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ANALYSIS ON 165TH LAW COMMISSION REPORT- FREE AND COMPULSORY EDUCATION FOR CHILDREN

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ABSTRACT

Numerous international agreements and national laws uphold the right to education, highlighting the need to ensure that education is universally available and mandated for all children. This dedication is based on the conviction that education is an effective means of promoting society's progress, individual emancipation, and the realization of human rights. Societies seek to remove obstacles that prevent children, especially those from disadvantaged homes, from obtaining the knowledge and skills required for a successful and meaningful life by offering free and mandatory education. The advantages of free and required education go beyond personal growth to advance society. Through producing a skilled labour force, increasing productivity, and lowering unemployment, education promotes economic growth.

Through the analysis of the report of the law commission we will see the implantation of the recommendations that are proposed by them in the free and compulsory education for children. The right to education has been enshrined in the Indian Constitution and through the leading case laws or judgements and the provisions in the constitution will help us to see the current status of the right.

Keywords - agreements, conventions, individual emancipation, human rights, free and compulsory education etc.

INTRODUCTION

Many nations see the need of free and compulsory education for children as a key premise for the overall development of society. Numerous international accords and state laws protect it and is frequently seen as a fundamental human right. The United Nations General Assembly approved

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the UDHR in 1948, and Article 26(1) declares that "Everyone has the right to education." It emphasizes that elementary education should be required and that education should be free, at least in the elementary levels. Adopted in 2015, the fourth Sustainable Development Goal (SDG) seeks to "ensure inclusive and equitable quality education and promote lifelong learning opportunities for all." This goal aims to guarantee that all boys and girls receive a primary and secondary education that is egalitarian, free, and of high quality by the year 2030.

The concept of free and compulsory education for children is crucial for ensuring that every child has the opportunity to receive an education, irrespective of their socio-economic background. Many countries recognize education as a fundamental right and have implemented laws and policies to make education accessible to all children.

ANALYSIS

The Law commission Report of 165th has pointed out the need for free and compulsory education. Numerous Acts, including the Religious Endowments Act of 1863, the Official Trustees Act of 1864, the Carriers Act of 1865, the Indian Companies Act of 1866, the General Clauses Act of 1868, the Divorce Act of 1869, the Court Fees Act of 1870, the Land Acquisition Act of 1870, the Female Infanticide Prevention Act of 1870, and the Code of Criminal Procedure Revised in 1872, were enacted in response to the recommendations of the pre-independence Law Commissions. Acts of 1872 pertaining to Indian contracts, Indian evidence, special marriages, etc.

PREVALENCE OF CHILD LABOUR

In the second chapter of the report, it is stated that Child labour is a socio-economic phenomenon. Illiteracy, ignorance, low wages, unemployment, poor standard of living, poverty, deep social prejudices and appalling backwardness of the countryside are all cumulatively the root causes of child labour. The direct consequence of child in labour is that a child is denied the opportunity to seek education in a school. The idea that young people ought to attend education rather than work is one that has gained traction recently. A few hundred years ago, children in the majority of nations assisted their parents in caring for the cattle and crops, gathering firewood, and bringing in food and water. Only the offspring of the affluent classes were able to continue in their positions of power due to their education. However, child work back then was substantially different from what occurred as a result of industrialization. It was predicated on the idea that a kid ought to

