

# Law & The Right to Education: A Step towards Development

Devesh Saxena

**Abstract:** Abstract: Human being requires food, shelter, & clothing to have a rudimentary essential living. But in this 21st century human survival is an extreme difficult task if a person is uneducated. Thus education plays an important role for human existence in the modern era. In a democratic country like India, the Right to Education Act is a progressive step taken by government to promote & fulfil the essential need of education. The paper carries a gender neutral thought concerning the children and analysing the issue at a grass root level. The paper compactly presents the activist role played by the judiciary in paving the way for RTE by the help of landmark judgements. The paper provides a background for the problems faced by children from lower class going to private schools. Further the paper raises a serious issue as to whether under privileged kids belonging to lower castes and weaker sections of society, be able to quickly socialise in the mainstream culture of classroom environment? The paper tries to provide a solution for this pigeonhole behaviour of the adaptability in such a change of classroom culture & typecast behaviour towards gender. Thus paper raises a central issue whether the society is mentally ready to for such a revolution change in the field of education?

**Keywords:** Children, Education, Judiciary, Psychology

## 1. INTRODUCTION

Education is a part of human development and hence indisputably a human right [1]. Education has become a fundamental need to survive in this 21st century. The Supreme Court has implied 'Right to Education' as a fundamental right from 'Art. 21'[2]. The word 'life' has been held to include 'education' because education promotes good & dignified life [3]. Education as defined under Law Lexicon Dictionary states that a set of systematic instructions, schooling or training given to the young in the preparation for the work of life [4]. Article 45 is a Directive Principle which has made a provision for free and compulsory education for all children till the age of 14 years. The idea was still a dream. With the establishment of National Policy of Education (NPE) in the year 1986, the task of providing education gained momentum.

## 2. ACTIVE PLAY OF JUDICIARY

The judiciary played an eminent role in paving way for Right to Education by various landmark judgments. In the case of 'Unni Krishnan, J.P. & Others v.State of Andhra Pradesh &Ors [5], it was observed that Education occupies a sacred place within our Constitution and culture. Further in the case of 'R. D. Upadhyay v.State of A.P. &Ors' it was held that State must provide education to all children in all places, even in prisons,

to the children of prisoners [6]. In the case of ‘Bandhua Mukti Morcha v. Union of India & Ors’, it was stated that democratic State may never reach its greatest potential without a citizenry sufficiently educated to understand civil rights and social duties [7]. Further in the case of ‘Ashoka Kumar Thakur v. Union of India & Ors.’ [8], it was held that Education stands above other rights, as one’s ability to enforce one’s fundamental rights flows from one’s education [9].

This was one of the classic judgements of all times which lead to the arrival of Right to Education. Dalveer Bhandari, J directed the Union of India to set a time – limit within which this article is going to be completely implemented. This time limit must be set within six months [10]. The Right to Education Act was passed by the Parliament in August 2009 and came into force from April 1 2010, provides for free and compulsory education as a fundamental right of every child in the age group of 6-14. This is stated as per the 86th Constitution Amendment Act which added Article 21A. This is ultimately why the judiciary must oversee Government spending on free and compulsory education. Thus if we read Art (21-A) with Article (19) (a) it has been interpreted to provide primary education to all children in a medium of instruction of their choice [11]. Right to Education under the Article 21-A, would cover primary as well as secondary education & petitioner can claim the benefit of Part III as well [12]. In the case of ‘Avinash Mehrotra vs Union Of India & Ors.’ [13], it was stated that Education should be received free from fear of safety and security so that children may receive education in a safe & sound building. The judiciary stepped one step forward and stated Hungry stomach cannot be expected to good education and thus mid-day meal is also a part of Right to Education [14].

### 3. CLASH OF THE TITANS

In the case of ‘State of H.P v. H.P. State Recognised and Aided Schools Managing Committee’ [15], the judiciary went on to say that Financial Constraint is not an answer for the constitutional duty. But in the case of ‘Maria Grace Rural Middle School v. Government of Tamil Nadu’ [16], it was held that the right to receive grant in aid for establishment & administration of schools is not a right. The rationale provided was Grant in Aid is an economic concept that would always depend upon subjective satisfaction, financial economic concept that would always depend upon subjective satisfaction, financial stability & resources as well as the discretion of the State Government [17]. Thus still the government is in tussle to provide either the fundamental right to the children or to aid the education institutions & support monetarily for the noble welfare which is the primary principle of a good government. This is also a serious concern, which is acting as a hindrance in the path of Right to Education.

