right to Constitutional Remedies : Article 32 to 35

In Maneka Gandhi v Union of India AIR 1978 SC 597_Justice Bhagvati Said- “these Fundamental rights represent the basic value cherished by the citizen of India since the Vedic times. The aim of the Fundamental Rights to protect the dignity of the individuals”.

These rights are regarded as fundamental because they are most essential to the individual to live a life with full dignity.

The object behind the inclusion of Part III is to establish a “Government of Law or Rule of Law and not of Man”

ARTICLE 21: "RIGHT TO LIFE AND PERSONAL LIBERTY"

According to Article 21: "No person shall be deprived of his life or personal liberty except according to Procedure Established by Law"

Means an individual can be deprived of his life and personal liberty only under a law passed by legislature and by laying down a procedure for such deprivation.

A person can be deprived of his life and personal liberty if two conditions are satisfied-

firstly, there must be a law and

secondly, there must be a procedure prescribed by that law, **provided that the procedure is just, fair and reasonable.**

RIGHT TO LIFE:

Right to Life means the right to lead meaningful, complete and dignified life. It does not have restricted meaning. It is something more than surviving or animal existence. The meaning of the word life cannot be narrowed down and it will be available not only to every citizen of the country but also available to any foreigner staying in India for any lawful purpose

PERSONAL LIBERTY:

In Meneka Gandhi vs Union of India AIR 1978 SC 597: Supreme Court has expanded the scope of Personal Liberty.

Justice Bhagwati observed: "the expression personal liberty in Art 21 is of widest amplitude and it covers a verity of rights which go to constitute the personal liberty. It protects the right of citizens not only from executive action but from the legislative action also".

PROCEDURE ESTABLISHED BY LAW:

Procedure established by law means procedure laid down by statute or procedure prescribed by the law of the State. For fulfilling this requirement following conditions must be satisfied-

- There must be a law justifying interference with the person's life or personal liberty
- The law should be a valid law
- Procedure laid down by the law should have been strictly followed
- The executive in the absence of any procedure prescribed by law sustaining the deprivation of personal liberty shall act in violation of Art. 21

In Meneka Gandhi vs Union of India AIR 1978 SC 597: the Court held that "the procedure which is established must satisfy the requirement of NATURAL JUSTICE ie it must be just fair and reasonable.

The object of the Article 21 is to prevent encroachment upon personal liberty and deprivation of life except procedure established by law. Right to life and personal liberty is the most cherished and decisive

fundamental right around which other rights of the individual revolves and therefore the study assumes great significance

This right is one of the greatest rights of human being given by the Constitution and protected by the High Courts and Supreme Court respectively under Article 226 and 32 of Indian Constitution.

Under the Constitution Of India Supreme Court acts as a Final Interpreter of the Constitution. Under this power Supreme Court has expanded gradually the scope of Article 21.

In **Mohini Jain V. State of Karnatak** (1992 (3) SCC 666), popularly known as the 'Capitation Fee Case', the Supreme Court has held that "the right to education is a fundamental right under article 21 which cannot be denied to a citizen by charging higher fee known as capitation fee. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education".

In **Unni Krishnan V. State of Andhra Pradesh** (1993 (1) SCC 654), the Supreme Court held that " the right to education is fundamental right under Article 21. But as regards its content the Court partly overruled the Mohini Jain Case and held that "the right to free education is available only to children until they complete the age of 14 years, but after that the obligation of the State to provide education is subject to the limits of its economic capacity and development".

In **TMA Pai Foundation V. State of Karnataka** (AIR 2003 SC 355), an eleven Judge Constitutional Bench of the Supreme Court has overruled the *Unni Krishnan's* decision partly. The Court held that the Scheme relating to admission and the fixing of fee were not correct and to that extent they are overruled. The Supreme Court in *Unni Krishnan Case* declared that the right to education for the children of the age of 6 to 14 is a fundamental right.

Even after this, there was no improvement. A demand was being raised from all corners to make education a fundamental right. Consequently, the Government enacted Constitution 86th Amendment Act, 2002 by this Amendment A new Article has been inserted in the Part III ie Article 21- A , which made education a fundamental right. According to Article 21- A "the State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may by law determine".

Article 21 – A is not a self executor right. Its implementation has been left to the discretion of the State. This Article has come into force on 1st April, 2010 when the Right of Children to Free and Compulsory Education Act, 2009 was brought into force by the Central Government.

In **Avinash Mehrotra V. Union of India**,(2009) 6 SCC 398.) the PIL sought the for framing the rules by the Supreme Court for safe education of children and to strengthen laws to protect children in school buildings in case of fire and other hazards so as to protect the right of life guaranteed to all school going children under articles 21 and 21A of the Constitution.

The PIL referred to an unfortunate fire accident in a privately run school, where a fire started in the school's kitchen while the cooks were preparing a meal under the mid-day meal scheme. The school building housed more than 900 students in a crowded with a single entrance and exit, a narrow staircase and windowless classrooms. The ventilation of the entire school was extremely poor with only cement perforated windows. The kitchen fire rose so high that the thatched roof of the classrooms caught fire and the blazing roof supported by bamboo poles collapsed on the school children and most of them died

on the spot. The school's narrow, steep stairs and few exits hampered efforts of nearby residents in dousing the flames and trying to rescue the children.

