



ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - journal@lexresearchhub.com

VOLUME III, ISSUE I

OCT - DEC, 2021

<https://journal.lexresearchhub.com>

Lex Research Hub
Publications

DISCLAIMER

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Research Hub Journal On Law And Multidisciplinary Issues), an irrevocable, non exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of **Lex Research Hub Journal On Law And Multidisciplinary Issues** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Research Hub Journal On Law And Multidisciplinary Issues.

[© Lex Research Hub Journal On Law And Multidisciplinary Issues. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]

EDITORIAL BOARD

Editor-in-Chief

Mr. Shaikh Taj Mohammed

Ex- Judicial Officer (West Bengal), Honorary Director, MABIJS

Senior Editors

Dr. Jadav Kumer Pal

Deputy Chief Executive, Indian Statistical Institute

Dr. Partha Pratim Mitra

Associate Professor, VIPS. Delhi

Dr. Pijush Sarkar

Advocate, Calcutta High Court

Associate Editors

Dr. Amitra Sudan Chakraborty

Assistant Professor, Glocal Law School

Dr. Sadhna Gupta (WBES)

Assistant professor of Law, Hooghly Mohsin Govt. College

Mr. Koushik Bagchi

Assistant Professor of law, NUSRL, Ranchi

Assistant Editors

Mr. Rupam Lal Howlader

Assistant Professor in Law, Dr. Ambedkar Government Law College

Mr. Lalit Kumar Roy

Assistant Professor, Department of Law, University of GourBanga

Md. AammarZaki

Advocate, Calcutta High Court

ABOUT US

Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) is an Online Journal is quarterly, Peer Review, Academic Journal, published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essays in the field of Law and Multidisciplinary issues.

Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

**POSITION OF CHILDREN’S RIGHT TO
ELEMENTARY EDUCATION IN WEST BENGAL:
A CRITICAL ANALYSIS**

Author –

Lalit Kumar Roy

Assistant Professor, Department of Law,
University of Gour Banga, Malda, West Bengal.

Dr. Om Prakash Sharma

Assistant Professor and Coordinator, Department of Law,
University of Gour Banga, Malda, West Bengal.

Abstract

Education has become one of the primary necessities in all over the world after food, cloth and shelter. Human society without education cannot flourish or grow because it doesn't have the intelligence to build and maintain society. In 2002 Parliament through the Constitutional (86th Amendment) Act, 2002 inserted Article 21A in the Indian Constitution providing free and compulsory education to every child between of 6 to 14 years of age¹. Later on, in 2009, the Right of Children to Free and Compulsory Education Act, 2009 came into force. In this reference the West Bengal State has launched West Bengal Right of Children to Free and Compulsory Education Rules, 2012 to fulfil the object of the above Act in the State. Apart from the Rule, the Government of West Bengal has launched various schemes, plans and policies to provide education to children. The paper focuses on the consequences of various schemes, different policies and plans of the Govt of West Bengal on children education.

Keywords: Education, Children, Social Impact, West Bengal.

Introduction

The most important tool which can give a bright future to an individual, as well as a nation, is education. Education is one of the basic human rights which is very essential to exercise the other rights. It is an instrument of social change as it promotes fundamental freedom and empowerment that yields several developmental benefits. Education has its impact in all spheres of our lives because it helps us to earn respect and recognition in society. Among the various reasons, education is one which is responsible for drawing boundaries between developed and under-developed countries. It generates different skills, knowledge and habits of the people which conveyed through generation to generation by teaching, training etc. Thus, a citizen who is well educated improves his nation's social and economic status including the political scenario. One cannot imagine a life without education because life without it became a misery. Education empowerment helps everyone to remove poverty, safety and security against crime, trade and commerce, empowerment of women, upliftment of backward section of our society. With these

¹ Right to Education, Ministry of Human Resource Development (Aug. 3, 2020, 10:40 AM), <https://www.mhrd.gov.in/rte>.

advantages, it is very essential in everyone's life and ignorance of which may lead to many problems like poor health, poor living standard and less creative mind. It also encourages people to innovation and creativity and helps people to create a better society.

The Concept of Right to Education and its Development

In India, after Independence, several changes had taken place in the political, social and economic field of the Indian society. In 1950, India gets its Constitution and at that time the right to education was incorporated in Part IV, under Article 45 of our Indian Constitution, falling under the head of Directive Principle of the State Policy. The Right to Education and its implementation guaranteed under Article 45 depends upon the economic condition of a State and it was not mandatory on the part of the state. The main problem which was faced by the States at that time is that there exist poverty and child labour.

