

Right to education comes under the category of social, economic and cultural rights. Right to education is one of the few rights that are crucial for a person's ability to live a meaningful life and to develop his personality. It has also been included in constitutions of various countries and also in international treaties. Though there is a huge difference between including it in the treaties and implementing them, yet states have, in some ways, agreed that illiteracy is a backdrop to the growth and development of any nation and needs to be eliminated.

As Galbraith said, "Education not only makes the democracy possible; it also makes it essential. Education not only brings into existence a population with an understanding of the public tasks, it also creates their demand to be heard."¹ This paper aims to analyze the state obligation in fulfilling its duty towards the right to education and the steps it should take to make this right a reality for those who are unable to access basic education.

The primary source describing the right to education is Article 26 of UDHR that guarantees the right to education and is the basis on which other human rights instruments include this right.² Moreover, the right to education in Article 13 of ICESCR³ is a universal right that is granted to every person regardless of his age, language or social origin and sub clause (2) of the Article mentions various steps that need to be taken by the states to realize this right, i.e. to make education accessible to everyone without any discrimination. Article 13(3) and 13(4) also recognizes sub category of the right to education by including right of parents in exercising right to education. Another instrument that was established in 1960 was UNESCO, which aims to eliminate discrimination and promote equality of opportunity. Further, CEDAW i.e. Convention on the Elimination of All Forms of Discrimination ensures that women have equal right in the field of education in a non discriminatory way. The convention also aims to reduce the female drop out rates by providing proper facilities to them. Moreover, The Convention on the Rights of the Child (CRC) is a unique convention in the view that it includes one new element that is lacking in the other instruments, namely the obligation to ensure that school discipline is administered in a manner consistent with child's dignity.⁴

Civil and political rights are said to be cost-free, are capable of immediate implementation and puts negative obligations whereas, socio-economic rights, of which right to education is a part, require financial resources and have a positive obligation on the states i.e. obligation to actively take measures.⁵

There are 2 aspects, which are found in Article 13 and 14 of ICESCR that explain the obligations on the state towards the right to education. One is that to realize this right, a state has to make an effort to make education easily available and accessible.

¹ Galbraith, *The Good Society in: The Humane Agenda* (Houghton Mifflin, 1996).

² Universal Declaration of Human Rights, art. 26

³ ICESCR, art. 13

⁴ Moeckli, Shah & Sivakumaran, *Human Rights*, p. 240.

⁵ Id. at 238.

This means a positive state obligation. Other aspect relates to negative state obligation, which requires a state to not interfere in private matters of individuals. People are free to choose between different modes of education according to their own needs. Further, right to education can be described by 4-A scheme of the inter-related features, which is made by the Committee on Economic, Social, and Cultural rights and the *UN Special Rapporteur*.⁶ These features are availability, accessibility, acceptability and adaptability. This 4-A scheme is a useful device to analyze the content of the right to receive an education and the obligations of state parties resulting from it as well as to measure the level of its realization.⁷

In addition, obligations may be divided into general and specific obligations that can be derived from Article 2(1) of ICESCR and General Comments of the Committee on Economic, Social and Cultural Rights. General obligations means obligation to prohibit discrimination of any kind in the area of education whereas specific obligations include obligations to adopt and implement a comprehensive strategy for the development of education system in the institutions.

The most debatable issue surrounding the right to education is the issue of whether education should be free to all. There are many obstacles to access free education that includes discrimination, fees and other charges which parents find unable to payoff. A state is considered to be in breach of its duty if it denies access of education to those who are not able to pay fees due to financial constraints. The obligations introduced by the Committee on Economic, Social, and Cultural rights i.e. the obligations to respect, protect and fulfill becomes crucial for the state to implement the right in an effective manner. The question arises that whether states are able to fulfill their duty in implement the right to education. Although right to education is mentioned in the constitution of most of the developing nations also, but they lack in the effective implementation of the same. For instance, right to free education to children is provided in most of the international documents, South African Constitution gives everyone the right to basic education but doesn't mention that it should be free.⁸ Some legislation exempts those who cannot afford the fees but then there arises an obstacle of discrimination against other group. A more efficient approach would be to levy general taxation wherein the poorest that do not earn enough to pay their taxes, are exempt.⁹

For this to be effectively implement, a proper check needs to be done on schools that charge them fees in other forms such as registration charges or by minimizing their intake of those particular students. Moreover, to make the system more efficient, the relevant principles were identified by the *UN Special Rapporteur*, which is the 4-A scheme for primary schools. As per the scheme, there should be proper availability of infrastructure and teachers, accessibility for all in a non-discriminatory manner, acceptability in terms of culture, language, and religion, and adaptability to changing circumstances.¹⁰

⁶ *Supra* Note 4 at 241.

