



Right to Education: Comparative Study of Constitutional Contours, Legislative Initiatives and Institutional Arrangements in India and Pakistan

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Abstract- Present work aims at exploring the legislative and institutional infrastructure for ensuring the prompt assurance of the right to education on both sides of the border. In India, the right to education has been brought from the directives of policy-Article 45- to the inventory of fundamental rights-Article 21A and in Pakistan; the insertion of Article 25A has given the right to education new dimensions. So, the paper dogmatically analyses the issue as to what extent, extant arrangement are in league with provisions contained in the constitutions, conventions and declarations adopted by both of the countries.

Keywords: Education, Constitutional Contours, Legislative Initiatives, Institutional Arrangements, India, Pakistan

I. INTRODUCTION

Notwithstanding the ideological basis of a state, the importance of education as potent weapon of civilization has always been acknowledged. For instance, Aristotle calculates that every one will like to have the legislator focused on education for youth; for neglecting the education causes harm to the constitution. The citizen should be molded to suit the form of government under which he lives (Wilson, 2000).

The case of India and Pakistan is of immense interest due to, *inter alia*, a couple of factors; firstly both of them have been under the subjugation of colonial masters for about one hundred years without compromising on their identities and secondly, after being emancipated from colonial clutches, both of them have been practicing their ideologies without any apprehension of being eclipsed by the other. Undoubtedly, with the arrival of third character i.e. Britishers, a character with liberal and progressive thoughts, socio-political landscape of the sub continent was likely to be affected. As to the Muslims' side, some philanthropists like Sir Syed Ahmad Khan had preempted that the Muslims would not be able to compete the Hindus unless they equip themselves with modern education and for this purpose, he had to launch a crusade in the form of Aligarh Movement. On the contrary, the Hindus readily realized that not to get education meant another era of non-Hindu's subjugation for an indefinite period.

Importance of Education

As the Muslims and the Hindus come of two diametrically opposite ideologies, it becomes apposite to know the vision and aspirations of legendary leadership about education. Primacy of education can be measured from the datum that Allah, in His first revelation to His Messenger Muhammad PBUH, has ordained; "read in the name of your Lord, Who created man from clot. Read for your Lord is Generous, Who teaches by means of pen, teaches man what he does not know". Similarly, Adam owes His superiority over the angles due to knowledge and in this context it is suffice the say that the dialogue between the Allah Almighty and the angles is sufficient to establish the inevitability of education. And He instructed Adam the names of all things; then He put all before the angles and asked to tell Him the nature of those entire if yee were right. They submitted;

“Glory to thee: of knowledge we have none save what thou hast taught us: in truth it thou Who are perfect in knowledge and wisdom”. Similarly, Prophet Hazrat Muhammad PBUH has been ordained to increase his knowledge (20:114 Sura Taha) and the Quran also claims that the prophet has been sent to teach wisdom. It proclaims: “But the best of provisions is right conduct so fear Me, O ye that are wise” (2:197 Sura Baqra). Likewise, Hazrat Prophet Muhammad PBUH has also highlighted the importance of knowledge by holding that one should seek knowledge from cradle to grave. In another Hadith, the Prophet of Islam reiterated that pursue knowledge as far as China. While making comparison of an ‘Aalam’ with a martyr, Hazrat Muhammad PBUH emphasized that a drop of sweat of the brow of a thinker was better than the thousands blood drops of the martyr. The Last prophet has been reported to have expounded, “Whoever seeks a way to acquire knowledge Allah will make easy his way to paradise” (Sahi Muslim). As to the need to seek knowledge, the Prophet of Islam stressed that seeking knowledge was obligatory upon every Muslim (Sunan Ibn Majah).

Undoubtedly, the role of educated people and the education had already been preempted by the pioneers of the Two Nations Theory, but the rhetoric made by the father of the nation had its own efficacy. In his address as president of All India Muslim League at annual convention, on 23rd of March, 1940, the Quaid reiterated the people to anchor as true servants of Islam for organizing the masses economically, politically, socially and educationally. Thus, the Quaid added that competence in such fields would be a key for their reorganization as separate power. The Quaid also emphasized that the education was one of the fundamental need of good citizenry whose acquisition was equally obligatory for all. He also emphasized that the education was matter of life and death.

