

An Analytical Study of The Culmination of “Education” As A Fundamental Right Under the Constitution of India and Restructuring “Education” To A Multi-Disciplinary Approach in The National Education Policy, 2020

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Abstract:

The emergence of education as a fundamental right under Article 21A guarantees an absolute right to education to the citizens of India. This right is complemented by the amendment made to Article 45 where the duty has been cast upon the State of early childhood care and education under the aegis of Directive Principles of State Policy. There is a duty cast upon the parents as Fundamental Duties under Article 51A to provide opportunities for education to their child or ward between 6 and 14 years of age. The source of these new education provisions lay on the precedents set out by some of the landmark judgments of the Supreme Court, which not only dealt with education but emphasised the overall development of an individual and his right to live with dignity. The National Education Policy 2020 has been structured keeping in mind the Preamble assurance and the Constitutional guarantees provided to all citizens of India towards justice- social, economic and political. To make the dream of Constitution makers a reality, a multi-disciplinary holistic approach to education has been framed. This approach has the objective of integration of knowledge, that is integration of traditional knowledge with modern scientific, and technological acumen. Overcoming the classroom method of teaching where the knowledge could be imparted to a limited number of students and embracing the hybrid blended modes of teaching, to reach out to a vast audience with flexible timings. This Policy is framed towards the attainment of SDG 4 goals, keeping pace with the changing universe of knowledge and making the future generation not only acquainted with theoretical knowledge but also skillful to meet the futuristic requirements of employment.

Keywords: right to education, Constitutional guarantees, National Education Policy 2020, multi-disciplinary approach, integration of knowledge.

Introduction:

“The National Education Policy 2020 (NEP 2020) is the first ducation policy of the 21st Century which aims to effectively address the need for restructuring the education framework in India”.

..... The National Education Policy 2020, Ministry of Human Resource Development, Government of India.

The NEP 2020 envisions multidisciplinary holistic education across sciences, social sciences, arts, humanities and sports to ensure the unity and integrity of all knowledge. The main objective is to develop a conscious ability to appreciate human problems and cultivate an ability to resolve these problems. In common parlance acquiring knowledge is to gain command over the subject, with the ability to resolve human problems. While resolving human problems with the help of knowledge, requires unity of various skills and disciplines. This cannot be attained if we compartmentalize subjects and disciplines. The effort put to resolve an issue depends on the ability of research to explore the multiple social and economic implications. With changing times problem-solving requires not only a multidisciplinary approach but also adequate knowledge of new technology and its effective application. The approach of the NEP 2020 is to break the stereotypical education system which has compartmentalised the system by keeping the different disciplines within water-tight boundaries. The attempt is to enable an individual to attain freedom of movement in all domains, namely, science, social science, art, literature and technology. To develop barrier-less movement in the ocean of knowledge. This will help an individual to interact with different disciplines, creating an atmosphere to discover innovative ways to resolve faced by humankind. Education became a Concurrent subject by the 42nd. Amendment of 1976, enabling the Central Government to legislate whenever it suited. In the original draft of the Constitution, education was a state subject. The word “education” has been broadened over time and it includes within its ambit education at all levels, that is from the primary level to post-graduate level and also encompassing professional education.

The approach of NEP 2020 towards “education”:

Indian education from the Vedic times has tried to incorporate the Vedantic concept of ‘integral education’ which indicates the distinctive characteristics of our education system in the olden days where scholars from faraway lands would come to enrich themselves with the flavour and dynamics of Indian education. There were experimental schools amongst them the pioneering one is Shantiniketan, founded and established by the first Nobel Laureate of India, Rabindranath Tagore, and the schools established by Shri Aurobindo and Jiddu Krishnamurthy are also attractions to global educationists. The rich content of philosophy, liberal thinking, traditional, innovative and transcendental methods and procedures culminated in the education of India during the ancient times. The integration of body, mind and soul transforms oneself into an illuminating mind, radiant soul and strong body. By practicing the ways of winning over passions, vices and earthly desires along with the integration of knowledge from across disciplines, develops wisdom in the mind that knowledge transcends to the supra mental stage where one recognises and acknowledges oneself as a part of the entire universe.