Stating the frequent occurrences of such incidents, the PIL alleged flagrant violation of school safety regulations in the entire country.

The Supreme Court held that "the right to education attaches to the individual as an inalienable human right, the scope of which mandates the state to provide education to children in all places, even in prisons. The right to education requires that the child study in a quality school which should pose no threat to his/her safety. It flows from articles 21 and 21A of the Constitution that the school children must receive education in safe schools. Declaring that it is the fundamental right of each and every child to receive education free from fear for personal security and safety, the Supreme Court directed to all government and private schools to comply with the national building code, 2005 and the code of practice of fire safety in educational institutions of the bureau of India standards".

In Swapan Kumar Saha V. South Point Montessary High School and others (AIR 2008 (NOC) 136 (GAU)), the Gauhati High Court held that the school management is under obligation to provide safe journey to children to school.

The Court held that "the overloading of school bus is violation of the right of school children. The Court directed the State to take remedial measures to enforce provisions of Motor Vehicle Act. The Court issued direction to school authorities to comply with the provisions of the Act".

INTERNATIONAL PROVISIONS FOR THE RIGHT TO EDUCATION:

Education has been regarded in all societies and throughout human history both as an end in itself and as a means for the individual and society to grow. Its recognition as a human right is derived from the indispensability of education to the preservation and enhancement of the inherent dignity of the human person. Several international, regional and national legal instruments recognize the right to education. Normative instruments of the United Nations and UNESCO lay down international legal obligations for the right to education. These instruments promote and develop the right of every person to enjoy access to education of good quality, without discrimination or exclusion. These instruments bear witness to the great importance that Member States and the international community attach to normative action for realizing the right to education. It is for governments to fulfil their obligations both legal and political in regard to providing education for all of good quality and to implement and monitor more effectively education strategies.

Some of the important provisions that guarantee the right to education as a human right have been discussed below:

- **Article 26 of the Universal Declaration of Human Rights:** Article 26 guarantee the right to education (have defined the aims of education which impact on the content of education, teaching and learning processes and materials, the learning environment and learning outcomes).

- **Articles 13 and 14 of the International Covenant on Economic Social and Cultural Rights to education** : Article 13 lays down that everyone has the right to education and that education should contribute to the full development of the human personality. And article 14 provides that Article 14 requires each state party that has not been able to secure compulsory primary education free of charge, to undertake, "within two years, to work out and adopt a detailed plan of action for the progressive implementation . . . of compulsory primary education free of charge for all."
- **Article 28 and 29 of the Convention on the Rights of the Child**: Art 28 of the CRC contains the same provisions contained in ICESCR and Article 29 provides that students must receive a quality education that enables their personalities, talents and abilities and to live a full and satisfying life within society. The aims of education go far beyond acquiring numeracy and literacy skills. Basic skills also include "life skills such as the ability to make well-balanced decisions; to resolve conflicts in a responsibility, critical thinking, creative talents, and other abilities which give children the tools needed to pursue their options in life"
- The UNESCO Convention stipulates that states parties must undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and treatment, and, in particular, to make primary education free and compulsory. In addition, it recognizes parents' right to freely choose their children's educational institutions and to ensure the religious and moral education of their children in conformity with their own convictions.
- **The Convention on the Elimination of All Forms of Discrimination against Women**: Article 10 of CEDAW also contains provisions dealing with the right to education. It provides, for example, for equal access to career and vocational guidance and to studies at all educational levels; access to the same curricula and examinations; elimination of stereotyping in the roles of women and men; and the same opportunities to benefit from academic scholarships
- **Article 5 of Convention on the Elimination of All Forms of Racial Discrimination**
- **Article 12 of American Declaration on the Rights and Duties of Man**

There are also United Nations committees ("treaty bodies") made up of experts that oversee the implementation of particular human rights treaties. These committees oversee the treaties by, among other things, receiving government reports on the implementation of the treaties making comments to the government reports, and issuing general comments about the treaties or specific rights contained therein.

Though, the right to education has been recognized in a great many international human rights treaties, the formulations used and the nature and the scope of the resulting obligations undertaken by states tend to vary significantly. Many country recognize the right to education through the Universal

declaration of human rights, they make sure the primary education is compulsory and available free for all. "The states parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the state and to ensure the religious and moral education of their children in conformity with their own convictions".

CONCLUSION

There is no doubt that education has a major role to play for protection and promotion of human rights. Education is considered as one of the major tools to stop the violations against human rights. Education is the most important human rights, we need to develop this right and also we have to think about the education trainer or teacher for quality education.

From the above discussion we saw the importance and how education can play a vital role in this regard. We have to proper implementation on human rights convention to serve the right to education. Equality shall be the primary consideration in actions concerning children, respect for the views of the child are the general principals of the Convention on the Rights of a child. Education in their own mother language about human rights will make the learners more prompt about their values and ways to use them in their day to day life. The values of cultural diversity and social diversity should be inculcated as a basic teaching. For integration of human rights, the relevant subjects at the primary stage are languages & environmental studies. Stories, poems and songs concerning human rights values will have to be selected. Education should impart gender equality, respect for human dignity and rights.

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