



Right to education under constitution of India and development among the scheduled tribes: A socio-legal study

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Abstract

The Beneficial Provision of Right to Education has been inserted into the Indian Constitution. In order the enactment of the Right to Education has brought several amendments in the Parliament. However, every state has duties to verify that the Right to Education policy reaches all the disadvantaged sections of the society. It is a constitutional mandate to provide free and compulsory elementary education to all Children until the age of 14". It is said that before the implementation of the Act in question, education was neither free nor compulsory.

This Paper discusses the constitutional provision related to educational right and several Acts related to Right to Education passed by the Indian legislature. It also discusses the international human rights provisions related to Right to Education. For this purpose, secondary data from law books, law articles, law journals, newspapers, etc. have been used.

Keywords: educational system, human rights, constitutional rights, amendments, constitutional debate, acts

1. Introduction

The Education is a Process which engages many different actors, firstly those one who provide education i.e. the teacher, the owner of an educational Institution, the parent. Secondly, those one who receive the Education i.e. the child, the Pupil. Thirdly, those one who is legally responsible for the one who receives the education through the parents, the legal guardians, society and the state"^[1].

In pre-Independent era, the complexity and ambiguity of the women's struggle is evident in the arena of education. Education and law were seen as key factors in the social reforms campaigns against child marriages and those in support of widow remarriage and the abolition of sati. Everyone seemed to agree that education was envisioned in Brahminical and elitist terms to enhance women's ability to serve to family and nation more effectively. Many reformist men who played a key role in widening the lives of Indian women through education also fostered ambiguous attitudes among women towards their own emancipation the freedom of their minds"^[2]. Therefore, the Education and the law are critical dimensions of democratic governance"^[3].

The Constitution of India insert new article 21A, i.e. the Right to Education. The aim of Education is to promote personal development, strengthen, freedoms and protection of human rights. It also enables that individuals those who participate effectively in a free society. They also promote to understanding the difficulty of society, to develop the

friendship and tolerance. However, the Right to Education has long been recognized as encompassing not only access to educational provision.

In order, the Right to education is recognised as a human right by the United Nation and also UNESCO lay down International Legal Obligation for the right to Educationist entitle to provide free, compulsory primary Education for all children. Hence, Right to education encompasses to obligation and eliminate the discrimination at all levels of the Educational System and set minimum standards to improve quality.

2. Origin and Development of the Education in India

The history of Education Development in India dates back to the Vedic period, and the Education system developed in terms of the Vedic System of Education. It is said that education was completely under the control of the Guru and not any other kings or states.

During the Vedic Education system the important stages in the development of the individual's personality were the physical, moral, intellectual, religious and spiritual"^[4]. However, according to the norms of the Varna System, only the top three Castes viz. Brahmins, Kshatriyas, and Vaishyas were entitled to gain knowledge. The Sudras and the downtrodden classes were denied the privileges of studying the Holy Scriptures and hence they were not entitled to gain knowledge.

During the Buddhist Era commenced the principle related to a

¹ S.H. Kapadia, CJI, K.S.Radhakrishnan and Swatanter Kumar, JJ. (2012), Supreme Court on Right to Education, published by Asia Law housing, Hyderabad. Pp. at 3

² Sumi Krishna, (2007), women's Livelihood Rights:-Recasting Citizenship for Development, published by sage publication, New Delhi.pp. at 9

³ Ibid at 26

⁴ Sheikh Mustafa, Historical Development of Teacher Education in India, Institute of Advanced Studies In Education, M.A Road Srinagar, see to www.gcoekmr.org/pdf/MED15042CR_HistoricalDevelopmentofTE, dated 12th December 2017

religious thought which was based on the analysis of the actual problems of life. The main aim of Education System was physical development for good health, development of knowledge, education of social behaviour and education of the Buddhist Religious thought”^[5]. During this Era there was no restriction imposed on the depressed classes with regard to studying the Holy Scriptures or their entitlement to knowledge.

In the Medieval period the Muslim Rulers started a new Muslim Education System which was popularly known as Maktab-Madarsha System”^[6]. Besides this, the old Pathashala System was also continued for Hindu Students. The main aim of the Muslim Educational System was development of Knowledge, spread of Islamic Culture and Islamic Religion, development of character and morality, loyalty to the Government, education of arts, building of skills and vocations, knowledge of alphabets, etc”^[7]. In this medieval period, the position of the depressed classes did not do much to improve their educational standard.

3. Educational Acts and Laws during the British period

The British brought the Western Education policy to India. During this period western science and literature made good progress through the English Medium. The British came to India as traders and simultaneously also established the East India Company. Thereafter, they adopted the policy to spread religion and education through the Christians Missionaries in India.

During the British Period the first education development policy was floated in India. The Education System in India started to take shape with the effort of the Britishers. There are several Acts and law made by British rulers for the development of the Education System in India.

