



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Genesis Of Education As A Fundamental Right

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Abstract:

This article explores the historical development and philosophical roots of education as a basic right, tracing its course from ancient societies to contemporary global human rights paradigms. It discusses how education changed from being a privilege of the ruling class in ancient India to becoming a common requirement in modern democratic states. The research emphasizes the contribution of international movements, like the Universal Declaration of Human Rights, and domestic actions, like India's constitutional amendments and legislative actions like the Right to Education Act, 2009. Focus is given to the ideological shift considering education as not just a moral or social duty but also a legal right necessary for human development and the fulfillment of other basic rights. The article also takes a basic needs perspective, advocating for education as a necessity for attaining individual autonomy, social equality, and sustainable development.

Key Components:

Philosophical Foundation, Ancient Indian Perspective, Global Evolution of Compulsory education, British Era in India, Post-Independence Developments, Education as a basic need, Legal and Social Implication.

• INTRODUCTION:

The supreme duty of a man is to prepare himself for self realization with the Ultimate Truth. It was with this contemplation and recognition of the truth that education was conducted in the ancient era. The importance of Education does not require any illusionary emphasis. The fundamental purpose of Education is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. It is the preparation for a living and life, here and hereafter. To quote an old Sanskrit adage:

"Education leads to liberation - liberation from ignorance which shrouds the mind; liberation from superstition which paralyses efforts, liberation from prejudice which blinds the vision of truth." The study of ancient literature reveals that elementary education was more or less compulsory for every child. Even reference in Manuscript where Lord Manu advocates both the State and the society should make it

compulsory upon all to send their children, both male and female, to school after the completion of fifth or eighth year of age.¹

Plato's The Republic made compulsory education a part of Western intellectual thought. Before Plato, parents in Judea educated their children in an informal setting.

The Aztecs (AD 1400-1600) possessed one of the earliest mandatory education systems.

Every boy child was needed to go to school up to the age of 16. Compulsory education came into Japan in the Meiji era.

During the Reformation in 1524, Martin Luther promoted compulsory education so that everyone could read the Bible for themselves, and Strasbourg at that time a free city of the Holy Roman Empire enacted consonant legislation in 1598.

In Prussia, a succession of edicts during the eighteenth century confirmed that education was a state function and in 1763 Frederick II of Prussia compelled children between the ages of five and thirteen to attend school. In 1794, all schools and universities were made state institutions. In Austria, mandatory primary education was introduced by Empress Maria Theresa in 1774) Public education gradually spread to other countries, reaching the American State of Massachusetts in 1852 and later to other U.S. states. In 1918, Mississippi was the last state to enact a compulsory attendance law.

The movement towards providing education to all was part of the human rights jurisprudence which emerged in 20th century. Actually the right to education is one of the basic rights which is linked directly and indirectly to realize all the fundamental rights. After the establishment of United Nations in 1945 and later the Universal Declaration of Human Rights in 1948 were historical landmarks in 20th century. In 21st century, other important initiatives to implement right to education with the sincere effort of world community, especially United Nations was started with the promise to make it mandatory for all the persons in the whole world. World Millennium Development Goal,2000 is another example regarding the right to education to be taken as one of the basic human right that needs to be realized as early as possible.

Indian position:

To understand more about the historical perspective of the elementary compulsory education, its genesis can be traced by studying and conveniently dividing it in three phases viz. The Ancient India, the British period and after Independence.

• COMPULSORY EDUCATION IN ANCIENT INDIA

Ancient Indian education was far more advanced in various areas of knowledge, than the education in modern European nations. Ancient Indian Education is to be understood as a product of the Indian theory of knowledge and a component of the related scheme of life and values.

Mac donell's comments here are stupendous, where he points out that after the birth of the oldest poetry, "we find Indian literature bearing an exclusively religious stamp: even those latest production of the Vedic age which cannot be called directly religious are yet meant to further religious end. The ancient Indian educators did not pay much attention to objective knowledge, but depended upon education as such, to guide the individual to his self-realization and achievement of the supreme truth, realization of the state of mukti. It is founded on a basis simple living and elevated thinking. In the temporal world too, education was considered

¹ Veda Mitra, EDUCATION IN ANCIENT INDIA(1964), P. 20.

of supreme importance and was usually in the form of occupation training was necessary for his adult life. During Vedic period education was compulsory for every youth of the first three varnas or classes (Brahmana, Kshatriya and Vaisya), in order that he attains the supreme ideals of human life. The educational system in ancient India was not entirely theoretical, was based on the conception of Brahmacharya, a religious discipline of mind and body, where the pupil was required to attend the house and the cattle of the teacher to develop a motivation of self help, dignity of labour and student brotherhood. The ceremony of Upanayana (Samaskara), marking the beginning of education, was regarded as a second or spiritual birth.

