



## AN ANALYSIS OF RIGHT TO EDUCATION IN INTERNATIONAL LEGAL PERSPECTIVE

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*Abstract--* Education is the powerful tool which can shape the destiny of an individual and as well as the nation. Hence the right to education is recognized, promoted and protected at all levels from national, regional to international. Education is the most vital factor by adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education as a vital role in empowering women, protecting children from exploitation, promoting human rights and democracy. The right to education is a fundamental human right. But both at the National and International levels require ensuring the effective implementation of the Right to Education. Achieving the right to basic education as fundamental human right is one of the biggest challenge on international community. Millions of children, youths and adults remain deprived basic education. United Nations stress the importance of the fundamental right to education. International Conventions and reports by United Nations bodies stated the importance of right to education. Several International Conventions endeavor to stress the importance of the fundamental right to education. They are, Universal Declaration of Human Rights, International Convention on Civil and Political rights, International Conventions on Economic, Social and Cultural rights, the Convention on Elimination all Forms of Discrimination Against Women, convention on the Rights of the Child and United Nations Educational Scientific and cultural Organization. The International Community reaffirmed the right to Education at the world Education forum in 2000. The United Nations General Assembly and the United Nations Millennium Deceleration was adopted in 2000 and has set a target that by 2015 children everywhere both boys and girls will be able to complete a full course of primary schooling. This article summarizes the content and scope of the right to education is established by different human rights institutions and international conventions.

### INTRODUCTION

Education is both human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain means to participate fully in their communities. Education has vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment and controlling population growth. Education is one of the most important and powerful tools for the spreading democratic values, the promotion of human rights and the attainment of self-esteem and self-realization. The right to education is foreseen in many international and regional legal instruments. A large number of standard setting instruments, conventions, declarations, recommendations, frameworks for action, charters,- that are used at the international and regional level, provide a normative frame work for right to education.

### INTERNATIONAL LEGAL JURISPRUDENCE RELATING TO EDUCATION

Normative international and regional instruments lay down the obligations of the State regarding the right to education. These instruments promote and develop the right of every person to enjoy access to a good quality education without discrimination or exclusion. Certain universal and regional treaties determining and regulating the right to education have been adopted. Some most important international treaties are mention here:-

- a. The Universal Declaration of Human Rights (UDHR) 1948.
- b. The International Covenant Economic, Social and Cultural Rights (ICESCR) 1966.
- c. The Convention on the Rights of the Child 1989.
- d. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) 1945.
- e. International Covenant on Civil and Political Rights (ICCPR)
- f. The Convention of the Elimination of All Forms of Discrimination against Women (CEDAW)
- g. United Nations Millennium Declaration 2000, By United Nations General Assembly.
- h. United Nations Human Development Resolution on International Human Order 2012.



Part 1 of Article 26 Universal Declaration of Human Rights provides that, “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory”. It is vital to ensure at least elementary education and to commit the states to take all possible legal measures and administrative tools for implementing compulsory elementary education thus making it free.

Part 2 of Article 26 of UDHR indicates quality education. “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”. Another important document dedicated to education is UNESCO’s Convention against Discrimination in Education (1960) is the first instruments which provides for right to education comprehensively. It establishes the fundamental principle of universal access to education and ensuring quality of education educational opportunities the Convention reflects UNSECO’s mission of instituting collaboration among nations to “advances the ideal of quality of educational opportunities without regard to race, sex or any discrimination, economic or social”.

The constitution of UNESCO express the belief of its founders in “full and equal opportunities for education for all” Under Article 4 of the convention undertake to formulate develop and apply a national policy which by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and treatment in the matter of education. The right to education is also comprehensively covered in International convent in Economic, Social and Cultural Rights (ICESCR) under Article 13 and 14. Article 13, the longest provision in the Covenant is the most wide ranging and comprehensive article on the Right to Education. Article 13 (1) of ICESCR, States parties agree that all education, weather public or private, formal or non formal shall be directed towards the aims and objectives identified in Article 13 (1). Article 13 (2) provides that this right envisages compulsory and free primary education for all, accessibility to secondary general education including technical and vocational secondary education and higher education with progressive introduction of free education and liberty for parents to choose schools for their children.<sup>1</sup>

The right of every child to education on the basis of equal opportunity is also established in Article 28 of the Convention on the Right of child (1989). The committee on the Rights of the Child has recognized the need for identifying and giving priority to marginalized and disadvantaged groups.