The British rulers enforced the first East India Company Act, 1813 which also known as the Charter Act 1813 and this Act was renewed after every 20 years in the British Parliament. The implementation of the Charter Act sought to spread Western Literature and train Learned Natives in Western Literature. However, the British Parliament had supported the Christian Missionaries in their expansion of education in India. Even the East India Company was responsible for organizing the education and incurred expenses for the improvement of literature and encouraged the learned Natives of India”^[8].

Meanwhile, Lord Macaulay known for the Macaulay’s Minutes Act, 1835, came to India on June 10, 1834 as a law member of the Governor General Council. Lord William Bentick, as the Governor General, appointed him as the President of Public Instruction. Lord William Bentick asked Lord Macaulay to render advice on three points namely: how to spend the Rs.10 lakh per annum on Education; how to define the terms literature and learned native; and how to solve the Anglicists Orientalists Controversy”^[9]. Lord

Macaulay submitted the report in 1835 and he suggested in his report that the word literature meant only the English literature and not Sanskrit or Arabic or Persian literature. It was also suggested that the term ‘learned native’ meant a scholar who is learned in the Locke philosophy and Milton poetry in English literature”^[10].

Subsequently, Lord William Bentick declared the New Education Policy of the British Government on March 7, 1835. The major declarations of the New Education Policy were: (a) All government funds appropriate for the purpose of Education would be best employed on English education, (b) The Education Institution of Sanskrit, Arabic or Persian shall not be closed down. The economic grants for teachers salary and students’ scholarship will continue (c) There was expenditure to be made on the printing and publication of oriental literature in future (d) All the money will be spent on the Education of the English Language, literature and western Knowledge and Science”^[11].

During the British Regime, when the first Hunter Commission was appointed in 1802”^[12] with the Chief object of reviewing of the condition of Primary education in India, it suggested the measures for expansion of Primary Education in India. The Commission decided that all the primary schools owned by the government should be transferred to the local bodies, Municipal Committees and District Boards. These local bodies were required to set aside definite funds for primary education. Whenever possible, the government can ask them to help for financial help to the extent of one half or at least one third of their total expenditure on primary education. It was also decided that primary education should be given through vernacular language, so the indigenous schools should be duly encouraged. It also suggested that arrangements for the training of primary schools teachers should be made”^[13].

Wood’s Despatch Act 1854, popularly known as the Magna Charta of English Education in India, gave some very important suggestions for the improvement of the education of teachers and also allowances to be given to persons who possess the aptness for teaching and who are willing to devote themselves to the profession of school master”^[14].

In the Lord Stanley’s Dispatch Act 1859”^[15] finding the grant-in-aid system inflexible and as such ineffective, Lord Stanley advised that primary education should be provided by the government alone. She could not absolve herself of this duty.

Meanwhile, the Monitorial System Act 1880 had come into existence during the British regime”^[16]. The aim of the Monitorial System was that the idea of formal teacher training originated out of an indigenous technique, was based on the principle of Mutual Instruction.

The Lord Curzon Resolution Act, 1904 laid down the foundation of the education system in India. He deeply

⁵ Ibid

⁶ Ibid

⁷ Ibid

⁸ Dr. V.K. Maheshwari, K.L.D.A.V (P.G), 2012, Evolution of Educational Systems in India, see to www.vkmaheshwari.com/WP dated 12th December 2017

⁹ Ibid at 8

¹⁰ See, supra Note 10 at 5

¹¹ See, supra Note 11 at 6

¹² Dr. M. Peer Basha, March 2015, Educational System during Pre & Post Independence India, published on international Journal of Multidisciplinary Advanced Research Trends, ISSN : 2349-7408 VOLUME 2, ISSUE 2,

¹³ See, supra Note 10 at 4

¹⁴ Ibid (n14) at 5

¹⁵ Ibid(n15) at 6

¹⁶ Ibid (n16) at 5

realised that the Indian primary education was in poor condition. He declared under this Act, that the primary education received insufficient attention. It is the duty of both central, as well as, the Provincial Government to pay more attention to the expansion and improvement of primary education. He also recommended training for teachers, simple curriculum, grant-in-aid on the basis of efficiency and making the mother-tongue the vehicle of imparting instructions in all the primary schools. All these things led to the increase of both schools and pupils. Differentiation in the curriculum of the rural and urban schools was made as their needs were different. His approach was realistic”^[17]. Similarly, Shri Gopal Krishna Gokhale Education Bill was presented on March 16th 1911 in the Imperial Legislative Council^[18]. The main aim of bill was the promotion of compulsory education. The Government of India Resolution on Education policy Act, 1913 suggested many useful measures with regard to improvement of Primary education. The teachers should be drawn from the class of the boys whom they will teach and they should have passed the middle vernacular examination and undergone a year's training. It also emphasized that no teacher should be allowed to teach without a certificate. There should be a constant exchange of ideas amongst the training college staff members and that they should visit different colleges”^[19].