In Vedic age, women were also involved in gaining education. In ancient concept of liberal education, women like men were also received into complete religious rites and hence into complete educational facilities. The wife used to be an regular participant of husband's sacrificial offerings.²

But overall education was not for the masses and it was for the few who were capable and willing for a devoted life in search of the ultimate Truth and the highest knowledge. Caste education of those times was naturally bound to a great extent by the specific professions and the role allotted to it in society. Education in the later Vedic period still represented, more or less, the earlier principles, techniques, and traditions initiated and developed in the Vedic period.

After the Brahmanas and the Upanisads, other type of literature came into existence, such as the Sutras, the Epics, the Puranas and the Arthasastras. The period of these literatures ranges roughly from 500 B.C. to 600 A.D. In Sutras literature the study of the sacred literature the study of the sacred subjects was equally open to all classes, even the Sudras, provided they had an aptitude for it, but the study was made compulsory for the first three classes.

As regards the Epic and the Puranic educational system, the evidence regarding their educational system is meagre in comparison to the sizes of the work. The Puranas are collection of old stories based on religious and social principles and the ideals upheld by the society. The Epics, The Ramayana and the Mahabharata are also commonly known as Puranas. During this period the Sudras were denied the study of the Vedic text, but not that of arts, crafts and other texts. But there are also on record examples of Sudras attaining the highest knowledge, such as, Vidura, in the Mahabharata.

Arthasastra literature roughly spreads out from 400 B.C. to 300 A.D. Kautilya details that studentship was open to first three classes or castes only.

Buddhist educational system started from 200 B.C. to 1200 A.D. Buddhism is the concrete embodiment of thought of a single individual, the Buddha, the knower, the enlightened, or is that by which Gautama the wandering preacher is known to his disciples. He attempted to reformulate the idea of rites and superstition presented by the Brahmin priests. For Max Mueller, Buddhism was no more than a natural evolution of the Indian mind. A characteristic of Buddhist monasticism was that the seekers, once they realized the Truth, formed themselves into a tight corporation and handled the knowledge they evolved suitable for the few and the elect, and not intended for the masses or to enter the national life.

The group of young Bhikshu's under the care of a common teacher who was personally accountable for their manners and morals and their intellectual and spiritual development, was the unit of Buddhist system of education. The initial step in Buddhist initiation was Pabbajja or 'going forth.' The gap between the two ordinations, Pabbajja and the Upasampada (final ordination on the student entitling one to the status of monkhood), was normally twelve years.

² Ram Chandra Gupta, WHITHER INDIAN EDUCATION (1988), P. 2.

Elementary education during the Buddhist period was based on the Buddhist scriptures and rigorous conduct. The overall emphasis was on spiritual than on man-made education. Still it did a great job in the expansion of the elementary education ideals amongst the people of India.

- **COMPULSORY EDUCATION DURING BRITISH PERIOD**

Universal, compulsory and free primary education did not find much favour at the hands of Britishers in India. Mahatma Gandhi, during his participated in the Round Table Conference in England during 1931-32, remarked that India was less literate after a century or so of the British rule than it was before the advent of the same for the reason that East India Company was commercial establishment and it did not concern itself with educational activities. The education policy of the Britishers in reference to India can be conveniently divided into six main stages.

Educational policy during 1600-1813

The period of 1600-1813 was a period of neglect and the British East India Company did not show any encouragement to the spread of education. The East India Company followed a policy of indifference and non interference with education, for their main object was to trade. But with the Charter of 1698, Champions were appointed and charity schools were established in the three presidency towns to look after the education of the Christian children. The education of the masses remained a situation, deplorable.

Educational policy during 1813-1882

During this era, the government accepted in principle the responsibility for the education of the masses. In this period the Downward Filtration Theory dominated the scene and consequently the problem of compulsory education was totally neglected by the government. This period was a period of neglect. The Charter of 1813 was the basic document which aimed at promoting elementary education in India and this outstanding document had influenced the English Educational policy for more than a century, Theory gained adamancy for class education and not mass education. The Company adopted the Theory in practice because of the political and administrative reasons so as to have a loyal upper class with religious flavours.

