

Implementation of right to education under international law: An Overview

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ABSTRACT

The issue of implementation of RTE under international human rights law is deeply embedded in almost every part of the world, particularly developing countries and undeveloped countries. The issue itself has various dimensions: ranging from discrimination, to the issue of free and compulsory quality education for all, due to the nature of soft law, ambiguous language and fragmentation within provisions of international and regional legal instruments.

Keywords:

Introduction

Since long time, several universal declarations, International conventions, legal instruments and regional conventions have been signed and ratified for recognition of the Right to Education. For instance, RTE is set forth by the UDHR in 1948, Article-26; “Convention Relating to the Status of Refugees”, Article- 22 (CRR 1951), “International Covenant on Civil and Political Rights” Article- 18 (ICCPR 1966), “International Covenant on Economic, Social and Cultural Rights” Article-13, 14 (ICESCR 1966), “Convention on the Elimination of All Form of Racial Discrimination”; Article- 5, 7 (CERD 1966); “Convention on the Elimination of All Forms of Discrimination Against Women”, Article-10 (CEDAW 1979); “Convention on the Protection of the Rights of All Migrant Workers and Members of their Families”, Article-12.(4), 30, 43(1), 45(1) (CPRMWF 1990); “Convention on the Rights of the Child”, Article-28, 29 (CRC 1989); “Convention on the Rights of Persons with Disabilities”, Article-24 (CRPD 2006); and other International/ regional frameworks have placed the RTE as a human right for all.

The aforesaid documents have established RTE in the language of right to development of human dignity. Many of these conventions, guidelines and instruments are binding at International and national level, while some remains non-binding at any level. Mostly instruments are designed to pursue the aim of, “Education for All,” (EFA). Under international law, the rights and freedoms set forth in these Declarations can be fully realized for everyone.¹The RTE is one of the most important rights of the “Second Generation” of human rights.² More than half a century has passed away since the official declaration of education as a human right under national and international law, but significant challenges remain on the ground in terms of realization of these aspirations. In most of the pockets of the world, education is still available only to the richer classes. The poor are unable to afford the cost of these academic institutions. In this situation, States need to intervene and enhance its budget on education and ensure well-functioning of the public institutions. However, under the influence of neo liberalism, states are now cutting its meager budgetary allocation on education in the name of financial discipline. The failure of a State to comply with the RTE amounts to a violation of international law and entailing the International Responsibility of the states to effective implementation of the RTE.³ The goal of EFA is one of the biggest challenges before the international community. Millions of children, youths and adults remain deprived of basic education. It is the biggest challenge particularly for the developing countries to achieve this goal. There are 124 million children left-out from school education and 781 million adults still could not read and write. The statistics on female ratio on educational attainments also makes dismal reading.⁴Education is a very important instrument for the development of human personality and inherent dignity and political, social, economic and cultural development of society. This article seeks of definitions and significance of education, and also seeks to make a legal analysis of different kinds of international instruments which recognize and implement of right

¹ United Nation Committee on Economic, Social and Cultural Rights, General Comment No-13, (1999); see Annexure II

² ICESCR, 1966

³ See Beiter, Dieter Klaus. (2005), *The Protection of the Right to Education by International Law*, Boston, Leiden: MartinusNijhoff.

⁴ UNESCO Institute of Statistics, June 2014

to education as a fundamental human right, entailing obligations on the part of States and other stakeholders to ensure the same in their respective societies.

Definitions and Significance of Right to Education

Education is a dynamic force in the life of every individual. It is capable of influencing the physical, mental, emotional, social and ethical outlook of human beings. Education is, thus, a fundamental tool for the organic growth of any society and nation. It not only gives a sense of empowerment but also provides tools to the marginalized so that they can speak out against special discrimination and the experiences of marginalization. In this way education is a fundamental human right and it is essential for personal and socio-economic development of individual in the society. In International law certain rights are recognized as paramount and essential for human survival and overall development Education is essential to the betterment of the world and the realization of peace, responsible citizenship and sustainable development.⁵ Education is the single most vital element in combating poverty, empowering women, moralize groups and promoting human rights and democracy.⁶ According to Dewey (1923), "the process of education is a continuous process of adjustment, having as its aim at every stage an added capacity of growth"⁷ It has assumed more importance today than ever before because of its present role and is adding new dimensions to our present and future scenario. Education is a process by which a person develops his or her personality, identifying the best within oneself. Jawaharlal Nehru declared that "if all is well with our educational institutions, all would be well with the nation" (Jawaharlal Nehru: *An Autobiography*, 1989).⁸