Being the basic fabrics of the society, the education not only brings about economic and social prosperity in the society but also deemed to be the assurance of the societal peace and healthy populace (Fiaqat Hussain v Federation of Pakistan through Secretary Planning and Development Division, Islamabad, 2012). The dearth of educated people brings about negative bearings on the society and the opportunities of new inventions and discoveries cannot be materialized without the help of such people. The saga of right to education can conveniently be appreciated by bifurcating it in two segments i.e. firstly, situation prior to the introduction of eighteenth constitutional amendment and secondly, post eighteenth constitutional amendment. In pre-amendment era, there was no independent fundamental right such as right to education and the court had to infer it by according extending the frontiers of the right to life. For instance, the court held that role of state had become more ubiquitous and the actions taken, laws made and policies formulated by it were likely to affect the individuals in a multifarious ways (Rana Aamer Raza Ashfaq v Dr. Minhaj Ahmad Khan, 2012). In this context, the court added, the courts were obliged to accord comprehensive and dynamic interpretation to the fundamental rights including the fundamental right of ‘right to life’. Right to life, the court interpreted, was no longer confined merely to the availability of means of livelihood or not to deprive an individual of life without due process of law rather the same turned out to be the aggregate of the rights necessary for leading a dignified life and right to certain level of education was concomitant of right to life for which the state was obliged to ensure necessary initiatives (Rana Aamer Raza Ashfaq v Dr. Minhaj Ahmad Khan, 2012).

Global Trends

It is interesting to note that the initiative of universalisation of education was taken by International Bureau of Education, a private organization, in 1924 in Geneva and within a short span of five years it attained the status of an inter-governmental organization (Maharshi Mahesh Jogi v Vishwavidyalaya V State of Madhya Pradesh & Orthers 2013). The principal task to be executed by this body was to ensure global coordination amongst the institutions which were imparting education. Albeit, the IBE had to remain within a limited circle but with the emergence of UNESCO in 1945, it did demonstrate a much broader approach as per discussion on the above mentioned case. The dawn of 10th of December, 1948 would be reckoned as phenomenal as the emergence of Universal Declaration of Human Rights gave new dimension to this right. Preamble and Article 26 of the UDHR reiterates that it is equally obligatory for every one- individual or institution, to make efforts for the promotion, pedagogically, of deference fundamental freedoms incorporated in the Declaration. The Article added that, in line with the said declaration; the education should strive for the promotion of human rights by spreading knowledge and skill amongst the dwellers of the planet. The said Article compendiously

adumbrates that elementary education shall be compulsory and free (Article 26 of the Universal Declaration Human Rights). However, general availability of professional and technical education shall be ensured and higher education, subject to merit, shall be within easy reach of all the segments of the society. This concept of education has also been replicated, almost four decades after the UDHR, in the United Nations Declaration of the Rights of the Child with slight lingual variation. The declaration demonstrates that the parties to the Convention recognise that the education is right of a child and pledge to achieve it progressively by adhering to the principle of equal opportunity in a couple of ways; firstly, by rendering the primary education free and compulsory for all and secondly, by discouraging the flourishment of secondary education in various forms. Especially, the Convention adds, including but not limiting to the vocational education obligating the states; (a) to make it available and accessible to every child (b) to demonstrate adequate initiatives as to free education and extending financial aid in case of needy students.

“Education for all” was the popular slogan in the year 2000 as it witnessed the assemblage at, of about 1100 philanthropists hailing from 164 countries of the globe, Dakar, capital of Senegal. The initiative clinched the adoption of a fascinating slogan “education for all”. The drive succeeded in chalking out a course of action under the rubric of Dakar Framework of Action, 2000 by setting out six goals to be achieved by 2015. Albeit, Dakar Framework of Action had to focus on the education of child but, it specially demonstrated its propensity to the initiation of a crusade for the flourishment of free, compulsory and good quality primary education for the girls and children coming of less fortune families (Dakar Framework of Action, Article 7, Goal No.2). Similarly, in the same year, the global leadership made another pledge, in the form of Millennium Development Goals, to leave no stone unturned in equipping all the children, regardless of their gender, with the primary education (United Nations Millennium Declaration, Goal No.2).