The earliest suggestion for introducing compulsory primary education was made by William Adam, who observed in 1838 that a law be ultimately enacted compelling every village to maintain a school. This period saw few enlightened and liberal minded personalities advocating for the compulsory education policy, but the Education Commission did make no reference to such policy formulation. Agitation for providing free primary education to the poor and even the educational material was gaining momentum and whereas the government of the day made concessions, issued rewards and prizes to induce attendance for the girl child, otherwise it would have led to the closure of the girl schools.

Educational policy during 1882-1999

The primary objective of the Education Commission was to create an environment wherever universal education could be possible for all, high or low.

Several religious and social movements among the Hindus were brought about by the religious reformation, like the Brahmo Samaj, Arya Samaj and the Ram Krishna Mission which also advertised reforms towards social and educational objectives. Public opinion regarding the status of women, their education, child marriage, widow remarriage, polygamy etc. was addressed with reforms by these social movements which could ultimately be said to lay the foundation of education of the women in the twentieth century. During this time further attempts were made to introduce compulsory primary education by prominent Indian natives. Sir Chimanlal Harilal Stealwad (1866-1948), a prominent public worker of

Bombay advocated for compulsory and free primary education. Sir Ibrahim Rahimtoola, a member of the Bombay legislative Council, while commenting upon the annual budget, marshaled, "Government will have to think seriously of making primary education free and compulsory."

But remarkable achievement was made possible by the small princely rulers, where Maharajah Sayajirao Gaikawar of Baroda, introduced compulsory education in a part of his state in 1893 and then extending to the whole state by 1906. The age limit for compulsion in his state was 7 to 12 years for boys and 7 to 10 years for girls, exemptions from compulsory attendance was strict and the parents were penalized for not sending their children to school. The experiment of Baroda state made the most powerful and the empathetic contribution to the advent of compulsory primary education.

Educational policy during 1910-1917

In this period an intense struggle for implementation of the compulsory education was fought under the guide and stewardship of nationalist leaders, like Gopal Krishna Gokhale. As early as 1906, Gokhal took up the cudgels on behalf of free and compulsory education which was made more stronger in appeal in the Budget speech of 1908, still all his remarks went unheeded. On 18th March, 1910

Gokhale moved his resolution before the Imperial Legislative Council. Gokhale moved his Bill on compulsory Primary Education on 16 March, 1911, which was very similar to the resolution, in idea. "The object of the Bill, "said Gokhle", is to provide for the gradual introduction of the principle of compulsion in the elementary education system of the country." The only variation was that the Bill suggested an enabling clause for the local bodies to establish compulsory education in their regions. On the official opinion, only 90 out of 234 supported the bill. Gokhale's attempts left a resonating impression for the fight of compulsory education.

Educational Policy during 1918-30

World War I can be attributed as the turning point in the history of Compulsory Education. On 25th July, 1917, Shri Vithalbhair Patel moved a Bill in the Bombay legislative Council for the introduction of compulsory primary education in the municipal districts of the province. The bill did seek to apply the principle of compulsion to the rural areas and the share of the finances to make the scheme of compulsion work, was left to the discretion of the Government. The Bill was described as revolutionary.

The Patel Act (Bombay Gazette, Part IV, dated 5th February, 1918), provided for compulsory education which shall necessarily be free. The act was made applicable only to the urban areas excluding the city of Bombay (preamble), where the compulsion was made for the sexes (Sec 5), age period for compulsion was from 6 to 11 years (Def.), duty was imposed on the parents to send their children to a recognized primary school, default of which led to the imposition of fine not exceeding rupees five (Sec 7 & 10), fine was imposed on people employing children of compulsory school age (Sec. 14). Though it was made discretionary for the government to aid such compulsion schemes (Sec. 18), the municipalities were authorized to impose taxes (Sec. 13).

The United Provinces (District Boards) Primary Education Act of 1926, was made applicable to the rural areas (Sec 1), as well as boys and girls (Sec 2), the age period of compulsion was 6 to 11 years, except, in the case of Muslim girls it was fixed 5 to 9 years (Sec 2) and the compulsory education was to be necessarily free (Sec 14).

The slow progress of the compulsion under the early acts made the people feel that unless a time table and a definite Programme is drawn up, nothing worthwhile would be ever achieved. But the idea did not become sufficiently widespread during this period to command universal acceptance.