However, the Union Government to achieve the objective of Article 45², decided to establish the All- India Council of Elementary Education, the task of which is to advise the govt. bodies relating to the matters of elementary education. Thereafter in the year 1964, a commission namely the Kothari Commission was constituted to examine the progress of elementary education and make recommendations.

The Govt. of India also formulated several national policies to promote education in India. The former Prime Minister Smt. Indira Gandhi was formulated as the first National Education Policy in the year 1968. Later on, Rajiv Gandhi, the Former Prime Minister formulated the second National Education Policy in the year 1986

The Government of India adopted the National Policy for Children in 1974, with the goal of ensuring the execution of children's rights guaranteed by the Indian Constitution and various international instruments.

Later, after the judgement in *Unni Krishnan v. State of Andhra Pradesh*³ in 1993, a demand to recognize education a fundamental right was raised by several activists, organizations etc. The Indian Constitution was then amended by the 86th Amendment Act, 2002, which added a new article, Article 21A, to Part III of the Indian Constitution, recognising the right to education as a

²Cont. Art. 45 "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years." THE CONSTITUTION (EIGHTY-SIXTH AMENDMENT) ACT, 2002.

³ Unni Krishnan v. State of Andhra Pradesh, AIR 2178, 1993 SCR (1) 594 (INDIA).

basic right. The Right of Children to Free and Compulsory Education Bill, 2009, was later passed by the Indian Parliament in 2009.

CONSTITUTIONAL PERSPECTIVE

Education is regarded as the most powerful and comprehensive tool to the advancement of human society. The right to education has been recognised as the inherent and basic human right by several important international instruments like UDHR, ICESCR, CRC etc. The international instruments that talk about the right to education provide that elementary education should be free and compulsory for everyone. Elementary education makes the base for the mental development of a child and equips her with skills, empowerment, confidence which help to pave the way for a successful future of her. Hence, every nation needs to focus its attention on providing qualified elementary education to their children.

India was listed among those 135 countries that had made the right to education as the fundamental right for every citizen. In the words of **Amartya Sen**, the Nobel Laureate, “Education is the backbone of India”⁴. The framers of the Indian Constitution realized the importance of education long before, so at the time of framing the constitution, they inserted Articles 45, 41 etc. under the provisions of Directive Principles of State Policy (DPSP), including several other Articles which are bearing the functioning of the educational system.

Like, under Art. 28 freedom to attend in certain religious educational institutions has been provided; Art. 29 which prohibits discrimination on any of the following grounds i.e. race, caste, ethnicity, religion, language or any other ground during admission into any State-run educational institutions; Minorities can organize and administer their own educational institutions under Article 30. ; Art. 41 provides the right to education; Art. 45 provides that within ten years from the commencement of the Indian Constitution, the State has to provide free and compulsory education for all the children below 14 years of age; under Art. 46 an imperative duty has been imposed on the State to promote economic and educational interest among Scheduled Castes, Scheduled Tribes and other weaker/backward sections of our society; according to Art. 337 for the benefit of Anglo-Indian community a special provision has been introduced for educational grants; according to

⁴Mayank Sharma, *Right to Education in India*, Lawctopus, (July, 28, 2020, 8 PM)
<https://www.lawctopus.com/academike/right-education-india>.

Art. 350A at stage of primary education the State shall endeavour to provide facilities for instruction in the mother- tongue for every child; under Art. 350B for those linguistic minorities a special provision for their education has been provided.⁵

However, it is until 2002, the Right to Education did not get fundamental recognition in India. In 2002, India to ensure the international bound made right to education as the fundamental right through amendment. After so many years the Government of India feels the need to recognize education as a fundamental and basic right as the provisions under the DPSP relating to education are inadequate to realize the importance of education and further these provisions are also not enforceable by the courts. Finally, the 86th Constitutional Amendment Act, 2002, makes three significant changes to provide free and compulsory education for children at the elementary stage of education.

- i. After Art. 21 of the Constitutional (86th Amendment) Act of 2002, a new clause, Article 21A, was added to make education a basic and fundamental right for all children aged 6 to 14. According to Art. 21A. "The State shall provide free and compulsory education to all children aged 6 to 14 years in such manner as the State may, by law, determine".⁶
- ii. By this Amendment Act, Art. 45 have been modified where the concept of early childhood care and education for every child has been introduced till their 6 years of age⁷.
- iii. Further this Amendment Act inserted a new clause (k) to Art. 51 which imposes an imperative duty upon the parents or guardians to provide their child's educational opportunities between the age group of 6 – 14 years.⁸

By this amendment, India not only recognizes education as a fundamental right but also as a fundamental duty to give more emphasis on education.