Calcutta University Commission (1917-19) also known as the Sadler Commission, suggested opening of post graduate department of education in Universities. Each department was to have a Professor, Reader and a number of Assistants in the institute of a post-graduate degree in Education. It recommended the introduction of Education as an optional subject at the Graduation and P.G. level”^[20].

Hartog Committee (1929) was appointed to review the Education System. It suggested that teachers for rural areas should be inducted from persons who were close to rural society. It also suggested that journals for teacher in the vernacular, refresher courses, conferences and meetings of teacher associations can do much to brighten the lives of the teachers and improve their work”^[21].

The most significant step taken by the Government in the development of education was the enactment of the Government of India Act of 1919. According to this Act, the field of education was made a provincial transfer subject under the change of an elected Minister who was responsible for the provincial legislature. As a result of this change there was an increase in the enrolment of students in schools”^[22].

Meanwhile the Government had decided to create the Bureau of Education through the enactment of the Government of India Act 1935. The main aim of the Bureau of Education was to convert into the Central Advisory Board of Education. This board “clearly specified the various levels in the educational system like primary Education, lower Secondary education

and higher secondary education”^[23]. The Abbott-Wood Report in 1937 was again a landmark in the field of education. It primarily analyzed the position of vocational education but also made valuable suggestions about teacher education”^[24].

The Central Advisory Board of Education (CABE) in 1944 popularly known as the Sergeant Plan or the Sargent Report (1944), presented a scheme of Post-war Educational Development in India. It recommended that suitable boys and girls should be picked out for the teaching profession after high school. It was also suggested that practical training, refresher courses and research facilities should be provided. It suggested a two year course for preprimary and junior basic schools (after high school) and a three year course for the senior basic schools”^[25].

4. Educational Acts and Laws after the independence of India

After the independence of India the outline of the Educational Development of the country had been laid down by the B. G. Kher Committee Report of 1948. This report estimated the cost of the various programmes and stages of educational Development. It also ensured programmes for educational Development for all provinces and states.

Subsequently, the Government of India had taken another significant step to appoint the Radhakrishnan Commission in 1949. It was suggested that there was a need to mould the education system in India and also need for improvements and extension requirements for the present and future of the country.

After the independence of India, the Secondary Education Commission known as Mudaliar Commission 1952 was appointed by the Government of India in term of their Resolution to bring changes in the present Education System and make a better Nation. According to this commission the following major recommendations were made: organisational pattern of secondary education, organisation of secondary school curriculum, text books, method of teaching, discipline, moral and religious education, guidance and counselling, supervision and Inspection”^[26].

Besides, the Government of India appointed an International team of eight experts in 1954 which was known as the Ford Foundation term. The Government of India had decided in collaboration with Ford Foundation term to study in greater detail the major recommendations of Secondary Education Commission. It recommended that the teacher training institutions should include demonstration or laboratory schools where experiments are made in curriculum construction and progressive methods of teaching are used”^[27].

The Piers Committee Act, 1956 had recommended that practical work should be given as much weightage as the

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See, shodhganga.inflibnet.ac.in/jspui/bitstream/10603/127065/12/12_chapter%204.pdf dated 15th January 2018.

¹⁸ See, supra Note 13 at 164

¹⁹ See, supra Note 17 at 7

²⁰ See, supra Note 20 at 8

²¹ Ibid

²² See, supra Note 19 at 165

²³ Ibid (n23)

²⁴ Ibid (n24)

²⁵ See, supra Note 21 at 9

²⁶ [wikieducator.org/Secondary_Education_Commission_\(1952-53\)](http://wikieducator.org/Secondary_Education_Commission_(1952-53)) dated 30th January 2018

²⁷ Pradeep Kumar, Sugandha Azad, (2016), Teacher education in India: Some Policy issues and Challenges published in IJARIE-ISSN(O)-2395-4396, Vol-2 Issue-6 2016, www.ijarie.com.pp.at 1218.

theory portion in teacher training”^[28]. Similarly, the Education Commission Act, (1964-66) also known as the Kothari Commission showed a keen interest in teachers’ education. It observed that a sound programme of professional education for teachers was essential for the qualitative improvement in education at all levels of teacher education to meet the requirements of the national system of education”^[29].

Thereafter, the National Policy on Education came into existence in 1968. It incorporated the recommendations made by the Education Commission (1964-66). However, the policy also emphasised all the factors which determine the quality of education and its contribution to national development^[30]. It also made recommendations regarding the service conditions of teachers stating that academic freedom of teachers and service education should be adequate and satisfactory with respect to their qualifications and responsibilities”^[31].

The first Asian Conference on Teacher Education (1971) recommended that the programs of school education and teacher education in each country should be modified to meet the new challenges^[32]. The National Commission on Teachers (1983-85) appointed by the Government of India under the chairmanship of Prof. D. P. Chattopadhyaya. It made a number of recommendations for the improvement of the educational process regarding the selection of trainees for the teaching profession”^[33].