The International Covenant on Economic, Social and Cultural Rights (1966). Reaffirmed all treaties and other documents related to human rights, the quantitative and qualitative scope of the right to education consists four “A” s:- Availability, Accessibility, Acceptability and Adoptability.<sup>2</sup> This conceptual framework is the minimum standard and at the same time, the goal implementing the Right to Education throughout the world. The achievement of these provisions defines a process as well as an end, and they challenge inequalities and abuse. Availability means that States must ensure a free and compulsory, good quality education available for all children up to a defined age minimum, with safe schools and appropriate infrastructure and facilities, especially with trained teachers.

Accessibility oblige the State to eliminate any discrimination in the basis of internationally prohibited grounds, legal and administrative barriers, ethnicity, economic status, disability, gender obstacles. In addition education must be free and physically accessible. Acceptability requires that States ensures that education is accessible to children, parents and teachers, with relevant content and methods, respecting everyone’s rights. It includes parental choice of education for their children and enforcement of minimal standards.

Adoptability imposes the obligations to ensure that education is adoptable to child’s specific situation and ability, especially for minority, indigenous, working children, and children with disabilities child migrants. The fundamental obligation in the ICESCR is for the States parties to “take steps”, towards realizing the rights enumerated in the ICESCR. This obligation is allows a great deal of scope for States to determine the measures they adopt in order to implement the ICESCR. Article 2 (2) places special importance on legislative measures, but it also clearly envisages other measures which might includes judicial, administrative, financial, educational and social implementation.

<sup>1</sup> The Committee on Economic, Social and Cultural Rights at its 21<sup>st</sup> session in 1999.

<sup>2</sup> Four essentials was developed by the farmer U N. Special Rapporteur on Right to Education, Katarina Tomasevski.



The UNESCO Convention provides Discrimination in Education refers to the general principles of “equal opportunity” in education as the basis of action to be taken by State Parties with a view to achieving the right of a child to education. The Convention has been cited in numerous decisions by law courts. Rich Jurisprudence exists as regards to the principles of equality of education opportunities in several countries. In India also the Supreme Court of India in *M.C. Mehta Vs State of Tamil Nadu and others*.<sup>3</sup> It was declared that “the right to education is part and parcel of Right to Life under Article 21 and is therefore one of the fundamental rights. The Supreme Court said that Article 24 of the Indian Constitution requires the State try to provide free and compulsory children.

The Convention on the Rights of the Child (1989) which dedicates Articles 28, 29 and 30 to education. Article 28 focusing upon the establishment of educational systems and in ensuring access thereto. The obligation of States Parties in relation to primary secondary and fundamental education are not identical. State obliges to “make primary education compulsory and available free to all”, to “encourage the development of different forms of secondary education including general and vocational education make them available and accessible to every child”. Make higher education accessible to all on the basis of capacity by every appropriate means.

Article 29 of convention provides that human dignity is innate in every child and his or her equal inalienable right. Article 29 provides a qualitative dimension which reflects the right and inherent dignity of the child. It also insists upon the need for education to be child centered, child friendly and empowering. It also provides not only access of education but also content. According to Article 29 of the Convention, an education with its contents is an indispensable tool for every child’s efforts to achieve in the course of her or his life a balanced, human rights, friendly response to the challenges that accompany a period of fundamental change by new technologies and related phenomena. This convention overcomes the boundaries of religion, nation or culture. The Article insists “upon a holistic approach to education which ensures that the educational opportunities made available reflect an appropriate balance between promoting the physical, mental, spiritual and emotional aspects of education, the intellectual, social and practical dimensions. It reflects the important role of appropriate educational opportunities in the promotion of all other human rights and understanding their indivisibility.

