

(PART III)

Whether right to education, right to know and should be fundamental right.

In India, at present, right to education fundamental right and right to know and knowledge are nowhere constitutionally protected under any of the provisions of the present constitution. While the Constitutional provisions of the various foreign nations have guaranteed right to education, right to know and knowledge to its residents or citizens. Let us have a comparative study of Indian Constitutional provisions viz-a-viz with other constitutional provisions of various other foreign nations.

In India, Constitutional right to education has been guaranteed Under Chapter IV of Directive principles of State policy within Articles 45, provisions have been made for free and compulsory education for children. It has also been provided that the State shall endeavor to provide, within a period of 10 years from the commencement of the Constitution for free and compulsory education to all children until they complete the age of 14 years. No fundamental right to education has been guaranteed while various foreign constitutional provisions are as follows ;-

1) Eire Article 4 2 States :-

The State shall provide for free primary education,

2) Burma :- Article 33 says :-

When in particular, the State shall make provisions for free and compulsory primary education.

Article 44 States.

The State shall pay special attention to the young and promote their education.

1) France :-

The preamble in 1946 Constitution of Fourth French Republic states :- " The establishment of free, secular, public education on all levels is a duty of the State.

2) Czechoslovakia :-

Section 12-

- i) All Citizens have right to education,
- ii) Elementary education is uniform, compulsory and free.

3) Germany :-

Section 39 -

(i) Every child must be given opportunity to develop thoroughly his physical, mental and moral powers, attendance at the technical and secondary Schools and at the institutes of learning higher shall be made possible for all sections of the Nation.

(ii) School shall be free of charge. Learning Aids in compulsory Schools shall be supplied without payment.

6) Costa Rica:-

Section 78-

Primary education is compulsory. Primary, pre-School and Secondary education are free and are provided at National expenses. The State shall facilitate the higher studies of persons, who lack the necessary funds. The Ministry of Education shall be responsible for the awarding of Scholarship and grants-in-aid, through a body appointed by Law.

Section 82

The State shall provide food and clothing for needy pupils in accordance with Law.

U.N.O.:

Article 23

(i) Posits-Elementary & fundamental education shall be free and compulsory. Likewise, the Constitution of Nepal has also promised free education to children.

Now the perusal of these provisions of the various Constitutions of foreign nation has shown us a path for free and compulsory education subject to certain riders against free and compulsory education. Hence, Right to free education has been made to be a fundamental right and State is bound to oblige for right to free and compulsory education. A perusal of these provisions had also shown that in some foreign nations, this right to education has been made compulsory and free completely to all kinds of children, In certain nations, it has been made free up to primary education. The position of France is quite unique, which has provided for the establishment of free, secular, public education at all levels as a duty of State.

The position of India is on different footing. The framers of the Constitution directed the State for free and compulsory education and State was made responsible under directive principles of the state policy, but it was not for the peoples to get this right enforced in case of non-compliance by the State.

Last 50 years constitutional experience has shown us that the expected progress of the education has not taken place either due to the negligence or non-compliance of the state of the directive principles of the State Policy or due to the Administrative or other inefficiencies prevailing in the education system Justice P.N. Bhagwati (1) has observed that child is a national asset. It is the duty of the State to look after the child with a view to ensure full development of its personality Right to education under directive principles was supposed to be fulfilled within 10 years of the commencement of the Constitution, but nothing

concrete has been done so far. The framers of the Constitution at the time of the framing of the Constitution might have thought that within a span of 10 years, the education standard of the nation shall be uplifted by the State and the State shall oblige to fulfil its obligation & responsibility. At the time of independence, there was about 84% illiteracy. Now, the position is that 2/3rd of the population is still illiterate and 1/3rd is only literate. It shows very very slow and little progress. In the last 50 years, position has not improved and now we are compelled to think that right to education, why should not be made to the fundamental rights, which are not appearing these days under Part III of the Constitution as fundamental right. In *Mohini Jain Vs state of Karnataka* (2) the supreme Court held that right to education at all levels should be a fundamental right but next year in *Unnikrishnan Vs. State of Andhra Pradesh* ((3)), the Supreme Court limited the scope for the right to education by holding that at least children education upto the age of 14 years must be regarded as a fundamental right due to the non-availability of wide resources and keeping in view the limited sources of the Government. In this case also, the Court, showed great regard to right to higher education also assuming it to be a fundamental right.