Educational policy during 1930-47

With the Congress ministry assuming power in seven major provinces in 1937, the movement for primary and compulsory education got much impetus.

Indian Education Conference in 1937 constituted a Committee under the leadership of Dr. Zakir Hussain. The major recommendation of the Committee was seven years of compulsory primary education on a national level and the medium of instruction to be mother tongue.

The dissatisfaction from the Government of India Act, 1919 and the failure of the Dyarchy compelled the British Parliament to pass the Government of India Act 1935. During this period new basic schools were opened, introduction of scheme like Vidya Mandir scheme, providing education to village children at the national cost, voluntary scheme to provide primary education at nominal cost and grants to local bodies were increased to share the cost of compulsion, but on an overview not much improvement took place in the realization of the goal of providing free compulsory primary education within the realm of the State Policy.

- **AFTER INDEPENDENCE**

After 1947, during Constituent Assembly Debate, members were unanimous in their views to impart education to all. One of the main obstacles impeding the realization of educational goal was financial incapacity of state. But the voice for education to all was very much strong. After 60's, pace of financial stability was on upward trajectory. In 1986, then government showed the commitment to take education even to rural areas. For example, Jawahar Navodaya Vidyalaya is considered to give quality education to the children of rural areas. 86th amendment added article 21-A as a fundamental right to part III of the Constitution of India.

In India, present position is that Right to Education Act, 2009 has been enacted which gives the right to education to every children's of 6-14 years of age.

- **RIGHT TO COMPULSORY EDUCATION: A BASIC NEED APPROACH**

Basic necessities must be taken to mean the irreducible minimum of prerequisites for a human being. The United Nations 14 had identified the following as the basic human survival needs: (i) Nutrition (ii) Health (iv) Education (v) Leisure (vi) Security (Physical safety and economic security) and (vii) Environment. In the same vein, the International Labour Organisation has placed in their material basic needs scheme a minimum level of private food consumption, like pure water, sanitation, public transport and educational and health facilities etc.

The potential pleasure and consumption good value of education can hardly be disentangled from its usefulness in delivering the skills to enable individuals to achieve their basic needs, for good health, appropriate nutrition; having access to safe drinking widens the conventional perspective of an educational system. Its various components are learned over a life time, but the foundations are established at the primary

level which can lead to material prosperity, higher productivity and capacity to earn livelihood through self-employment. It has three vital goals; communication skills to express, skills to enhance the quality of life and production skills. The satisfaction right of the basic needs does not assume that there are all the practical instruments for their execution in every situation. The failure of putative rights to meet the test of practicability is no ground to deny them the status of 'rights.' 'All irrespective of income level and social stratum are entitled to gain a basic level of education and skills. This is the principle which all the societies have accepted and in the Universal Declaration of Human rights, and by implication that there should be proper basic education, and at the same time be effective in a vast process of modernization and development. The United Nations has even recognized education as a basic need.'

From the right to basic necessities flows a correlative State duty to facilities access to justice for the deprived. Education is the need of all. Society must with all its means favour the progress of public reason and must put education within everyone's reach. The right to basic necessities is to merge with the more expansive right to development.

The orthodox legal rights approach entertains serious reservations in according rights status to basic needs, mainly for the following reasons. First the rights imply an autonomous and fully capable agent, while basic needs relate to those sections that can hardly be described as being capable or autonomous. Second, rights are generally understood in the negative connotation as lack of interference or constraint by others, whereas basic needs require positive action or official action in the interest of obtaining them. Third, rights tend to be concerned with political and property interests, whereas basic needs primarily involve economic and social interests. Without taking an in-depth analysis of these reasons it is argued that neither the rights are ever so the orthodox perspective envisions neither them nor the distinction between basic needs and rights so irreconcilable.

When and what basic needs were converted into rights is a function of the prevailing legal and political awareness. On one level the relationship between the fundamental rights and the directive principles is conflict oriented. Second, by providing socially relevant meaning to the fundamental rights and by accepting the possibility of incorporating new rights the field of conflict can be meaningfully minimized.

Founding basic need assertions on equal protection clause is a rich area of Constitutional controversy in the United States. The equality clause there is used to assert a more equitable allocation of medical care education, social security benefits etc.

The purpose of such Constitutional actions is to demonstrate the denial of either a 'benefit of a fundamental nature in an arbitrary or unreasonable manner.'".