Besides this, when the Government of India announced a New Educational Policy in 1985, the National Policy on Education was produced in 1986. The important recommendation made was that teacher education is a continuous process and its pre-service and in-service components are inseparable”^[34].

The Acharya Ramamurthi Review Committee (1990) recommended that in-service and refresher courses should be related to the specific needs of teachers, and that evaluation and follow-up should be part of the scheme^[35]. The Yashpal Committee (1993) provided guidelines in respect of the content and methodology of teacher education”^[36].

The National Curriculum Framework (NCF) 2005, stated that the teacher now acts as a facilitator, transforming information into knowledge/ wisdom, as a supporter in enhancing learning through multiple exposures, encouraging the learner to continuously achieve his/her educational goals”^[37]. Similarly, the National Knowledge Commission (2007) has made considerable progress in school education since independence with reference to overall literacy, infrastructure and universal access and enrolment in schools”^[38].

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid (n30) at 1219

³¹ Ibid (n31)

³² Jayeeta Bhattacharjee, 2015, Progress of Teacher Education in India– A Discussion from Past to Present, published in International Journal of Humanities & Social Science Studies (IJHSSS) A Peer-Reviewed Bi-monthly Bi-lingual Research Journal ISSN: 2349-6959 (Online), ISSN: 2349-6711 (Print) Volume-II, Issue-I.

³³ Ibid

³⁴ Ibid

³⁵ See, supra Note 32

³⁶ See, supra Note 33

³⁷ Ibid Note36

³⁸ Ibid Note38

The National Curriculum Framework for Teacher Education (NCFTE) 2010 highlighted that the education and training of a prospective teacher to be effective enough should be delivered by competent and professionally qualified teacher educators. It also recommended that to improve the quality of teacher education, the National Council for Teacher Education (NCTE) should take up several initiatives jointly with the National Assessment and Accreditation Council (NAAC) to bring quality³⁹. Finally, according to the Teacher Education in Five Year Plans, in five year plans teacher education got 10% share of the total education, resulting into an increased output in training schools and training colleges”^[40].

The, 86th Amendment to the Constitution, the Right to Education Act 2009 provides free and universal elementary education to all children between the age of six and fourteen years. According to this Act, the Central Government has framed a subordinate legislation, the Model Rules, and also provides guidelines to every state for implementing the Act.

In the Indian Constitution it was stated in Article 21A that the State shall provide free and compulsory education to all children of the age six to fourteen years in such manner as the State may, by law, determine”^[41]. Similarly, Article 45 stated that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”^[42]. Under Article 51A(k) it is stated that whoever is a parent or guardian is to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years”^[43].

In addition to the declaration and amendment to declaring the right to education as a fundamental right, there are several states in India which have passed legislations for making primary education compulsory. According to these Acts, it remains unenforced due to some socio-economic, cultural, administrative and financial factors. With the Supreme Court declarations, it is to be seen whether the State machinery is put to work to enforce the right, and also to implement the State-level legislations, which seek to provide free and compulsory primary education. Therefore, the issue would be of enforceability and not one of justifiability.

5. Right to Education and Provisions in the Indian Constitution

Article 21A (1) states that the State shall provide free and compulsory education to all Citizens of the age of six to fourteen years”^[44]. The Directive Principles of State Policy enumerated in our constitution lay down that the state shall provide free and compulsory education to all Children up to the age of 14 years”^[45]. During the formation of the Constitution, the assembly had only included it among the Directive Principles of State policy and it found no room in Part III of the Constitution. The right to education up to

³⁹ See, supra Note 39

⁴⁰ See, supra Note 40

⁴¹ Dr.J. N. Pandey, 44th Edition (2007), Constituted Law of India, publisher Central Law Agency, 30D/1, Motilal Nehru Road, Allahabad – 2. pp.278

⁴² Ibid at 390

⁴³ Ibid at 407

⁴⁴ Ibid at 278

⁴⁵ See, supra Note 42

fourteen years as a fundamental right is only a recent occurrence.

However it has been quite different from that of the other constitutional social rights, the main reason being that Article 45 of the directive principles gave a very different promise than the other provisions within the Constitution as it imposed a time-limit of ten years to implement the right to free and compulsory primary education. Article 45 is the only article among all the articles in Part IV of the Constitution, which speaks of a time-limit within which this right should be made justifiable.

The framers of the Indian Constitution were aware that for the realization of a person's capabilities and for full protection, Right to education was an important tool. In addition to Article 45, the right to education has been referred in Articles 41 and 46 of the directive principles as well. The theory of the complementary nature of rights declared in Part III and Part IV, and the harmonious interpretation of these rights has been the foundation for the realization of primary education being declared a fundamental right today in India.