² Universal Declaration of Human Rights

support the family, which served as a social unit. But as industrialization progressed, kids began to labour with machinery and chemicals in factories and mines. They were exploited, forced to labour long hours for meagre pay, and faced serious risks to their health and welfare. They had jobs in cottage industries as well. Not until 1284 did a Venetian ordinance restrict glass producers from hiring minors for hazardous glass-making branches, and not until 1396 did a Venetian ducal decree forbid children under 13 from working in specific trades. These discussions are still occurring in India today, and socio-political factors are clearly at work. The primary defence of child labour being important for the impoverished's well-being because the State is unable to assist is used to argue against mandatory education. The second claim is that if the impoverished had an education, they would become unfit to perform the necessary manual labour. The third point of contention is that without the option of using low-wage child labour, certain industries would have to close. The last defence of prohibiting child labour and requiring compulsory schooling is that the government shouldn't have the authority to infringe on the rights of parents, who are the ones who should determine what is best for their children and families. While the underlying question is whether we can afford to have child labour and illiterate children, and still talk about tomorrow's citizens, some people in India believe that society cannot afford to do without the employment of children. Basic education must begin as soon as poverty is completely eradicated. It is the State's responsibility to provide for the child's constitutional rights. Politicians have long opposed state action to take youngsters out of the workforce and force them to attend school. There is a never-ending discussion. the mother's need for assistance, the family's financial needs, the challenges faced by the child labour sector, the belief that education would exclude the impoverished from performing manual employment, that is required.

RIGHT TO EDUCATION IN INDIAN CONSTITUTION

The right to education is the central theme of the report and it has been talked in extent in the report. In the Range of the "right to education" in the instance of Unnikrishnan. In the case of Unnikrishnan, the Constitution Bench limited the scope of the right to education, ruling that: Every person of this nation is entitled to a basic education. This privilege is derived from Article 21. But this is not an unqualified right. Articles 45 and 41 must be taken into consideration while determining its dimensions and substance. Stated differently, all children and citizens of this nation are entitled to free education up until the age of fourteen. After that, the State's development and economic capacity will determine how much of his entitlement to an education he can receive." In the case law of Bandha Mukti Morcha The Supreme Court ruled that "educational facilities" are covered by the Article 21 Right to Life. Regarding the fundamental importance of education to

the life of an individual and the nation, the court noted in *Unnikrishnan J*³ that it agreed with the assertion made in *Bandhua Mukti Morcha*⁴ that the right to education is implicit in and flows from the right to life guaranteed by Article 21. Furthermore, the right to education has been treated as one of transcendental importance in an individual's life, a recognition that has been held for thousands of years not only in this country but throughout the world. Promises to protect children have been made in numerous international treaties and declarations since the League of Nations' founding. On September 26, 1924, the five-principle Geneva Declaration was ratified. It stipulated that children must be given the resources they need for their physical and spiritual growth and that they must receive an education and be shielded from exploitation. Following that, the historic 1948 Universal Declaration of Human Rights declared that children are entitled to extra support and care. Article 26 recognises the right to free and compulsory education, at least for the basic and elementary levels. The Preamble of the Convention lists the fundamental tenets of the United Nations as well as particular clauses from several pertinent human rights treaties and declarations. It reiterates that children require extra care and protection due to their vulnerability and emphasises the importance of the family as the primary provider and guardian, the necessity of the child's legal and other protections both before and after birth, the significance of respecting the child's community's cultural values, and the critical role that international cooperation plays in ensuring the realisation of children's rights. In order to advance children's rights, it encourages concerned public action by all individuals and agencies—governmental and non-governmental, local, national, regional, and worldwide.

IMPARTING PRIMARY EDUCATION TO CHILDREN IN SOUTH ASIA

South Asia is currently the most illiterate area in the world, with 50 million school-age children (more than two-fifths of the global total) and 395 million illiterate adults (almost half of the world total). The Human Development Centre's publication *Human Development in South Asia 19981* shows that political will is more important than financial resources in order to address the future challenges in education. According to the aforementioned data, income poverty does not prevent basic education from spreading. Consequently, it highlights the fact that Kerala, which has a per capita income of \$1017, has a 90% literacy rate, while Punjab, which has a per capita income more than double that of Kerala, has a literacy rate of 58%. The HDC report clearly identifies three

³ *Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors.* Cited as: 1993 AIR 217, 1993 SCR (1) 594, 1993 SCC (1) 645, JT 1993 (1) 474, 1993 SCALE (1)290