So, the upshot of the growing corpus of narrations turns out to be that the global community has always been cognizant of the importance of the free, compulsory and qualitative education. To this end, all the signatories to the Conventions and other International Instruments have solemnly pledged to take pragmatic initiatives for purging the society of the ill effects of illiteracy. So, in the light of pledges made by both of the countries legislative and institutional arranged shall be analysed on the yardstick of quality, free and compulsory education.

Constitutional Arrangements in Pakistan

In Pakistan, right to education is primordial as we witness discreet constitutional provisions since the dawn of independence in 1947 especially, under the constitution of 1973; Articles 37 (b) and Article 38(d) have paved the way to the insertion of constitutional provisions encompassing free and compulsory education. Article 37(b) and 38(d), being the directives of policy obligated the state to make arrangements for the eradication of illiteracy, provision of free and compulsory secondary education within shortest span of time, provision of basic essential commodities like bread and butter, clothing, accommodation, education and medical care to the citizen regardless of their gender, race, creed and caste who are, due to their sickness, infirmity or unemployment, unable to make both ends meet respectively. It was owing to its constitutional obligation that the state, by acknowledging its fundamental right, has inserted that it would provide all such facilities on envisaged lines to the children between the ages of five to sixteen years in such a way as would be prescribed by framing law (Article 25-A of the Constitution of 1973).

Constitutional Landscape in India

At the other end of spectrum, India, like Pakistan, has been cognizant of the importance of the education for the uplift of its masses. Under the Constitution, the right to education is stretched over three parts i.e. (a) Fundamental Rights (b) Principles of State Policy and (c) Fundamental Duties (Constitutional Right to Education, 2019). It stemmed in Article 21 and reached a crescendo with the insertion of Article 21-A via constitutional amendment (The Constitution (Eighty Sixth) Amendment Act, 2002). It is equally relevant/interesting to note that, originally, education was a state subject. It was not until 1976 that, vide an amendment, article 42 was amended and the education was placed under concurrent legislative list (The Constitution, Amendment Act, 1976). Under the new arrangements, the Central Government could legislate

on the subject of education according to its whims and caprice. But, first half of the 1980s witnessed a paradigm shift from the debris of directive of state policy to the crescendo of fundamental right. Thus, the state mandated itself to make arrangements for the provision of free and compulsory education to all the children from six to fourteen years of age in a way to be determined by framing law (The Constitution (Eighty Sixth) Amendment Act, 2002). Similarly, it is state policy to make arrangements for early childhood care and education for all the children till the attainment of their age of six year (Article 45 of the Constitution of India, 1950).

As to the role and importance of the education, both of the countries have been on the qui vive. Therefore, in consonance with the constitutional asseverations and catena of judicial pronouncements, both the countries have made legislative and institutional endeavours to ensure free and compulsory education within their respective frontiers. This segment of the article will assess, inter alia, the extent to which envisaged arrangements have been made in both of the jurisdictions in order to provide free, compulsory and qualitative education. In this context, the Indian legislature, in 2009, did pass the Right of Children to Free and Compulsory Education Act, 2009, (hereinafter called Right to Education Act) as enabling enactment.