The NEP 2020 has been drafted by enslaving to the Anglo-American holistic education where the students’ demand and choice of higher education is based on the prevailing market conditions. This has been due to the demand for education modules based on skills to cater to the market requirement. Holistic education may create more unevenness in the society and lead education to become a trade in services. The holistic education which is mentioned in the policy liberates the education system from science, social science, humanities and arts and integrates with Science, Technology, Engineering and Mathematics (STEM) to activate creativity, innovation and critical thinking. This will develop the capabilities of the intellectual, aesthetic, social, physical, emotional and moral. The NEP suggests that such a framework would help develop well-rounded individuals in fields across arts, humanities, languages, sciences, social sciences, and professional, technical and vocational fields. However, the dilemma is that even after

accommodating various skill-based modules into the policy, NEP 2020 also envisages upon value education.

In integral education one learns duties and obligations first and not the gain, profit, benefit and the result. When education is integral and transcendental, one does not additionally think about the value education. Integral education, however, is concerned with knowledge of a learned mind when the person works for others' benefit.

The first National Education Policy was adopted in 1968 which focussed on centralized education policy. In 1986, the government brought the second National Education Policy, emphasising the removal of disparities and equalising educational opportunities, especially for Indian women, Scheduled Tribes (ST) and the Scheduled Caste (SC) communities. The present NEP is the third version where for the first time, it has determined the guiding principles of the entire education system for the country with an identified space of variation.

The present policy ensures integrity, transparency and resource efficiency through a regulatory framework. The effective realisation of the policy has to be derived from the experience of the education system. The policy has made the teacher, the centre of reforms to be introduced in the education system. The underlying principles are respect for diversity, respect for local languages, promoting multilingualism and the power of language in breaking barriers of teaching and research, observing and abiding by the constitutional spirit of equality, justice, democracy, freedom and liberty of thought, emphasising good governance and empowering the regulatory system. The policy has been drafted keeping within the purview of education being a concurrent subject.

The NEP 2020 has been framed on the following objectives: first, to attain the Sustainable Development Goal 4 (SDG 4) adopted by India in 2015; second, to keep pace with the changing of knowledge universe; third, to meet the challenges in the employment paradigm; fourth, to bridge the gap between the learning outcome and the requirement in the market with major reforms and lastly to create opportunities for equitable access to high-quality education. Nonetheless, the policy is being executed gradually because of the inherent delay in the implementation mechanism through the executive branch of the government. There is also a fear that the outcome of this education plan may bring saturation of trained personnel belonging to the same field, creating a socio-economic issue of unemployment in the country.

“Education” as provided under the Constitution:

Entries 25, 26 of the Concurrent List talk about education including technical education, medical education and universities subject to the provisions of Entries 63,64, 65 and 66 of List I, vocational and technical training of labour. Thus, the State Legislature may establish Universities under Entry 25. But these Universities may also be controlled by Union List Entries mentioned above. Hence, every Legislature seeking to establish a State University is required to be cleared by the Union Government under the provisions of the Constitution. Under Entry 25 List II (concurrent List) predominance has been given to the centre in matters of education.

The Indian Constitution incorporates different approaches to education depending on the nature of the knowledge to be imparted. Some are in the form of Fundamental Rights of citizens and some are only Directive Principles of State Policy being mere directives to the Government. The recently substituted Article 45 provides provision for early childhood care and education to children below the age of 6 years where the duty is cast upon the State to take necessary steps to endeavour to provide the same.

Before the Constitution (86th Amendment) Act 2002, Article 45 required the state to make provisions within 10 years for free and compulsory education for all children until they complete the age of 14 years. The object of this Article was to abolish illiteracy in the country.

In the landmark judgment of *Unnikrishnan v. State of Andhra Pradesh* (AIR 1993 SC 2178) the Hon'ble Supreme Court observed that the "Right to Education" up to the age of 14 years is a Fundamental Right within the meaning of Article 21 of the Constitution, however, the obligation of the State to provide education is subject to the limit of its economic capacity. "The Right to Education" flows directly from the "Right to Life" was declared by the Hon'ble Apex Court. Fortunately, this judicial verdict finally found a place in the Constitution by the Constitution (86th Amendment) Act, 2002. Right to Education has been added as a Fundamental Right in Article 21A.

Article 41 relates to the right to work, to education and public assistance in certain cases. Article 46 provides for the promotion of education and economic interest of scheduled castes, scheduled tribes and other weaker sections. These directive principles are fundamental in the governance of the country, but they cannot be enforced through a court of law. However, the Supreme Court has interpreted the directive principles in a very liberal manner and has even enforced some of them under appropriate situations.