The Constitutional 86th Amendment Act was passed in 2002 and inserted in the Constitution as Article 21A. This Amendment Act, 2002, made three specific provisions in the Constitution to facilitate the realization to provide free and compulsory education to children between the age of six and 14 years as a fundamental right. While adding Article 21A in Part –III of the fundamental rights and slightly modifying Article 45, it also added a new clause (k) under Article 51A of the fundamental duties and it stated that the parent or guardian is responsible for providing opportunities for education to their children between six and 14 years.

Right to Education under Article 41 of the constitution lays down that the state shall, within the limits of its economic capacity and development”^[46] make effective provision for securing the right to education. Article 45 of the Constitution provides that the State shall provide early childhood care and provide compulsory education for all children until they complete the age of six years”^[47]. The obligation of the state to provide education to all children till the age of fourteen years would still depend upon the economic capacity and development of the state. Similarly, Article 46 of the Constitution requires the State to promote with special care the educational and economic interests of the weaker sections of the people, especially of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation”^[48].

Moreover, Articles 29 and 30 which are incorporated in the part III of the Constitution as fundamental rights, also lay down the following provision in regard to right of education: No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the grounds only of religion, race, caste, language or any of them”^[49] [Constitution of India, Article 29(2)].

⁴⁶ Ibid Note 43

⁴⁷ Ibid at 391

⁴⁸ See, supra Note 45

⁴⁹ Ibid at 325

6. Right to Education and Judicial Contribution.

The Indian Constitution is known to be a document committed to social justice. The Indian Constitution has recognized education as the essence of social transformation, as is evident from its education specific Articles. The right to education up to the age of fourteen years has been raised by the decision of the Supreme Court in the Unni Krishnan case where it was held by the court that right to education for the children of the age of 6 to 14 is a fundamental right. The Constitution (86th) Amendment Act, 2002, has added new Article 21 A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right”^[50].

The judicial decision from which the right to education emanated as a fundamental right was from the one rendered by the Supreme Court in the case of Mohini Jain v. State of Karnataka. It was held that the right to education is a fundamental right guaranteed under article 21 of the Constitution and that dignity of individuals cannot be assured unless accompanied by the Right to Education and that charging of capitation fee for admission to educational institutions would amount to denial of citizens’ right to education and is violative of article 14 of the Constitution”^[51].

The declaration of the right to education as a fundamental right has been further upheld by the eleven-judge Constitutional Bench of the Supreme Court in T. M. A. Pai Foundation v. State of Karnataka”^[52] the court held that governments and universities cannot regulate the admission policy of unaided educational institutions run by linguistic and religious minorities, but state governments and universities can specify academic qualifications for students and make rules and regulations for maintaining academic standards. The same principle applies in the appointment of teachers and other staff. An unaided minority educational institution would be free to hire as it pleased as long as some essential qualifications were adhered to. Minority educational institutions would have to comply with conditions laid down by universities or boards to get recognition or affiliation.

While charging of capitation fees was held illegal and categorically in the case of Mohini Jain v. State of Karnataka”^[53], the Supreme Court held that right to education flows directly from the right to life as the right to life and dignity of an individual cannot be assured unless it is accompanied by the right to education and the fundamental rights guaranteed under Part III of the constitution of India, including the right to freedom of speech and expression and other rights under article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity. In the Islamic Academy v. State of Karnataka”^[54] case, the court held that the state can fix the quota for admission to these educational Institutions but it cannot fix fee and also admissions can be done on the basis of common admission test and on the basis of merit. In the case of P. A. Inamda v. State of Maharashtra”^[55], the court has ruled with reference to the Islamic Academy stating to the effect that the state could

⁵⁰ See, supra Note 47

⁵¹ AIR(1992)3SCC 666

⁵² AIR 2003 SC 355

⁵³ AIR 1992 SC 1858

⁵⁴ AIR 2003SC 3724.

⁵⁵ AIR 2005SC 3226.

fix the quota for admissions to private professional Educational institutions.

Similarly, the Right to education is interpreted in the right to development as a human right. The Supreme Court held that the right to development is also considered to be a basic human right⁵⁶. In another case, *Institute Commission of India v. St. Mary's School*⁵⁷, the court held the desire to acquire more qualification is an inherent human right. The chief secretary of Delhi Administration indicated that it would take about two years for filling up the 5302 vacancies of trained graduates⁵⁸. The Supreme Court held that there cannot be any justification for such inordinate delay. Right of children to free and compulsory education is now a fundamental right under article 21A, which has been infringed due to acute shortage of teachers which is affecting their studies and administration of school. Therefore, the children have right to basic necessity for their education and quality education, without any dissemination on the ground of their economic, social and cultural background⁵⁹.