### 4. CHILD PSYCHOLOGY; AN ACT OVER AN ACT

Psychological impact of an environment plays a crucial role. The same is the concern with the children entering in the private institution. Since the Act has already passed that private, non-minority schools that don’t receive government support has to mandatory reserve 25% of their seats for underprivileged kids. This leads to a striking problem

with the psychology of these underprivileged children as to mingling in such an environment. They would rather feel themselves as outcasts & literal aliens to this new classroom atmosphere. Quality educational performance is correlated as to how an individual perceives an educational from its aspiring surrounding.

An important piece of experimental research by economists 'Karla Hoff' and 'Priyanka-Pandey', using Indian data found that kids from historically disadvantaged castes performed just as well as upper caste kids in aptitude tests such as solving puzzles and mazes. This equivalent performance happened only when caste identity was not revealed to their peers in the experiment. In a mixed group, when the researchers revealed everyone's caste identity, the disadvantaged kids performed fully 20% worse than their peers [18]. This study strongly suggests that the performance of disadvantaged children who have been acknowledged into an altogether new set up of private schools under the new law will rest on whether they're able to manage the psychological challenges and encounters of interacting at close quarters in an unaccustomed and potentially antagonistic environment. This is the stereotype threat which will be commonly observed in these children as they are reminded back of their backwardness & status in the society deteriorating the performance.

Underprivileged kids will almost certainly be dressed differently, have less fancy accoutrements, and will probably lack the self-confidence that accompanies wealth and privilege in India, as in most other places. This is likely to reinforce what psychologists call the "stereotype threat," whereby being reminded of belonging to an underprivileged group creates cognitive challenges and worsens performance [19]. In such peer pressure circumstances, children tend to follow wrong ways or they tend to commit suicide aren't uncommon. Thus the situation doesn't offer a greater amount of comfort.

## 5. THE ROLE-MODEL

Exploiting a randomized natural experiment in India, we show that female leadership influences adolescent girls' career aspirations and educational attainment. A 1993 law reserved leadership positions for women in randomly selected village councils. Using 8453 surveys of adolescents aged 11 to 15 and their parents in 495 villages, we found that, relative to villages in which such positions were never reserved, the gender gap in aspirations closed by 20% in parents and 32% in adolescents in villages assigned a female leader for two election cycles. The gender gap in adolescent educational attainment was erased, and girls spent less time on household chores. We found no evidence of changes in young women's labour market opportunity, which suggests that the impact of women leaders primarily reflects a role model effect [20].

## 6. THOUGHT EXPERIMENT

Here is a thought experiment. There are two types of people, reds and greens. They differ only in the way they process information. Compared to a red, a green is more able to forget his failures. This makes a green's confidence curve more bowed-out than a red's. Since equilibrium is where the confidence curve intersects the production function, it is clear in the figure that greens outperform reds.

Now reinterpret the experiment: There are two “races,” reds and greens. Reds have historically been characterised as inferior, race remains salient, and race constrains how individuals process information about themselves. Compared to greens, reds less easily forget their failures because they see them as confirming their inferiority. We define an “equilibrium fiction” as a belief that affects perceptions and so changes behaviour in ways that make the belief come true. In the equilibrium in Panel C, the racial gap in performance confirms the fiction of racial inequality even though the groups differ neither in ability nor in the costs and benefits of any economic action. The rational frame created by ideology can sustain inequality because of three features of how the mind works – we think in terms of categories that are given to us by society (such as reds and greens), we have confirmatory bias and self-confidence can improve our performance.

The more the reds are stigmatised and susceptible to believing in their inferiority (e.g. because they see little disconfirmation in the circles in which they live), the wider the performance gap between races [21].

