

Free and Compulsory Elementary Education For Children in India

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1. Elementary Education is a Human Right

* Universal Declaration of Human Rights (UDHR), 1948

- Everyone has the right to education.
- Education shall be free.
- Elementary education shall be compulsory.

* International Covenant on Economic, Social and Cultural Rights.

"Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) Primary education shall be compulsory and available free to all;
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) Higher education shall be made equally

accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

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.

No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

* The Convention on the Rights of the child.

"Article 28 (1). States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates."

* India has ratified these treaties, so it is bound by their provisions to work towards its realization.

* So Government is obliged

- to make primary education compulsory.
- to make it free for all children.
- to take measures to provide financial assistance to the needy child.
- to encourage regular attendance of children at schools.
- to ensure reduction in drop-out rates of children.

2. Provisions in Part IV of the Constitution of India - Directive Principles of State Policy

"Article 45. Provision for free and compulsory education for children.-The State shall endeavour to provide, within a period of 10 years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

"Article 41. Right to work, to education and to public assistance to certain cases.-The

State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."

"Article 46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.-The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

* It was the duty of the Central Government to implement Article 45 within 10 years of Independence.

* The above provisions are not justiciable through courts, but they are fundamental in the governance of the country.

* Effect of their non-implementation is negation of other fundamental rights like:

- Right to freedom of information/Right to know.
- Right to freedom of expression (Art. 19).
- Right to decent and dignified life (Art.21).

3. Supreme Court Judgements

1. *Bandua Mukti Morcha's case [(1984) 3 SCC 161]*

"Right to education implicit in and flow from the right to life guaranteed by Article 21."

MohiniJain v. State ofKarnataka [(1992) 23 SCC666]

"Right to education is a fundamental right. Without education being provided to the citizens of this country, the objectives set forth in the Preamble of the Constitution cannot be achieved."

Importance of education

"Today, education is perhaps the most important function of State and local governments ... It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." [347 US 483 (1954)]

3. *Unnikrishnan vs. State of Andhra Pradesh* [(1993) 1 SCC 645]

"The citizens of this country have a fundamental right to 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 completes the age of fourteen years. Therefore his right to education is subject to the limits of economic capacity and development of the State."

4. **Parliamentary Legislation on Fundamental Right to Elementary Education (93rd Amendment to the Constitution)**

- a) **Article 45:** "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."
- b) **Article 21 (A):** "The State shall provide free and compulsory education for all children of the age of 6 to 14 years in such manner as the State may, by law, determine."
- c) **Article 51 (A)(K):** "Parents/guardian to provide opportunities for education to his child or ward between the age of 6 and 14 years."

Note: The 93rd amendment to the Constitution inter-alia requires promulgation of Law (Act) to determine the manner for free and

compulsory education for all children of the age of 6 to 14 years. The citizenry has an active role of putting positive pressure on the 'State' to determine the manner of free and compulsory elementary education which is based on high norms and standards and appealable to the civilised conscience of the community.

5. **The Fundamental Human Rights for Free and Compulsory Elementary Education**

- * The Universal Declaration of Human Rights (UDHR) and Children's Rights have created fundamental human right to free and compulsory education in India.
- * They are ratified by the Government of India. Now it is upto the "State" to ensure this human right.
- * The education of children during their tender and formative years is a basic necessity,
- * The cost of education at this stage should be born by the State, in order to make elementary education 'free of cost' for the children. This is accepted in principle, but full-scale financial requirements are never allocated.
- * The quality and content of free primary education should be of world class and enable all children to achieve meaningfully essential and maximum levels of learning.
- * The Government of India's Department of Elementary Education and literacy has assessed that Rs 60,000 crore will be required from the budget of Central and state Governments from 2000 to 2010.
- * The Indian government must invest the required amount of money for meaningful and full-scale realization of universal free elementary education by at least 2010 A.D. It is only then India can stand as a completely educated nation and realise the Fundamental Right to Education.