⁵P M Bakshi, *The Constitution of India* (LexisNexis, 16th ed, 2019).

⁶ Id at 91.

⁷ Id at 135.

⁸ Id at 139.

The Scenario in West Bengal

The literacy rate in West Bengal is 77.08% and ranked 20th as per Census 2011⁹. Though the data is almost 9 years old and a lot has been changed from 2011 to 2020. After the Right of Children to Free and Compulsory Education Act, 2009 passed by the Parliament, the West Bengal Government took a step forward and passed the Right of Children to Free and Compulsory Education Bill, 2012 to provide free and compulsory education to every child between the age group of 6 to 14 years. Apart from the above Bill, the Bengal Government has launched various schemes, plans and policies under the Department of Women and Child Welfare Society to provide free and compulsory education for every child. Kanyashree Prakalpa, Scholarship for students with disabilities studying below class IX, Scheme for payment to Handicapped Students, Shishu Aloy etc. are some of the important schemes for child education. The state has two boards namely West Bengal Board of Primary Education and West Bengal Board of Secondary Education dealing with primary and secondary education. Apart from these, there is a madrasah board for the Muslim community.

In a developing state, not every family is financially sound and everyone can't afford their children in high priced private schools, in this regard free and compulsory education for children of 6-14 years of age has been the only option for the economically and backward class of children of the society to get elementary education.

School Education Department Government of West Bengal

The main objective of the State School Education Department is to provide quality education in a healthy environment that will help them to be a responsible citizen of the country in the future. The aim of the Department is to universalize the education in entry-level in schools as has been predicted in the Right of Children to Free and Compulsory Education Act, 2009. The Department by its several dedicated initiatives and schemes ensured the children's education with proper skills and knowledge to make them capable to handle difficulties successfully in their future life. The Department also gives facilities for the development of children by various social schemes such as

⁹Census of India 2011, Wikipedia (July, 29, 2020, 2:00 PM) https://en.wikipedia.org/wiki/List_of_Indian_states_and_union_territories_by_literacy_rate.

Mid-day meal, Kanyashree, Sobuj Sathi etc¹⁰. The School Education Department has various parastatals, some of these are West Bengal Board of Primary Education, West Bengal Board of Secondary Education, Paschim Banga Samagra Siksha Mission.

The mission of this Department is the holistic growth and development of Students and progression of Teachers and Headmasters. The Department has specified some goals to achieve which are the following:¹¹

- Everyone in the state has free access to education, regardless of religion, gender, class, colour, or place of birth.
- To ensure that all students are treated fairly and that no discrimination is made on the basis of race, religion, gender, or socioeconomic status.
- To ensure gender neutral educational among all.
- To ensure that all female students, particularly those from backward, reserved, and minority areas, are enrolled.
- To ensure that all female students, particularly those from backward, reserved, and minority areas, are enrolled.
- To ensure and maintain improved hygiene and sanitation in all schools by providing separate facilities for boys and girls, ample water for washing and drinking, and a safe atmosphere in which to study and learn.
- Recruiting competent instructors, fostering quality teaching and learning, and providing appropriate teaching-learning aids are all ways to ensure and maintain high-quality education.
- To guarantee that instructors receive high-quality training, with a focus on student-centered teaching and participatory learning.
- Arrangements for the training of unqualified instructors should be made as soon as possible.
- To rationalise the pupil-teacher ratio at all levels of education.
- To promote computer literacy and education even further.
- To provide library and laboratory facilities to secondary and higher secondary schools.

¹⁰School Education Department Government of West Bengal (Aug. 4, 2020, 1 PM)

<https://banglarshiksha.gov.in/about>

¹¹ School Education Department Government of West Bengal (Aug. 4, 2020, 2 PM)

<https://banglarshiksha.gov.in/about#vision>

- To ensure that all students who have completed secondary school are enrolled in a higher secondary school.

Government’s Schemes, Plans and Policies

For education, one needs to go to school but the state has faced many problems for sending children to schools. For these reasons, the government has implemented a number of initiatives, plans, and policies aimed at providing free and compulsory education to all children aged 6 to 14. Followings are some leading schemes of the govt.