The UNESCO Convention on technical and vocational education (1989), consists of all forms and levels of the educational process involving, in addition to general knowledge, the study of the technologies and related sciences and the acquisitions of practical skills, know-how attitudes and under studying relating to acceptations in various sectors of economic and social life”. World declaration on education for all provides that, the right to fundamental education is not confined to those “who have not received or completed the whole period of their primary education. The whole period of their primary education. The right to fundamental education exists to all those who have not yet satisfied their “Basic learning needs”.

The convention on the elimination of all forms of discrimination against women (CEDAW 2004), Article 10 provides that “the equal rights of women and men in the field of education”. The convention also requires that, women be given an equal status and that they be empowered by an enabling environment to achieve equality of results. The convention on the elimination of all forms of Racial discrimination, Articles provides that, the right to education and training everyone without discrimination and addressed the issues of access to education, quality of education, dropout rates and special measures to ensure inclusion of communities which face discrimination (CERT-2000;2002).

The United Nations conventions in the Right of persons with disabilities (CRPD), Article 3 provides that, “equality of opportunity as a general provision of the treaty, Article 24 of the convention has detailed provision concerning the right of persons with disabilities can access an inclusive quality and free primary education and secondary education in an equal basis with others”.

The International Convention in the Right of all migrant workers and members of their families, Article 30 provides that, “Each child of a migrant worker shall have the basic right access to education in the basis of equality of treatment with nations of the State concerned. Further Article 43 and 45 of the convention emphasize equality of treatment for migrant workers and members of their families in relation to access to educational institutions, as well as vocational training”.

<sup>3</sup> AIR 1997 SC 699



Some regional legal instruments relating to Right to education are mentioned here:-

1. The European convention in Human Rights (1950), Article 2 of the protocol provides that, “No person shall be denied the right to education. In the exercise of any functions which assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and reaching in conformity with their own religions and philosophical conventions”. This has been emphasized by observing racial, national or other discrimination any issues by State in a case. *Timishev Vs Russia*<sup>4</sup>. By European court on Human Rights that, a differential treatment of persons in relevantly similar situation without objective and reasonable justification consistories discrimination.
2. The African charter on the Rights and welfare of the child (1999), Article 11 provides that, “Every child shall have the right to and education. this provision incorporates on the Right of the Child (1989).
3. The American Convention on Human Rights (1978). Its additional protocol of San Salvador to the American Convention on Human Rights (1988) by its Article 13, provides for right to education and is similar to convention in Economic, social and cultural Rights (1966) and the UNESCO convention against discrimination in Education.

### CONCLUSION

The UDHR and ICESCR provide for progressive realization and acknowledge the obligation of the States. Article 13 of ICESCR provides that States have a specific and continuing obligation “to move as expeditiously and effectively as possible” for progressive realization. State parties must closely monitor education including all relevant policies, institutions, programmes, spending patterns and other practices so as to identify and take measures to redress any de facto discrimination. Education operates as a multiplier, enhancing the engagement of all individual rights and freedom where the right to education is effectively guarantee, while depriving people of the enjoyment of many rights and freedoms where the right is denied.

### SUGGESTIONS

1. States are required to incorporate their obligation under international human rights conventions in to their domestic legal order.
2. Multiple forms of inequality and discrimination through comprehensive policies must be addressed. Ex. Disparities in access to education between boys and girls, and rich and poor reasons. Learning accessible for the most marginalized and vulnerable group.
3. Those who are victims of marginalization and exclusion in the provision of education, States must ensure adequate allocation of resources where they are needed most.
4. The right to education is a universal right, which must be provided without discrimination or exclusion. Hence Equity based approaches to education are necessary in face of growing disparities to education.

### REFERENCE

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<sup>4</sup> No. 55762/00-56-58 ECHR-Reports of Judgments and Decisions- 2005-XII