Right to Free Education in India

In order ensure free education to the children ranging between 6 to 14 years of age, the Act requires of the Central and State Governments to share the financial responsibilities. This move, it is submitted, will be equally efficacious in lessening the fiscal burden on any of the governments. Secondly, in private sector, unaided institutions have been obligated to reserve 25% of the total seats for the children coming of weaker, disadvantaged, low-income segments of the society or being the off springs of scheduled castes or tribes (Section 12 (c) of the Right of the Children to Free and Compulsory Education Act, 2009). Such children would be eligible to get free and compulsory primary education from such private schools. It would not be out of place to mention that free education means that the child has been emancipated from the burden of paying any kind of fees, charges or expenses which may be a bottleneck in the way of his/her getting education. Similarly, the Act stipulates adequate arrangements for prohibiting the imposition of capitation fee (Section 13 of the Right of Children to Free and Compulsory Education Act, 2009).

Prior to the enactment of the law, especially in private sector, levying of exorbitant amounts under the garb of capitation fee had become routine of the day and a lot of children would remain without education due non payment of capitation fee. With the enforcement of Act, however, the chances of extorting money under the premise of capitation have been minimized to a great extent due to penal provisions of the Act. The violation thereof, the law prescribes, will entail penal consequences in the form of fine extending to ten times the capitation fee levied by the school or any other person. Similarly, putting a child subject to any type of screening test has also been rendered to be a barrier in the way of free and compulsory education. The new law has also addressed this issue in a very effective way. Like the capitation fee, the issue of putting a child to screening test has been made amenable to fine extending to twenty five thousand for the first violation and fifty thousand for each subsequent contravention thereof (Section 13 of the Right of Children to Free and Compulsory Education Act, 2009). The encouraging aspect of the new legislation is that it has been enforced across the board.

Pakistan and Free Education

Like its counterpart, Pakistan has, in compliance with its international pledges and constitutional obligations, also made sincere efforts to impart free and compulsory education to the targeted age group of the children. It is relevant to mention that after the elimination of the concurrent legislative list, the education has become a provincial matter and Provincial Legislature was expected to dwell upon the issue on war footings but instead of making any pragmatic effort, the Legislature remained insensitive to the issue for about four years. It was not until 2014 that the Government could enact a law on the subject (The Punjab free and Compulsory Education Act, 2014).

In the meantime, however, the Federal Government took the initiative and promulgated a law to impart ordained education to the required groups in the schools established by the Federal and Local Government and in the capital territory of Islamabad (The Right to Free and Compulsory Education Act, 2012). In this law, free education means the education to be imparted to the children of five to sixteen years of age without any expenditure in respect of stationery, school bags and transport to be incurred by the children (Section 2 (f) of the Right to Free and Compulsory Education, Act, 2012). The evangelical flavour of the law renders it so sacrosanct that even the schools in private sector have to impart free and compulsory education to such number of children as its annual grant bears to its annual recurring expenses (Section 10(a) of the right to Free and Compulsory education Act, 2012). Similarly, in case of a school which is not recipient of any kind of official aid, is obliged to admit, as a first step, in class one and then in every subsequent class, to maximumly 10% of the total number of students of that class, disadvantaged children in the neighborhood and will provide free education till highest level of that school. As a palliative initiative, the law also obligates the state to adhere to pragmatic tactics for imparting free and compulsory pre-school education and providing early childhood care to the kids above the age of three years (Section 9 of the Right to Free and Compulsory Education Act, 2012). This responsibility will, of course, be shared by the schools, even not receiving aid, as well in the same proportion as has been prescribed in the case of other schools (Section 10(b) of the Right to Free and Compulsory Education Act, 2012).

The provisions pertaining to the proscription of capitation fee do sound in the same tone as they do resonate in Indian jurisdiction. Total ban has been imposed on levying any kind of capitation charges in Pakistan and in case of violation; the accused school or person will have to face penal consequences in the form of fine to the extent of twenty times the amount charged from the child for first violation and in case of subsequent contravention fifty thousand for each count (Section 11 of the Right to Free and Compulsory Education Act, 2012). Similarly, putting a child or his parents to any kind of screening trial has also been deemed to be a barrier in the way of said education in this country. Being cognizant of its harsh effects, the new law speaks of total prohibition of the screening procedures and in case of its commission, the accused school will have to face penal consequences in the form of fine extending to fifty thousand rupees in case of first violation and one hundred rupees in case of each subsequent violation (Section 11(2)(b) of the Right to Free and Compulsory Education Act, 2012). As has been said earlier that after the insertion of Eighteenth Constitutional Amendment, the matter of education has become provincial domain and as a result of constitutional mandate, all the provinces have, to bring the education at envisaged degree, enacted laws on the subject (Punjab Free and Compulsory Education Act, 2014, Sindh Right of Children to Free and Compulsory Education Act, 2013, Balochistan Compulsory Education Act, 2014 and Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act, 2017).