- i. **Kanyashree Prakalpa:** According to the Prohibition of Child Marriage Act, 2006 the age of girls to get married is 18 and 21 for boys. Despite the Act in force from 2006, child marriage especially girl was in practice for years. In 2013 West Bengal Government launched the Kanyashree Prakalpa which seeks to improve the well-being of girls especially economically weaker section of the society by giving direct money to their bank account. The objective of the scheme is to secure that the girl should at least stay at school until she attains 18 years of age. The purpose of the government is to stop child marriage and promote girl child education. The onetime 25000 rupees is a good amount for an economically backward family whose annual income is 120000 or less. The conditions to get the scheme benefit that she engaged in academics and unmarried when she turned 18 years of age.
- ii. **Shishu Aloy:** The strength of any nation depends on its children’s health and education. In West Bengal, children under the age of six make up 11.07 percent of the population. It is the duty of the state to ensure the well-being and holistic development of the children, so that the future of the nation keeps in safe hands. Early childhood care and education are necessary for proper growth and development that is why the Government of West Bengal had launched “Shishu Aloy” in 2015. Some of the remarkable points of Shishu Aloy is its child-friendly atmosphere, vibrant and colourful classroom, theme-based approach, provision of mid-day-meal, a reasonable ratio of teacher-student, creating awareness on the maintenance of personal hygiene etc.¹²

¹²Shishu Aloy, Department of Women and Child Development and Social Welfare (Aug. 22, 2020, 1.34 PM) http://wbcddwsw.gov.in/User/shishu_aloy

- iii. **Sobuj Sathi:** Sobuj Sathi scheme introduced by the West Bengal Government in 2015-2016 Financial year by the Finance Minister Amit Mishra to distribute bicycles to an estimated forty lakh students in Govt. and Govt. Aided schools. The object of the scheme is to increase retention in the school, encourages students for higher studies, promote environmentally friendly and healthy means of transportation. Since 2015, more than seventy-three lakh students received the benefit of this scheme. Though the scheme is for class IX to XII students, this will benefit the students who have completed their elementary education, so Sobuj Sathi is more than a bicycle distribution scheme.

- iv. **Midday Meal:** Midday meal helped the economically underprivileged communities who were unable to go to school due to their food crisis at home and many of them forced to be child labour mostly those who were without parents. The purpose of the scheme is to provide a meal during school time to all the children and there should be no children worry about hunger while studying at school. Though the Scheme is a project of Central Government.

It cannot be denied that various schemes, plans and policies of the State have helped many underprivileged children who otherwise could not get the elementary education due to their poverty, economically backwardness or other reasons. In West Bengal, free education is provided by govt schools or govt. aided schools. But with the changing time and tough competition in every sector building the base of children in the early state becomes necessary. All these schemes will attract children to go to school but with the use of new teaching methods and digital modern technologies, students will show more interest in learning. The State used to be the prime place for education and almost all other states in India followed West Bengal in the past time but now the situation has been changed and states like Delhi are leading in providing free elementary education with quality and advanced infrastructure. Most of the parents shifting from private school to govt. schools.

The Need of the Hour

Now the question arises as to what needs to be done for providing better quality education? just by providing free foods, free cycles or other things will not fulfil the true object of the Right to Education. The schemes and policies of the government help in attracting the children to go schools

but in the 21st century with the rising to private schools and competition in every field state needs to have some changes from its traditional schooling system.

In a democratic context, the quality of education must be challenged, discussed, theorised, and re-conceptualized. Even if we should support family choice in their children's education, the task of defining great education cannot be left to the market or ascribed only to parental responsibility. A strong state school system is required to ensure quality basic education for all students.

As the quality of education and the quality of teaching are intricately related, teacher development and enhancement of classroom pedagogy must be prioritised in public school reform. As a result, the current practise of teacher education needs to be drastically improved. The syllabus, curriculum, and textbooks (not to mention their impact on the child's formative mind) all have a role in the quality of children's learning. It is equally depending on the manner of assessment, whether it is “eliminative” or “evaluative.” These educational system's basic nuts and bolts are frequently constructed by specialists and experts, rather than by schoolteachers charged with the critical responsibility of developing young minds and igniting their imagination and curiosity. However, schoolteachers are rarely represented on textbook boards, syllabus committees, or examination councils, despite the fact that their intellectual contributions could make a significant difference in improving educational content on the one hand and assessing children's deeper learning on the other. Teachers may engage local resource persons on their own initiative to provide students a taste of music, dance, art, aesthetics, theatre, language learning, and so on - the kind of exposure that every school needs outside of instruction. We must reconsider what is and is not feasible. If politics is the art of the doable, a well-run government school should be within reach. It's important to remember that, after all, a decent government school system must be governed not by superhumans but by ordinary people like us, with the purpose of providing social justice to children through proper education.