In 1946, the International community charged UNESCO with the responsibility for promoting education throughout the world, keeping in mind its vital importance to the individual and social well-being.⁹ In 1948, the United Nations General Assembly (UNGA) proclaimed Universal Declaration of Human Rights which includes within it, the Right to Education.¹⁰ Article 2(i) states "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory." The international community having been convinced of the need and importance of Education for All initiated a number of strategies and efforts for realizing this lofty and laudable objective. In 1987, UNESCO General Conference requested the United Nations General Assembly to proclaim the year 1990 as the International Literacy Year (ILY).¹¹ The goal had been to achieve "Education for All" (EFA) by 2000 AD by all means. EFA is an international goal as well as a global commitment. It is a matter of major concern both for the developed and developing countries. The latter countries must realize that without "Education for All" adequate development and democratization cannot be possible. The educational system has to be more diversified, flexible and open for entry, exit and re-entry at any point of time in life. The International Commission on the Development of Education¹² has aptly remarked, "thus the universal right to education which contemporary civilization takes such premature pride is often refused, by a complete reversal of justice, to the most underprivileged."¹³ It is necessary to offer wide educational opportunities in formal, non-formal and informal settings, to vulnerable groups, in particular in post-conflict situations where formal education systems may not be functional. As non-formal education systems mostly relies on a flexible, voluntary and non-mandatory basis, there will be a greater chance to reach learners who would not be able to access or stay in the formal system and to adapt to their particular educational needs.

The objective of education must be envisaged in a broad lifelong learning perspective, Education contributes to socio-economic development, creative thinking, understanding and respect for human rights, inclusion and equity, cultural diversity and learning to live together all.

⁵ World Declaration Education for All, 1990

⁶ UN Committee on Economic, Social and Cultural Right Council General Comments UNCESCR G/C, No (13) 1999
⁷Life, H. (2002). John Dewey. *Western Educational Thinkers*, 158.

⁸ Hick, J., Hempel, L., Dillman, J. C., Maguire, J. D., &ht, C. E. (1989). *Gandhi's significance for today*. Springer.

⁹ UNESCO, *Learning To Be*, International Commission on the Development of Education, Sterling Publishers Pvt. Ltd., (New Delhi, 1973).

¹⁰ United Nations, *Universal Declaration of Human Rights*, (Paris, 1948).

¹¹ <http://unesdoc.unesco.org/images/0014/001462/146253e.pdf>

¹² UNESCO, *Learning To Be*, International Commission on the Development of Education, Sterling Publishers Pvt. Ltd., New Delhi, 1973.

¹³Buch, M.B. (1992). "Education for All by 2000 A.D. A Challenge Ahead" *Journal of All India Association for Education Research*. p. 71.

International and regional legal instruments to implement of RTE

The UDHR 1948 articulates the larger goals and aims of education. Education is not only the source of full development of individual personality but also essential for enlarging the capacity for human tolerance, friendship and to maintain the peace among the countries and communities. It declares that everyone is entitled to education as a right without any kind of discrimination such as race, sex, language, religion, political, national, and social origin (caste) etc. Education has three levels like primary, secondary and higher education. Other secondary and higher education address to progressive nature with the available resources and international co-operation. The Declaration indicates freedom aspects through prior right in field of education and limitation which recognized by law in favour of general welfare and securing democratization in society.

ICESCR introduced the positive and negative nature of rights. Provisions of convention imposed legal obligation on member states to ensure Free and Compulsory Education at primary level. It means that states must take immediate action or in reasonable number of years. Secondary and higher education must be accessible to all in progressive context through avoidable national resources and international Co-operation. The Covenant directs member states to grant entitlement to everyone to education in regards to availability, accessibility, acceptability and adaptability in national education system without any kind of discrimination such as race, sex, languages religion political nation and etc. states have legal duty to obstacle all type of barriers in field of education and respect freedom of parental rights under the provision of ICESCR but it seems *due to the nature of soft law, ambiguous language and fragmentation within provisions of the Covenant*, it seems difficult to implement of RTE. Right of freedom for minority groups in field of education is ensured by state parties under the ICCPR.