Article 51A of the Constitution provides many fundamental duties that are related to the kinds of education that can be imparted in educational institutions which can also indirectly support to implementation of the new education policy. Clause (k) has been inserted in Article 51A by the Constitution (86th Amendment) Act, 2002, imposes a fundamental duty upon "every parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of 6 and 14 years".

The fundamental duties cannot be enforced; however, can be promoted only by constitutional methods. However, they can be used for interpreting ambiguous statutes where the constitutionality of the Act is challenged, the court may look at Article 51A to uphold it.

In the case of *Francis C Mullin v. Administrator, Union Territory of Delhi*, AIR 1981 SC 746, the Hon'ble Apex court observed, "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, free moving about and mixing and co-mingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend on the extent of the economic development of the country, but it must, in any view of the matter, include a right to basic necessities of life and also the right to...constitute the bare minimum expression of human self."

Again in *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802, the Hon'ble Apex Court observed that "the right to education is implicit in and flows from the right to life. Concentrating on the right to live with human dignity, the court clarified that the right to live with human dignity enshrined in Article 21 derives its life and breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include....educational facilities....in order to enable a person to live with human dignity....".

Mohini Jain v. State of Karnataka, AIR 1992 SC 1858, the Hon'ble Supreme Court embarked upon whether the right to education is a guaranteed right to the people of India under the constitution. Referring to Articles 21, 38, 39(a), 39(f), 41 & 45 of the Constitution, it was observed that the right to education has not been guaranteed expressly as a Fundamental Right under Part III of the Constitution but the framers of the constitution have made it obligatory for the state to provide education to its citizens. Emphasis was put by the court on the view that the Preamble of the Constitution promises to secure to all its citizens'

justice (social, economic and political) combining social and economic rights along with political and justifiable legal rights. The court held that the three-pronged justice (social, economic and political) promised by the Preamble is only an illusion to the teeming millions who are illiterate. It is only through education which equips a citizen to participate in achieving the objective enshrined in the preamble. The fundamental right to speech and expression cannot be fully enjoyed unless a citizen is educated and conscious of his individualistic dignity. Education in India has never been a commodity for sale, their Lordships declared.

NEP 2020 is subservient to implement all these rights which have been recognized as fundamental rights now and then. It is submitted that there is no question of difficulties in implementing the tenets of NEP when there is a liberal interpretation of the subject of 'education' by the Hon'ble Supreme Court of India. Furthermore, in Articles 26(a), 29, and 30 of the Constitution there are special provisions for protection specifically of the interest of minorities having different culture or language, education by and to minorities. These Articles talk about the rights of minorities to establish and administer such cultural and educational institutions. Article 26 (a) specifically states that "Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes. Religious denomination or any section thereof will include religious minorities barring the restrictions as given in Article 28".

Conclusion:

Article 21 A and the Right To Education Act (RTE Act) came into effect on 1 April 2010. The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that "no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education".

The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25% of seats to children. It also prohibits all unrecognized schools from practice, and makes provisions for no donation or capitation fees and no interview of the child or parent for admission. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age.

Since the Act was enacted by invoking Article 21A as inserted in the Constitution by the 86th Constitutional Amendment Act thereby making the Right to Education of children between 6 to 14 years a Fundamental Right and now NEP has given a further flip to this right. It is high time to bring the RTE Act as envisaged thereby converting the dreams of the framers of the Constitution by making free and compulsory education up to the age of 18, a fundamental right.

As a vision for the future of education in India, NEP 2020 has attempted to fill some of the gaps long felt in the school sector. The extension of free and compulsory education from only grades 1-8 to preschool and secondary levels is welcome and overdue. Extending compulsory education both to preschool and secondary education will require a very large financial allocation.

NEP aims to facilitate an inclusive, participatory and holistic approach, which takes into consideration field experiences, empirical research, stakeholder feedback, as well as lessons learned from best practices. It is a progressive shift towards a more scientific approach to education. The prescribed structure will help

to cater for the ability of the child – stages of cognitive development as well as social and physical awareness. If implemented in its true vision, the new structure can bring India at par with the leading countries of the world.

Indeed, the policy failed to address the role and conformity of the RTE Act, if the policy aims to transform the India's education system by 2040 the free and compulsory education as given under Article 21A of the Indian Constitution. Right to Education Act should be properly implemented by the Government and proper monitoring of its implementation has to be ensured at all levels. This gap between vision and tasking will need more than action plans and implementation strategies. Hence, it requires the right steps to ensure that aspirations are matched by implementation. It is in this context that the NEP should gear itself towards the demands of the 21st Century and the needs of the people and the country. It is the prime responsibility of the government to establish primary schools in every village of our country with proper classrooms, toilets and good and dedicated teachers. An awareness programme in every corner of our country should be done so that the parents are well convinced and aware of the education to send their children to the School. Free and compulsory education should be made up to the age of 18 years by bringing the laws at par with NEP. If the RTE is extended to 18 years of age, a much bigger number of our population will pursue higher education.