## 7. CONCLUSION

The bottom line clearly indicates the need of A Role Model to increase the confidence & self believe of an individual. By increasing self-confidence, self-image management an individual can improve his performance and gain real knowledge. Thus, the mind-set should be in an affirmative position in order to attain equilibrium among the hybrid students set up in a common environment. The principle need is to bridge the communication & social gap existing among the students in the same class. Further the illusion of two sets of children existing in the same institution should be clarified. Clearly it’s a tough task rarely apprehended by the Proposers of such an Act. Every policy carries certain amount of pros & cons. It’s up to the government & its citizens as to how well they address a problem & come to a consensus solution for the smooth functioning of system and its better administration.

## 8. ACKNOWLEDGMENT

The authors of the paper would like to thank the H.O.D of our Department, School of Law, Christ University, Dr, C.S. Somu without whose able guidance this paper would have been just a vision for the authors. Without his inputs it would have been difficult to work on the paper. Along with this I would like to acknowledge Karla Hoff, for the empirical research and experiment which helped me in making a research over the nature of the subject.

## 9. REFERENCES

- [1] State of Bihar v. SC/ST Welfare Society of Kerela, AIR 2007 Ker 158.
- [2] Ranbir Singh & A Lakshminath, Constitutional Law 267 (Lexis Nexis Butterworths 2006).

- [3] M.P Jain, Indian Constitutional Law 1129 (Lexis NexisButterworthsWadhwa Nagpur 5th ed. 2009), See also Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.
- [4] P RamanathaAiyar's, The Law Lexicon 534 (Lexis NexisButterworthsWadhwa Nagpur 3rd ed. 2012). See also LokaShikshana Trust v. I.T. Commissioner Mysore AIR 1976 SC 10, 14; Gujarat University v. Shri Krishna RanganathMadholkar, AIR 1963 SCC 703; P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537.
- [5] Unni Krishnan, J.P. & Others v.State of Andhra Pradesh &Ors, 1993 AIR 217.
- [6] R. D. Upadhyay v.State of A.P. &Ors., AIR 2006 SC 1946. Increased the scope of Right to Education to a larger extend.
- [7] BandhuaMuktiMorcha v. Union of India &amp; Ors., (1997) 10 SCC 549.
- [8] Ashoka Kumar Thakur v.Union of India &Ors., (2008) 6 SCC 1.
- [9] M.P Jain Indian Constitutional Law 1301, Lexis NexisButterworthsWadhwa Nagpur 6th ed. 2010.
- [10] Id at 1302.
- [11] Associated Managements of Primary and Secondary Schools in Karnataka v. The State of Karnataka by its Secretary, Department of Education and Ors., ILR 2008 KAR 2895.
- [12] State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtri Mahavidyalaya, (2006) 9 SCC 1.
- [13] AvinashMehrotra vs Union Of India &Ors., (2009), 6 SCC 398.
- [14] Rifahul Muslim Education Trust v. State of Karnataka, AIR 2005 Kant. 203.
- [15] State of H.P v. H.P. State Recognised and Aided Schools Managing Committee, (1995) 4 SCC 507
- [16] Maria Grace Rural Middle School v. Government of Tamil Nadu, (2006) 5 CTC 193 (Mad).
- [17] Durga Das Basu, Constitution of India 3269 (Lexis NexisButterworthsWadhwa Nagpur 8th ed. 2008).
- [18] Karla Hoff , Equilibrium fictions, societal rigidity, and affirmative action (24 Apr 2012),
- [19] Karla Hoff , Equilibrium fictions, societal rigidity, and affirmative action (24 Apr 2012), [http:// http://voxeu.org/article/why-economists-should-not-ignore-affirmative-action](http://voxeu.org/article/why-economists-should-not-ignore-affirmative-action),
- [20] RupaSubramanya, Economics Journal: Will India's Right to Education Act Upset Stereotypes? (12 May 2012), Economics Journal for India Real Time.
- [21] Lori Beaman&odrs, Science: Female Leadership Raises Aspirations and Educational Attainment for Girls: A Policy Experiment in India. (12 January2012), <http://www.sciencemag.org/content/335/6068/582.short>.

\* \* \*

*<sup>1</sup>Devesh Saxena 91 Chitragupta Nagar KotraSultanabadh Bhopal/Student/School of Law, Christ University/ 2013*