The discrimination against woman is very problematic issue before the international community. The CEDAW provides the protection to women against all types of discrimination against women in the field of education. Provisions of the convention instruct States parties to take all effective measures to grant to girls, women, whether married or unmarried, provide equal right and opportunities with men at all levels in the field of education. Provisions direct member states adopt appropriate measure not only combat the discrimination against women but also the full development of women through the special treatment of women in field of education. But the provisions of CEDAW are not legally bound. Children are considered vulnerable groups in human society. International instruments relating to children's rights give the entitlement of FCE at least elementary level and promote the full development of children ability.

Provisions of the CRC instruct the State Parties to implement of RTE in only progressive nature not mandate as like provisions of ICESCR. The CRC used the term "make" rather than "shall be" used in ICESCR in introducing FCE at primary level. Article 14 of ICESCR imposed time bound legal obligation on the member states in progressive nature but provisions of CRC only simply progressive obligations. CRC protected the freedom of parents of children relating to all matters which deal with education. But this right is not absolute; they can exercise these rights only in the best interest of children. Article 23 of CRC protects the child's interest from economic exploitation. Instruments relating to refugees and Stateless persons implement the RTE in a weaker fashion.

Few instruments which deal with implement of RTE are applicable in European region. Article 2 of The European Convention for the Protection of Human Right and Fundamental Freedom (ECHR).¹⁴P-2, ECHR ensured to RTE for everyone with partial rights. But it does not impose the financial obligation on the member states without financial support RTE cannot be enjoyed in real sense. The provisions of P-2 ECHR were insured by European Commission of Human Rights and European Court of Human Rights through to heard the complaint of state, persons and NGOs but not competent to entertain of individual complaints. The Revised European Social Charter (RESC)¹⁵protected the compulsory education and secured the children from labour exploitation. It does not secure free education. It secured the right established of education institution according to national law but states had right to laid down minimum education standard for private school.

Inter-American instruments introduced obligation related to RTE collectively on member states. Article 30 of *Charter of the Organization of American States (OAS)*¹⁶ called to member states integral development. The Provisions of OAS imposed obligation to eradication illiteracy through the compulsory education and

¹⁴ European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) ETS No. 5, entered into force on 3 September 1953.

¹⁵ European Social Charter (1961) ETS No. 35, entered into force on 26 February 1965.

¹⁶ The texts of instruments of the Organisation of American States are available on the website of the Organisation (<http://www.oas.org/en/default.asp>).

without charges by member states. The Additional Protocol to The American Convention on Human Rights, (AP ACHR) Protocol of San Salvador 1988 ensured RTE as similar way of ICESCR but the term were used “should” which made weak instrument. Article 16 of IADC provided the aim of education as “strengthening democratic institution, development of human potential, alleviating poverty and understanding among the peoples.

The RTE was protected in African region by the provisions of The “African Charter on Human and Peoples’ Rights” (ACHPR) was adopted by the former OAU on June 27, 1981. It is known as Banjul Charter.¹⁷ Article 17(1) ensured every individual right of FCE. It provided the wide sense of RTE including cultural life and tradition values. Article 25 directed to member states to promote through the teaching and publication ensured the freedom and human rights. The supervision on the ACHPR was African Commission of human people’s Rights and African Court of human people’s rights. Protocol to ACHPR of African Women protected the RTE for women. It ensured to women for protection against the all kind of discrimination at all level in the field of education and sexual harassment.

Conclusion

All of these the international /regional level instrument provide the concept of free and compulsory education and also, quality education. Mostly, legal instruments are not legally binding. Many instruments are silent regarding the financial support and technical assistances so critical for the effective implementation of the obligations entailed by the provision of rights and entitlements under these legal instruments.

Today the international community needs to implement RTE with the principles of equality, availability, accessibility, acceptability and adoptability with educational opportunities across all level without any discrimination. Education must be free and compulsory. Inclusive education should include for instance women, cultural, ethnic and linguistic minorities, persons with disabilities with special accommodation, foreign nationals, immigrants, students with special needs, children from poor households, quality education, providing each of them with quality environment, infrastructure and accessible technology. It is also need to secure full implementation of the RTE becomes imperative given the importance of education in securing the basic rights of individuals. The low spread of literacy and education especially in the developing states is a huge problem. It makes necessary to implementation of the right to education. It will be securing individual, societal and national development.

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