The present legal position is that the right to primary education upto the age of 14 years has been presumed by the supreme Court to be a fundamental right. Last 50 years' experience has shown us that generally in all states of India, right to primary education for students specifically 1. *Sheela Barse Vs. Union of Indian*, A.I.R, 1986 S.C. 1773. 2) 1992, S.C.C. 666 3) 1993 S.C.C., page 645. for girls upto the age of 14 years, has been provided with prime importance and the State itself is bearing all the expenses of education for children. The practical experience has shown us that peoples do not want to send their children to these Government Schools because of poor quality of education, inefficient staff and no atmosphere of education there. Peoples are compelled to send their children to private Schools to spend more and more on the education of their children. If due care and attention should have been brought by State Governments on the educational standard, then certainly the position could have been otherwise today. Even if the Government tries to improve, then it may do a lot even today. Unless, the right to education is made fundamental right completely in all respects at all levels of education, the welfare of nation & Society is not possible and feasible.

Still, I could not understand why the right to education was not made to be fundamental right at the time of inspection of the Constitution in spite of having full knowledge that various other foreign Nations have made the right to education as a fundamental right. The framers of the Constitution might have thought it that it should be better to place promise of education under directive

principles of State Policy as a responsibility of the state to be fulfilled within 10 years of the Constitution. It was Acharya Bam Murthi Committee in 1990, which recognized for the first time in free India that the right to education should be made one of the fundamental rights of the Indian Citizens. The Committee recommended amendment in the Constitution by the creation of right to education as a fundamental right. It is also a fact that when India became a signatory to the United Nations Convention on the right of the child, it accepted the obligation of making education compulsory. But making education compulsory has always been opposed by Central Advisory Board of Education, New Delhi, which even declared that compulsion in education is unnecessary. The Board also stated that compulsion shall be ineffective and useless. I think the Central Advisory Board of Education forget its responsibility of educating masses not only a duty towards Nation, but also a obligation and responsibility towards individuals to educate them. In my opinion, the education is not a bad suggestion. It opens vistas towards fertilization and progress. Unless, the education is made compulsory, the progress of the Nation shall never take place. The Board should not forget its responsibility to educate each and every individual particularly the children to make them good citizens.. It is not a compulsion either to do or not to do a particular job work or thing but it is a compulsion for benefit of Society and towards welfare of all., I know that a fundamental right to education shall create greater responsibilities to the State. Compulsory education shall compel the State to spend more on education by opening new Schools & Colleges to children, adults and even to elders. We know that State shall have to bear more burden in the establishment of these Schools, Colleges and other material and para philiar relevant to education.

We thank to the Maharaja Sayaji Rao Gaikward of Baroda who introduced compulsory education in his kingdom in 1906. Likewise, Vithal Bhai Patel, perusing efforts for Gopal Krishan Gokhale, got the Bombay Education Council to adopt in law for compulsory education in 1918. By 1930 all the provinces in British India, covered under Bombay Legislative Council have adopted compulsory education Acts. As Gokhale had desired these acts, made local bodies responsible for introducing compulsory education in respective areas. Hence, it is wrong to say that compulsory Education System to children, to adults and even to elders shall be ineffective, unnecessary and useless., I shall put emphasis on the fact that when compulsory Education System had proved fruitful in the earlier States of Baroda and Bombay, then why it could not be effective and useful for the rest of India now a days. Definitely, the State will have to increase its budget if compulsory education system is introduced, which is now near about 4%. It has been drastically realised that the educational system, which is very backward, old and still we are following the old British type education

system, should be indianised. It should suits Indian conditions and it needs Indian Cultural Orientation. In May 1997 Union Government has decided to bring legislation to regulate the private Educational institutions, including their fee structure to check commercialisation of the educational system. The ministry of human resources and development had prepared a bill to make education as a fundamental right and it was expected that the Union Govt. will do needful in this regard... Unfortunately that Govt had done nothing Concrete. It was expected that to create the requisite

infrastructure for achieving full literacy Rs.40,000/- crores will be needed and if found necessary an education tax may be imposed to mobilise the resources for compulsory education or Semi Govt. Authorities or welfare Societies may be invited for easy funding or World Bank aid may be requested for. Now all these proposals are merely dreams unless and until, these proposals are adopted by the prospective Government.