In this context, Sindh Government took the lead and enacted the law in 2013 which, inter alia, obligated the Government to make arrangements in terms of free education to the children of five to sixteen years. The law, it is submitted, seems to be the facsimile of the federal law except with a few dissimilarities. For instance, in the case of disadvantaged child, the law goes a step ahead of the federal law and includes a child whose parents have fallen victim to any terrorist activity to be notified by the Provincial Government (Section 2 (c) of the Sindh Right of Children to Free and Compulsory Education Act, 2013).

Right to Quality Education

Right to education has not been confined to simply imparting education but also extends to providing quality education (Fiaqat Hussain v Federation of Pakistan through Secretary Planning and Development Division Islamabad, 2012). In this context, the teacher becomes a potent instrument to ensure innovation in the society. In this context C.S. Lewis has aptly opined that the task of modern educator is not to cut down the jungles but to irrigate the deserts (Caughey, 2009).

Moreover, a teacher's knowledge, skills and techniques are instrumental in enhancing not only the peculiarity and efficacy of the education but is deemed to be equally apt as well as a prerequisite of research and innovation (Fiaqat Hussain v. federation of Pakistan through Secretary Planning and Development Division Islamabad, 2012). Albeit, no exhaustive concept of quality education has been given under any of the

documents/instruments pertaining to quality education but in the light of different surveys/reports and dogmatically analysed data/material the term encompasses the following areas: firstly, education conducive to cognitive faculties of the child, secondly, education fostering respect for the fundamental rights and other freedoms, thirdly, education inculcating a sense of peace, tolerance, equality and friendship, fourthly, education instrumental in furthering respect not only for child's own and other's patents but other's cultural identity, language and values, fifthly, education aiming at the promotion of respecting the environment, sixthly, assurance of accessing information from multifarious sources, and lastly, ensuring the respect for non academic rights of the child i.e rest, leisure, play etc according to United Nations (2020). Albeit, quality discourse has been on a conspectus of the normative documents pertaining to education in Pakistan, but inchoate tenor of the policy makers tuned out to be the principal bottleneck in ensuring the quality education. For instance, since the dawn of independence in 1947, one national conference on education in 1947, one report of commission on national education in 1959, six national education policies have been held/prepared/ formulated respectively in Pakistan. Main thrust of the National Education Policy of 1979 was Islamization of education in the country without any heed to the issue of quality. The national Education policy of 1992 did demonstrate, though in a bleak manner, the key issue by pledging to raise the quality of an extensive training programme for in-service teachers. Similarly, in National Education Policy of 1998 promises were made: firstly, to ensure improvement in quality, efficiency and access to elementary education, secondly, reinvigoration of governance, supervision, evaluation and monitoring of education in Pakistan. In National Education Policy of 2009, access to education and improvement in quality were reiterated by the architects of the policy. Similarly, in Draft National Policy on Education, 2017 asseverating pledges have been made by its architects to achieve quality targets not only in public educational institutional institutions but private institutions as well.