⁴ *Bandhua Mukti Morcha v. Union of India & Ors.* (1997) 10 SCC 549

major issues that need to be addressed in order to rectify the three main flaws in South Asia's educational system. First, many children lack access to education; second, primary school completion rates are poor due to dropout and repeat rates; and third, many students who enter in school but do not meet academic expectations. These major issues affect, among other countries, Sri Lanka, the Maldives, Bhutan, Bangladesh, Pakistan, India, and Nepal. The aforementioned HDC research has highlighted the main student enrolment reforms implemented by Zimbabwe as well as their benefits and drawbacks. Below is a summary of these:

1. Mandatory elementary education is one of the main reforms for student enrolment.
2. The elimination of tuition for primary schools.
3. Elimination of repetition.
4. Four years of secondary education are offered to graduates of primary schools.
5. The public education budget is growing quickly.
6. Significant community funding was introduced.

STRATEGIES FOR FINANCING UNIVERSAL EDUCATION

- Unit costs reduced by standardizing classes, thus increasing class size in many of the more privilege schools.
- School resource allocation strictly on the basis of children enrolled.
- Number of topic in curriculum reduced.
- Examinations localized.
- Science-kits for class-based science teaching, even without labs of electricity.
- Vocational subjects introduced.

NATIONAL POLICIES AND PROGRESS MADE

The National Policy, Central Schemes, State programmes, decentralised education development, and District Primary Education Program—approved in 1992—are all presented in chronological order by the World Bank. According to the statement, "Working groups of the Planning Commission set ambitious deadlines for implementing Universal Elementary Education, which

were adjusted over the course of the 1960s and 1970s." The Kothari Commission suggested in 1966 that the target be met by 1986 at the latest. This goal was also surpassed in 1986 when the National Policy on Education was established, stating that by 1990 all children who were 11 years old would have received five years of formal or non-formal education. The 1992 National Policy on Education was revised and adopted by Parliament. The new strategy chose to prioritise the education of girls and raise the standard of primary education. Additionally, it advocated for the development of primary education systems using an integrated and decentralised approach, with an emphasis on enhancing district capacity for primary education planning and management. Thus, the 73rd and 74th constitutional amendments were implemented in 1992, visualising the expansion of local governments' power and duty. Panchayati Raj Bodies now have authority over primary, secondary, adult, non-formal, technical, and vocational education thanks to these amendments. A special report on decentralising education management was released by the Central Advisory Board of Education, outlining the composition, duties, and authority of local bodies. In 1976, states had sole authority over education, with the federal government only having jurisdiction over a limited number of issues, such as standard-setting and coordination in technical and higher education. A 1976 constitutional change made education a shared responsibility. The states are primarily responsible for making decisions about how education is organised and structured. That being said, there is little doubt that the Union Government bears some responsibility for the standard and kind of education. Apart from formulating policies, the states and the Ministry of Human Resource Development, Department of Education are jointly in charge of educational planning. Before the twenty-first century begins, all children up to the age of fourteen must get free, obligatory, high-quality education, according to the amended Programme of Action 1992 of the NPE, 1986. During the Eighth Plan, three sub-schemes were suggested under Operation Blackboard to operationalize the government's amended policy:

- (i) the ongoing program's continuation to cover all remaining schools as of September 30, 1986;
- (ii) the program's scope expansion to include three rooms and three teachers in primary schools with enrolment exceeding 100, with a requirement for all states and UTs to provide at least 50% of their teachers to be women; and the program's expansion to include upper primary schools.

CONCLUSION

In conclusion, the idea of making education free and required for kids is admirable since it promotes equality of opportunity and advances society. However, for it to be implemented successfully, a number of aspects must be carefully taken into account, such as the distribution of resources, cultural sensitivity, and a dedication to guaranteeing both quality and accessibility. For a system to be successful in the long run, these components must be balanced. To overcome obstacles and optimise the benefits of free and mandatory education for kids, stakeholders must constantly assess, adapt, and work together.

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