The Right to Education includes safe education because “the condition of not permitting new school within radius of 5 kms of existing school is not mandatory”⁶⁰. In the same vein, the Supreme Court held that the right to education includes right to safe education. While granting recognition to a new school they need to follow certain criteria such as the condition of not permitting a new school within the radius of five kms of existing school provides relaxation so it has be constructed liberally⁶¹. In the case dealing with the plight of prostitutes, the Supreme Court placed emphasis on the need to provide prostitutes opportunities for education and training so as to facilitate their rehabilitation⁶². Basic education is a constitutional obligation on the state, as well as, societies running educational institutions. The Supreme Court held that the provision of free and compulsory education of satisfactory quality to children from the disadvantaged and weaker section is not merely the responsibility of schools run or supported by the appropriate government, but also of schools which are not dependent on government funds⁶³. The Supreme Court held that the condition cannot be strictly constructed as an absolute mandate without any exception⁶⁴. However, restraining the members of Schedule Castes and Scheduled Tribes from availing education loan from banks shall be wholly unreasonable and unjustified and violative of the right to education enshrined under article 21A of the constitution⁶⁵. The right to admission to an educational institution is a right

of a citizen”⁶⁶, which cannot be denied on the grounds of religion, race, caste, language or any of them. An educational institution receiving aid out of state funds cannot refuse admission to the children belonging to a particular community. Since minorities have rights to establish and administer educational institutions of their choice, they can be permitted to reserve 50% of the seats for members of their own community in the educational institutions so established by them”⁶⁷. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice”⁶⁸. It also prohibits the State (while granting aid to educational institutions) from discriminating against any educational institution on the ground that it is under the management of a minority, whether based on religion or language”⁶⁹.

Besides, since the minorities which are based on religion or language are entitled to establish and administer educational institution of their choice, this serves two purposes; namely, the purpose of conserving their religions, language or culture, and also the purpose of granting general education to their children in their own language”⁷⁰.

The Indian Constitution deals with the right to establish educational institutions but it does not carry with it the right to receive recognition and affiliation. Though there is no fundamental right to recognition or affiliation, they cannot deny affiliation or recognition to minority institutions except under certain terms and conditions”⁷¹. Therefore, the minority institutions receiving aid out of State Fund cannot deny admissions to the members of other backward communities.

7. An analysis of the provision under International legal instruments recognizing the Right to Education.

Education is essential and valuable as humankind's most effective tool for personal development. Education is an integral part of human rights and enhances human dignity through its fruits of knowledge, wisdom and understanding. Moreover, education is a multifaceted social, economic and cultural human right.

There are several International legal instruments which recognize the Right to Education. For instance, the provision of the Universal Declaration of Human Rights 1948 through its Article 26(2) states that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious group, and shall further the activities of the United Nations for the maintenance of peace”⁷². Likewise, the International Covenant on Economic, Social and Cultural Rights, 1996 also stated under its Article 13 (1), (2), (3) and (4) to recognize the

⁵⁶ Dipak Kumar Mukherjee v.Kolkata Municipal Corporation, AIR 2013SC927(931)

⁵⁷ (2007) 12SCC 210:AIR 2007SC 2091(2007)4SLR572.

⁵⁸ P.M.Bakshi, (2014),Comentary on the Constitution of India, published by universal law publishing companay.pp.269.

⁵⁹ Environmental & Consumer protection foundation v.Delhi Administration,(2011)7SCC55.

⁶⁰ Shikshan Prasarak mandal, pune v. state of Maharastra,AIR 2010 Bom 39:2009(6) Bom CR1:2009(5)Mah LJ969.

⁶¹ Avinsha Mehrotra v.union of India, (2009)6 SCC 398:2009 AIR SCW 2589.

⁶² Gaurav Jain v.Union of India, AIR 1997 SC 3021

⁶³ Bharatiya seva Samaj Trust v.Y.A.Patel,AIR 2012SC 3285(3289):2012Lab IC 3971:2012 AIR SCW 5125.

⁶⁴ Ibid (n38)

⁶⁵ Felix Tamba v.state of Jharkhand,AIR 2009 Jhar 1:2009(1)ALJ (NOC)199:2008 (71) All Ind. Cas 961.

⁶⁶ State of Madras v. Champak am Dorairajan, AIR 1951 SC 226

⁶⁷ St.Stephen's College v. University of Delhi,(1992) 1 SCC 558; AIR 1992 C 1630

⁶⁸ Article 30(1) Constitution of India

⁶⁹ Article 30(2) Constitution of India

⁷⁰ In re, Kerala Education Bill, AIR 1958 SC 956.

⁷¹ See, supra Note 42 at 331

⁷² See, [https://wikieducator.org/images/7/78/SJ_Elumalai.dated.12th January 2018](https://wikieducator.org/images/7/78/SJ_Elumalai.dated.12th.January.2018).

educational right to everyone and development of education system, as well as, to protect the liberty of individuals and bodies of the educational institutions.