As to India, it is submitted that, albeit, the law does address the core question of quality education by obligating the Union Government and the State Governments to venture upon the legislative process. For instance, section 23 of the Right to Education Act, 2009 mandates the Central Government to authorize an academic authority for laying down minimum qualifications for his/her appointment as teacher. Similarly, prohibition of teachers engaging themselves in private coaching/ tuition houses may conveniently be termed as an endeavour to over shadow the ripples of deprivation (Section 28 of the Right to Education Act, 2009). Although, prima facie, inadequacy of the salary seems to be the *raison d'être* of their indulgence in such unethical activity, but the issue can be overcome by awarding them decent scales of pay. Undoubtedly, a teacher, who after attending his official duties, indulging in such activities, would not be able to discharge his duties diligently on next working day. Resultantly, either it will lead to absenteeism or pave the way to underperformance – a repercussion detrimental to quality of education. Merely, adding penal provisions as a desisting devise will not be of palliative effect (Section 24 of the Right to Education Act, 2009). The teacher who has been deemed to be the personification of enviable characteristics (State of U.P. v. Anad Kumar Yadav, 2017) needs to be brought out of the swamps of sky touching inflation and webs of societal inequalities.

The issue, to a great extent, has been debated and handled compendiously in a chain of erudite judgments taken down by the apex court.

Is Education a Statutory Right or Fundamental Right?

Initially, the right to education was not expressly provided as fundamental right in the constitution, rather, the same was deemed to be imbued in the right to life (Syeda Shazia Irshad Bokhari v Government of the Punjab, through Secretary Health, PLD 2005).

Right to life has, as enshrined the Constitution (Article 9 of the Constitution, 1973), long been acknowledged all over the globe and given a stretched interpretation (Ahmad Abdullah v Government of Punjab, PLD 2003). In modern era, pervasive role of state has increased the task of the courts manifold as the action taken by the state affects the individuals in host of ways. Thus, owing to this role of the state, the courts have to give comprehensive and dynamic interpretation to the fundamental rights of the citizens in the same article of the constitution. Resultantly, the right to life is no more confined to mere physical existence or a right not to be deprived of except with due process of law, rather it embraces within its ambit the whole corpus of rights

which can be reckoned essential for living a dignified life in the society and the dream of dignified existence would likely to be shattered without attaining a certain level of education. For this purpose, the state is enjoined to take certain pragmatic initiatives in the same case discussed above. First decade of the twenty first century may be rated as the outstanding year in the constitutional archives of Pakistan owing to, inter alia, a couple of factors: first, abolishment of concurrent legislative list and second, inscription of Article 25-A in the constitution. The courts had, being fully cognizant of the importance of the education, hitherto, been declaring it to be concomitant of right to life, but the incorporation of Article 25-A in the inventory of fundamental rights was indicative of the fact that the society as well as the legislature were fully aware of the significance of the mass enlightenment for sustainable headway of the country (Ghulam Mustafa v Province of Sindh through Secretary, Education Department, CLC, 2010). So, it seems that the entire gamut of legislative and institutional arrangements has been callous about elevation of education from the slums of ordinary right to the crescendo of fundamental right in Pakistan. The authorities should have made recourse to this optimal strategy since the dawn of independence in 1947. However, after suffering from gross laches, the right to education has, at last in Pakistan, been recognised as fundamental right.

II. CONCLUSION

The study concludes that both the countries should have made the initiatives immediately after their independence from the colonial regime but even then their efforts to make up the leeway in bringing the education from the debris of right to free to the crescendo of fundamental right to free and compulsory education is really laudable. Despite demonstrating less pejorative headway in bringing the education at this level, both the countries need to undertake palliative legislative and institutional initiatives. Both of them have been showing nuanced approaches in terms of quality education. An urge to adorn the kids with ornaments of education will remain an elusive idea unless, inter alia, following are assured by both of the jurisdictions.

As the poverty is rampant on both sides of the borders, therefore, both of the governments need to undertake poverty alleviation derives for the emancipation of the masses from the clutches of this menace. Secondly, budgetary allocation also seems to be stray aberration and successive governments have been unashamedly contributing to its perpetuation. It needs to be enhanced at any cost. Thirdly, ineffective involvement of parent and community is also a debilitating factor in terms of low enrolments. So, effective institutions should be established to achieve the target. Especially in Pakistan, after the incorporation of 18th constitutional amendment, the quantum of responsibility has increased manifold. Last but not the least, both of the governments have been adverting to quality education but demonstrating myopic approach towards the establishment of enabling framework.

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