⁷ *Supra* Note 4 at 242.

⁸ Sandra Fredman, *Human Rights transformed*, p. 217.

⁹ *Id.* at 217.

¹⁰ *Supra* Note 8 at 220.

To eliminate discrimination in the field of education, the right to equality is linked to the right to education. There is a big obstacle in the countries like US and Europe regarding the race, religion and socio-economic status of people. In Europe, these problems are experienced by Roma people.¹¹ There is residential segregation also that leads to a high percentage of Roma People in poor schools. Further, in case of *D.H. & others*¹², which is a major case against the Czech Republic, it was alleged on behalf of the children who were put in 'special schools' after psychological testing. It was alleged that a vast number of Roma children were placed in such schools that provided low quality education. The government in this case argued that tests were only describing the low intellectual level of the children.¹³ The Grand Chamber, by reversing the order of the Chamber of the European Court of Human Rights, stated that the principle of indirect discrimination applied to Article 14 of the Convention. It was also held that the State could only justify such a disparity if it could show that the aim was objectively and reasonably justified and that there existed a reasonable relationship of proportionality between the means used and the aim pursued.¹⁴ In another case against the State of Andhra Pradesh in India¹⁵, the issue was whether Section 3A of *Andhra Pradesh Educational Institutions Act, 1983*¹⁶ was violative of the equality clause enshrined in Article 14 of the Constitution of India. It may be analyzed from this case that the obligations created under Article 41 and 45 of the Constitution can be discharged by the state through its own institutions or by aiding, recognizing or granting affiliation to educational institutions. Justice Mohan stated "education transfigures the human personality into a pattern of perfection through a synthetic process of the development of body, the enrichment of mind, the sublimation of the emotions and the illumination of the spirit."¹⁷ The right to education is implied by fundamental right to life when read in conjunction with the directive principle of the education. Therefore, Section 3A of the Andhra Pradesh Educational Institutions Act, 1983 is violative of the equality clause in Article 14 of the Constitution.

It can therefore be said that education effectively helps in achieving growth, improving health facilities, increasing employment opportunities and also helps in eradication of poverty to a great extent. Right to education is a right that is interlinked to other human rights as well. It is a powerful right in a view that "it provides an individual with control over the course of his life and in particular, the control over the state."¹⁸ It is very clear that an effective action needs to be taken to achieve equality of opportunities in education. There is a greater need for the state

¹¹ *Supra* Note 8 at 220.

¹² *DH and others v The Czech Republic* (App No. 57325/00)

¹³ ID at para 10-11 & para 50-51.

¹⁴ *Supra* Note 12.

¹⁵ *Unni Krishnan, J.P. & others v State of Andhra Pradesh & Others*, AIR 1993 SC 2178

¹⁶ Section 3-A was introduced in the 1983 Act where these private engineering colleges took the stand that they are entitled to admit students to the extent of 50 percent of seats according to their choice irrespective of merit so long as they have qualified in the entrance test

¹⁷ *Supra* Note 15

¹⁸ *Supra* Note 4 at 248.

to fulfill its obligations.¹⁹ The right to education can be characterized as an empowerment right because “exercising this right enables a person to experience the benefit of other rights”.²⁰ Education promotes other socio-economic rights as well such as the right to health, right to food and right to work, which in turn helps in developing the standard of living of the citizens. All other rights including civil and political rights can get a meaning only when an individual becomes educated. Right to education also proves to be a very essential for ethnic minorities as it further strengthens their cultural identity.²¹ It can be said that education contributes in an important way to the promotion of the essence of human rights, namely living in human dignity.²²

¹⁹ The special rapporteur on the right to education also puts forward the recommendations for the promotion of equal opportunities in education on the basis of a human rights framework. Report of the Special Rapporteur on the right to education, Kishore Singh; *A/HRC/17/29*

²⁰ *Supra* Note 4 248

²¹ *Id.*

²² *Id.*