References

Articles:

1. Chaturvedi, S (2003). Right to educate and be educated under Indian constitution. *Indian Bar Review*, Vol. XXX (4), The Bar Council of India Trust, 2003.
2. Gupta, S (2002). Right of the child to education in India. *Indian Bar Review*, Vol. XXIV (2), The Bar Council of India Trust, 2002.
3. Mishra, Pawan kr. (Dr.) (2010). Constitutional contours of right to education: an implicit fundamental right. *Indian Bar Review*, Vol. XXXVII (1&2), The Bar Council of India Trust, 2010.
4. Mitra, N. L. (2020). An introductory note: National policy on higher education. *Journal of the Indian Law Institute*, 62(4), 390–412. <https://www.jstor.org/stable/27296725>
5. Pandey, D. (2020). Glimpses of NEP 2020 and the Fundamental Right to Education. *The National Education Policy 2020*, 9.

Books:

1. Pandey, J.N. (Dr.) THE CONSTITUTIONAL LAW OF INDIA. 48th Ed., Central Law Agency, 2011.
2. Shukla, V.N. CONSTITUTION OF INDIA. 11th Ed., Eastern Book Company, 2011.

Cases:

1. Bandhua Mukti Morcha v. Union of India, AIR 1984 SC 802.
Bapuji Education Association v. State, AIR 1986 Kar 119.
Francis C Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746.
2. Gram Vikas Shikahan Prasarak Mandal v. State of Maharashtra, AIR 2000 Bom. 437. Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.
T. M. A. Pai Foundation v. State of Karnataka, (AIR 2003 SC 355).
Unnikrishnan v. State of Andhra Pradesh (AIR 1993 SC 2178);(1993) 1 SCC 645.

Reports:

1. The National Education Policy 2020, Ministry of Human Resource Development, Government of India

2. National Education Policy 2020 https://www.mhrd.gov.in/sites/upload_files/mhrd/files/NEP_Final_English_0.pdf (last visited 02/09/2020) Statutes:
3. Right to Education Act, 2009.
4. The Constitution of India.
5. Websites:
6. “Right to Education, Wikipedia, the free encyclopedia”, en. Wikipedia. Org/wiki/ right_to_education, visited on-25/04/15.
7. “Education in India-Wikipedia, the free encyclopaedia”,en. Wikipedia. Org/wiki/ Education-in –India, visited on-25/04/2015.
8. “Right to Education Act- Home: National Portal of India”, www.archive.india.gov.in/citizen/education.php?Id=38, visited on-25/04/15.
9. “History of education in India”, www.academia.edu/1747225/history_of_education_in_india, Visited on 25/04/15.
10. Kumar, V.Sasi (Dr.), “The education system in India-GNU project-free....” https://www.gnu.org/education/edu_system_india.html, visited on 26/04/15.
11. Ponnemil, V.A., “Brief history of education in India-India education-new...”education.newkerala.com>India education, visited on 26/04/15.
12. “United nation convention on the rights of the child”, [www.childlineindia.org.in/ united_nation_convention_on_the_right_of_the....](http://www.childlineindia.org.in/united_nation_convention_on_the_right_of_the....)”, visited on 26/04/15.
13. “Right to education (RTE) Act, 2009/2010 in India 2014-15”, www.icbse.com/right_to_education_Act, visited on 27/04/15.
14. “Is the right to education reality for India’s children...”,www.business-standred.com/.../is_the_right_to_education_a_reality_for_ind....,visited on 27/04/15.
15. “Right to education-ministry of human resources...” Mhrd.gov.in>school education-, visited on 27/04/15.
16. “Right to education/AzimPremji Foundation”, [www.Azimpremjifoundation.org/ right_to_education](http://www.Azimpremjifoundation.org/right_to_education), visited on 27/04/15.
17. “Right to education Act-Wikipedia”, en.wikipedia.org/.../right_of_childern_to_free_and_compulsary_educ..., visited on 28/04/15.
18. “Fundamental rights in India-Wikipedia, the free encyclopedia”, en.wikipedia.org/wiki/fundamental_rights_in_india, visited on 28/04/15.