Concluding Remarks

With 23 districts and more than 9 crore population, West Bengal becomes the fourth populous State in India. The Govt. of West Bengal through its various policies, succeed to attract the mass population in primary education. Although the net enrolment ratio in primary schools has substantially increased it does not mean that quality education is accessible to all. This lack of quality education causes several problems including drops out, depending on the private tuitions.

In rural areas, it has been seen that the students of the primary schools only come at the time of the meal. Further as per the report¹³ titled, “Primary Education in West Bengal: Scope for Change”, released by Pratichi Institute and Shiksha Alochona, the cost of an adequate meal for a child per day would cost Rs. 7.71 but the present allocation is only Rs. 4.13. Thus, the children are provided with an insufficient meal.

Further, the scheme of “Kanyashree”, gives every girl child at primary and upper primary level Rs. 500/ every year for education purpose and on time Rs. 25000 after completion of 18 years of age. However, the question is whether this meagre sum is sufficient to cover all of a child's needs. The government should reconsider paying a girl child Rs. 500 every year. and must increase the amount as Rs. 500 is too low compared to modern-day expenses.

Another problem is that in rural areas, most of the primary schools have no proper infrastructure and the teachers are also not well trained. As education does not mean only to learn the bookish things, rather it develops one’s intellectual, social and moral capabilities. The state should positively look into the matter.

There is a lack of human resources in primary schools, especially the shortage of teachers. As per reports¹⁴ primary institutions in west Bengal run by only one teacher increased from 3.3% in 2014-2015 to 4% in 2015-2016. However, the average pupil-teacher ratio has increased from 49:1 in 2004-2005 to 23:1 in 2015-2016. Thus, it proves that there is a lack of proper management which results in the unequal distribution of teachers. Even nowadays for various court cases pending in the High Court of Calcutta primary and upper primary teacher recruitment has been delayed which ultimately hamper the equal distribution of teachers in various schools and depriving children of quality education. Moreover, education has become a matter of politics. Politicians use it as a tool of vote banking, especially in rural areas. Political leaders in rural areas misuse their powers in establishing schools at the places according to their wishes without following the exact rules which create hardship for the child to go to school if it situates far away.

In the present educational system, the state should spend more money on educational infrastructure, modern classroom equipped with advance technologies. In modern society, professional education is needed which will help individual self-dependent in future without

¹³Supra note 12

¹⁴SuvojitBagchi, *The Good and Bad in Bengal's Primary Education*, The Hindu (Aug. 31, 2020 2.13 PM) <https://www.thehindu.com/news/national/other-states/the-good-and-the-bad-in-bengals-primary-education/article24375055.ece>

degrading primary education. At present only in private schools, there are kindergartens. In State-owned schools, education starts only in class one. Hence the pre-schooling is completely ignored in the state-owned schools which are not a part of elementary education. This will make the parents and guardian rely on private schools rather than state-owned schools. So, the state should prefer pre-schooling the children along with elementary education. Education should be a complete physical, mental, psychological and spiritual well-being. This should be imparted to all children for the betterment of the nation.

Education can change the whole world but a country without education can go to vail in one or two decades. Somalia is an example where just 10% of children go to primary school. On the other hand most educated countries e.g., United States of America, Switzerland, Finland, Norway or Sweden etc. are developed and advanced. As a result, elementary education plays a critical role in the development and transformation of society as a whole, as it establishes the student's foundation. But it's just not about the education it's about advance quality of education which leads a country forward towards development.

So, what are the secrets of the world best education system? what are the things that make them special? and what can India learn from these systems? These are some questions that arise when we talk about the best education system. India needs to take the positives from the world best education system and apply it to India as required and as practical. If the elementary education base of a child is strong then the chances that he or she can be more successful in future. National Education Policy 2020 will bring more positive changes but it will also take a lot of time as Ramesh Pokhriyal Nishank (Minister of Education, MHRD, INDIA) said that “India’s education system to be world-class by 2040 and during this time students and teachers have to keep learning new ideas”.