Meanwhile, International human rights also enforced the important Convention on the Rights of the Child, 1989. This convention deals with two important Articles viz. Article 28 and Article 29(1) and (2), to protect the human dignity of child and to provide education to the child. Another important Convention recognises the right of persons with disabilities to education⁷³ and safeguards their interest.

Similarly the UNESCO also enforced the important Convention against Discrimination in Education 1960⁷⁴. This convention laid down the important Articles 2, 4 and 5 related to free and compulsory education. In 1974 the UNESCO also made recommendations concerning Education for International Understanding Co-operation and Peace and education relating to Human Rights and Fundamental Freedoms⁷⁵. Later, the Dakar Framework for Action was adopted in 2000 by the World Education Forum⁷⁶ which concerns the achievement of education for all and every citizen and society. Similarly, it also protected the interest of the child and inserted very important provision, such as; every child has the right to an education under Article 11 of the African Charter on the Rights and Welfare of the Child, 1990⁷⁷. The Protocol also provides broader protection related to Right to Education and training for women without any discrimination as found under article 12 of the Protocol of the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003⁷⁸.

The African Youth Charter, 2006⁷⁹ provides important guidelines and responsibilities of Member States for the empowerment of youth namely "Education and Skills Development"⁸⁰. Education as a right has also found place in the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights adopted in San Salvador on November 17, 1988 (not yet in force)⁸¹. According to this convention it declared that everyone has the right to education⁸². Finally, there are two important charters namely the Arab Charter on Human Rights, 2004⁸³ and ASEAN Human Rights Declaration, 2012⁸⁴. The Arab Charter inserted an important Article 41 to provide every citizen with the right to education. Similarly the ASEAN Human Right Declaration in its Article 31 provides

that every person has the Right to Education.

8. Educational Status in Goa

The Right to Education is necessary for the fulfilment of the Constitutional Mandate on the ground of social, economic, cultural and political Right. As per Census 2011 data has revealed into two alarming facts i.e, there were 8.4. crore children don't go to school at all and 78 lakh Indian Children are forced to earn a livelihood because large number of among them are child workers, street children and child laborers⁸⁵. But State need to full fill the constitutional Mandate to provide free and compulsory education even in fourteen years. According to this data it also point out that the increasing cost of Education should be ideally free for the age group of 5 to 17 years.

Today the Education is becoming an increasingly important determinant of living standards. Goa has a total population of 15 lakes population as per the 2011 census, of which 38% live in rural areas and 62% in urban area. The density of population as per 2011 census is 394 per sq km which is higher the below the national average of 382 sq km. Goa stands at 16th position at National level with regard to density population. The number of literates in Goa is reported to be 1165487 of whom 615823 are males and 549664 are females as per 2011 Census. The total literacy rate in the State works out to be 88.70% compared to the previous decades from 31.23% (1961), 45.31% (1971), 56.66% (1981), 75.51% (1991) and 82.01% (2001)⁸⁶.

The literacy rate among males and females work out to be 92.65 %t and 84.66 % respectively in 2011. The literacy rate for the country as per 2011 Census is 74.04 %. Goa stands at 4th position in respect to literacy in the country. The State wise literacy rates as per the 2011 population census. The literacy rate of the State has increased significantly from 82.01 % in 2001 to 88.70 % in 2011 showing an increase of 6.69 % during the decade. At the district level, North Goa (89.57%) had a higher literacy rate than South Goa (87.59%) in 2011⁸⁷. There are 956 primary schools in rural Area and 234 primary schools urban area out of the total 1190 primary schools in Goa with enrolment of 95555 students in primary schools and 3775 teachers⁸⁸. Based on Educational statistic at a glance 201-2016, there are 800 government and 390 aided and unaided out of total 1190 primary schools in Goa. So out of total 1190 primary schools, there are 817 primary school are run in Marathi Medium, 240 followed English Medium, 62 Konkani Medium and other 71 followed other medium in Goa⁸⁹.

9. Literacy and Educational status of Scheduled tribes

The population of Gawda, Kunbi and velip 1, 49,275 respectively, as per the 2011 Census. According to 2011 Census, the percentage of literate among Scheduled Tribe

⁷³ Article 24, Convention on Rights of Persons with Disabilities, 2006, dated 12th January 2018

⁷⁴ unesdoc.unesco.org/images/0013/001325/132598e.pdf., dated 12th January 2018

⁷⁵ www.unesco.org/.../unesco_1974_recommendation_used_to_measure_progress_towa, dated 12th January 2018

⁷⁶ https://resourcecentre.savethechildren.net/.../dakar-framework-action-education-all-me, dated 12th January 2018

⁷⁷ https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf, dated 12th January 2018

⁷⁸ www.achpr.org/instruments/women-protocol/, dated 12th January 2018

⁷⁹ See, www.un.org/en/africa/osaa/pdf/au/african_youth_charter_2006.pdf dated 30 january 2018

⁸⁰ Articles 13 under African Youth Charter, 2006 dated 30 january 2018

⁸¹ See, https://www.oas.org/.../1988%20Additional%20Protocol%20to%20the%20American. dated 30 january 2018

⁸² Ibid (n80) Article 13.