In this regard, various non-Governmental Organisations should also be consulted, how to improve the education system. The Kothari Commission Report should also be considered and Governmental Agencies like NCERT and NIEPA should also be asked to submit their suggestions. After full discussion in this regard, a proper law for making right to education as a fundamental right, should be made. Complete enforcement of these rights should also be made responsibility of the State for the benefit of the Society and individual.

Now, the question is that whether right to education should be made fundamental right only upto primary education or in full-fledged complete sense. This question may be decided by inviting the opinions of various educationalists, jurists and with reference to different case laws of Supreme Court. In Mohini Jain's (1992) Case, right to education has been made to be a complete fundamental right to education at all level, while in Unnikrishanan's case (1993), the Court limited the scope of fundamental right to education upto the right to primary education only. I think that the right to education should be made fundamental right in complete sense but for the sake of convenience and looking into the limited resources of the Govt. phase-wise implementation should be ordered. At first stage, primary education should be made effective. At second stage, Intermediate education should be taken into consideration. At third stage, University level education should be considered and lastly the scientific research education should be taken-up. All these programmes should be executed equally by time bound schemes and programmes and in case of non-compliance of and violation of these steps, each individual shall have a right to get this right of education enforced through Court of law. Importantly, we have also to see whether these above recommendations were made to veil out the Govt. from its responsibility cast upon by the supreme

Court in 1992 and 1993 two aforesaid cases or whether Govt. is sincerely looking into the interests of education. It might be possible that by enacting the Judgement of the Supreme Court into a legislation, the Govt. may sit with his fingers crossed without any kind of implementation. If right to education is made as a fundamental right in view of the decisions of the Supreme Court. then the Govt. shall be first able to say that we have made this right to education as a fundamental right then if no sincere step are taken in this regard by the Govt even then the right to education shall be futile and of no use. Hence, two things are required to right to education, first making it fundamental right under Part-III of the Constitution and secondly there should a will of Govt. to get this right enforced providing sufficient funds for the establishment and machinery to keep it well in Society. To make this right more effective, monitoring by all should be permitted since it shall become a fundamental right. Hence, monitoring by all members of society, is permitted and in case of violation and non-compliance these rights may be enforced at the behest of the Court. Lastly which is very important that education should be free from interference and control of Govt or its local bodies. It does not mean that Govt. will not be in a position to say anything. Govt. shall supervise and in due course, it shall take suitable steps looking into the prevalent needs and according to the various suggestions, prescribed by the Educational Institutions. Permanent body of eminent personalities. Educationalists should be made to supervise the educational system in India to make this right more and more effective.

A long with the right to education, right to know & knowledge should also be made as fundamental rights. Now, a days, right to secrecy along with right to privacy are two major empeding factors, which are adopted by all public servants and even by Govt. to curtail their misdeeds. If really we want to crush down and eliminate corruption and mis-management and inefficiency, then, Indian Citizens should be authorised and permitted to have right to know and knowledge as a right to information Now a days, public life and public dealing require transparency. Whatever is being done by any Public Servant or Govt. Functionary, except in the case of National integrity and unity and security or it affects foreign policy of the Nation, there should be no secrecy as Section 5 of the Secret Act and Sections 123, 124 of Evidence Act had created. These are the biggest hurdless. Secret Act and Sections 123 and 124 of the Indian Evident Act should also be scrapped. There should be no public document, which should be confidential except which affects the national unity or foreign policy. We know the secrecy breed corruption and inefficiency, while openness provides greatness, confidence and sincerity. Hence, the veil of secrecy should be opened and let the transparency light should come In November, 1997, the Bombay High Court has delivered a very important Judgement on the petition of Sanjeev M. Gowadkar Vs. State of Maharashtra (5). The Bombay High Court has directed the State of

Maharashtra, and Union of India that all laws, enactments and legal provisions should be made available to the Public at large at reasonable prices. The Court ordered that under Article 21 of the Constitution, each and every citizen has a right to know and it is the duty of the State and Union that all necessary facilities should be provided while making this right to know as an effective right. The Court also directed the Publication Department of the State of Maharashtra and Union of India that all legal provisions and laws should be published and made available to individuals on reasonable cost for which they are duty bound. The Court has further directed that if any legal provision is found in English Language, then its Hindi version or its version of the Local Language of the State should also be made available.

Hence, I expect that right to education at all levels, right to know and knowledge shall not only be made fundamental right, but these rights should also be duly cared and implemented by Governments in the near future. It is also expected that all the members of the Society shall co-operate in this regard, to the Govt, for the welfare of the Nation and individual as a whole.