⁸³ See, https://www.unicef.org/tdad/arabcharterhumanrights.doc dated 30 january 2018

⁸⁴ See, www.mfa.go.th/asean/contents/files/other-20121217-165728-100439.pdf, dated 30 january 2018

⁸⁵ See, timesofindia.indiatimes.com › India date 21 October 2017

⁸⁶ Gawas, vijay (2015), Political Economy of Tribal Development in Goa, published in International Peer Reviewed and Referred, Scholarly Research Journal for Interdisciplinary Studies, Volume 3.oct-Dec, 2015.VOL-4, Issue-14.

⁸⁷ Ibid at 114-115.

⁸⁸ Dr.Pradeep Narayan Maske,(2016),Integral Education :-A Farewell to Mother Tongue in Goa, published Atharva a monthly of contemporary Studies & Analyses Vol.11, No.5.pp.14

⁸⁹ Ibid at 15

population of Goa is 79.14 percent, which is highest percent reported for state population as a whole. The literacy data show that the Scheduled Tribe population of the state has

made significant improvement in literacy during the decade 2001-2011.

Table 1: District wise distribution of literate population among the scheduled tribe - 2011 Census

Sr. No.	State /District	Total ST Population	0-6 ST Population	Total Literate ST Population	Literacy Rate
1.	Goa	149275	14908	106334	79.14
	Males	72948	7573	56982	87.16
	Females	76327	7335	49352	71.53
2.	North Goa -District	56606	5253	42905	83.55
	Males	27824	2681	23000	91.48
	Females	28782	2572	19905	75.94
3.	South Goa -District	92669	9655	63429	76.41
	Males	45124	4892	33982	84.47
	Females	47545	4763	29447	68.83

Date collected from Directorate of tribal welfare, Government of Goa, Panji-Goa

The total literacy rate of Scheduled tribes in the state of Goa was increased by 79.14 and percentage points in 2001, census. But highest Male literacy rate (87.16 %) and lower female literacy rate was (71.53 %) in the state of Goa. At the district level, the highest literacy rate has been recorded in North Goa -District (83.55%) and the lowest in South Goa -District (76.41%). The effective literacy rate among the scheduled tribe highest Male literacy (91.48 %) and lowest female literacy (75.94 %) are recorded North-Goa District. Secondly, the highest Male literacy (84.47 %) and lowest female literacy (68.83%) are recorded South-Goa District⁹⁰.

Table 2: Status of Enrolment of scheduled tribes in primary school level (I-IV) in 2015-2016 in Goa.

Sr.No.	Primary school	Enrolment student belongs to scheduled tribes in primary school		
		Boys	Girls	Both
1	Government	1585	1595	3180
2	Aided	1377	1323	2700
3	Unaided	186	166	352
4	Total	3,148	3,084	6,232

Source: Data Collected from Atharva a monthly of contemporary Studies & Analyses Vol.11, No.5.

10. Discussion and Conclusion

The right to education is indispensable in the interpretation of right to development as a human right. Similarly, the right to development is also considered to be a basic human right and the desire to acquire more qualification is an inherent human right.

The Central Government enacted the Right of Children to Free and Compulsory Education Act, 2009 which is the Consequential Legislation to Article 21(A). Similarly, Article 21 casts an obligation on every state to provide free and compulsory education to children between the ages of 6 to 14 years. But it is not applicable to unaided non-minority and minority educational institutions.

The rights of children to free and compulsory education is guaranteed under Article 21A and it can be enforced against the schools as defined under Section 2(n) of the Act. This Act

does not bar the unaided minority and non-minority schools who are not receiving any kind of aid or grants to meet their expenses from the appropriate governments or local authorities from charging capitation fees.

Similarly, the Central as well as the State Governments may set up a proper Regulatory Authority for supervision, implementation and effective functioning of the Act. However, the Right to Education Act should also set up educational institutes at the secondary level and it should not be limited to the age of 14 years.

Education should be provided free of cost and on private institute patterns based on the wants and demands of the society. Therefore, the Parents have a significant role to make Right to Education a major success in India and it can be done only by motivating them through counselling.

National and international agencies including all states and societies should focus on the weaker sections of the society and should give them top priority to improve efficiency to this Act.

Similarly, the state should make the provision for severe punishment regarding the abuse of this Act. It also places responsibility on the state government, central government, parents, teachers and administrators, owners of the school to keep a proper check on the functioning of the Act. Constant monitoring and strong political will is a must to make it effective.

The central government and state government should make budgetary provision and provide adequate funds for Education Development. The government should make some necessary changes while introducing diplomas/degrees under the Right to Education Act.

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⁹⁰ See, supra Note 89 at 117-118.

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