



Defining human dignity of child and education in India: Human rights perspectives

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Abstract

Indian Constitution in 1950 was a significant event not only in the political history of India but also in the history of social justice 'and human rights' [1]. Article 21, 21A and Article 45, 51A of the Indian constitution protects Right to life with dignity of children and provide the right to free and compulsory education Act 2009. So we need to study and review the human rights in books and in action to protect the rights of children in India. India has made significant progress in universalizing primary education, and is moderately on track to achieve this Millennium Development Goal. Ultimately Human dignity gets when child acquired self-respect, independent thinking and education in this perspectives. The Right to education Act 2009 is the means to achieve the goals enumerated in Indian Constitution.

Keywords: human dignity, child rights to education, human rights

1. Introduction

India gained the status of free and sovereign nation-state in August 15, 1947 after a long struggle and countless sacrifices. It adopted Constitution on November 26, 1949 which came in enforcement on January 26, 1950. It is often considered as one of the gigantic constitutions in the world which establishes a democratic state. The inception of the Indian Constitution in 1950 was a significant event not only in the political history of India but also in the history of social justice 'and human rights' [2]. Article 21, 21A and Article 45, 51A of the Indian constitution protects Right to life with dignity of children and provide the right to free and compulsory education Act 2009. According to Dr B. R Ambedkar " *However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad. However bad a Constitution may be, it may turn out good if those who are called to work it, happen to be a good lot*". So we need to study and review the human rights in books and in action to protect the rights of children in India.

2. Child rights law and the convention on the rights of the child:

In human rights' law and documents such as the CRC, it is assumed that every human being, including children, have *inherent dignity*. The key to a human rights approach is that children must be accorded the inherent dignity of all members of the human community. This not only addresses the unequal treatment that children are subjected to, but also anchors this in the larger understanding that inherent dignity is a quality of all life. Being treated with dignity and respect is not a privilege to be earned and guarded. It is a birth right of all members of the human community. In its Preamble, the CRC begins with the "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world..." [3] Throughout its preamble and in its articles, the CRC makes many references to concepts related to the idea of 'human dignity' and children. These provisions may be classified into

two groups: (1) those provisions that attempt to ensure a 'social responsibility' for the *nurturing of human dignity in children* and (2) those that aim to *prevent violations of children's human dignity*. (See Chart 2).

3. Regarding the category of "nurturing dignity":

The CRC states, for example, that the governments (State Parties) must seek to ensure the care necessary for the child's well-being; that governments must use their best efforts to ensure that the best interest of the child is the basic concern of the parents; that children should be treated with humanity and respect; and that governments must take all appropriate measures to promote the recovery of victims of child maltreatment. Regarding the category of "protecting children from violations of dignity," the CRC states that all State Parties must take every measure-legislative, administrative, social and educational- "to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse"; and that State Parties shall ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment [4]."

4. Definitions of Human Dignity [5].

In our analysis of student responses to the question "What is your definition of 'human dignity'," definitions reflecting adult-centered/colonial as well as child-centered-human rights emerged. Examples of definitions consistent with a *human-rights or child-centered model* include, among others, the following:

1. "valuable, worthy, deserving of respect";
2. "the right of everyone, regardless of race, class, gender...to have the respect of everyone else";
3. "That you are somebody. You are not worthless";
4. "that it matters that you are here";
5. "Worthy...Having respect for every human life on earth...Being alive, having life, deserves respect.";
6. "Having self-respect. Respect for others";

7. "a person who has character, integrity and is considerate";
8. "compassionate, able to forgive self and others";
9. "Having compassion. It is treating everyone with the respect that they deserve. It is being able to empathize with those who have it rough. And, it is displaying kindness, even to those who are not as kind.";
10. "All forms of treatment that comes from the heart that shows love and respect for another...";
11. "Self-respect. Believing in oneself regardless of accomplishments and failures. But that respect cannot be obtained,
12. it is a natural right as a person";
13. "I believe human dignity to be the quality of being worthy. At times honor and dignity may seem to parallel each other, but there is a distinct difference between the two. Honor is a characteristic that is granted to us as a result of our good deeds. A good name, or a good reputation. Dignity is given to us as a natural right at birth. All humans possess dignity and no one has a right or the ability to take that dignity away ^[6]."

In the US, the rights of children are often sacrificed in favor of the "rights" or power of parents and other caretakers. These parental "rights" include parents' power to treat children as they wish without any outside ("government") interference unless a gross violation of minimal caretaking standards has occurred (Polonko and Lombardo 2005). Here, except in extreme cases ('abuse' or 'neglect', as defined by law), the child is more often than not, the loser (Lombardo and Polonko, 1999). In addition, "family" responsibilities toward children are often the limit of 'social' or 'collective' responsibilities for protecting and supporting children.

5. Legislative and Judicial perspectives on human rights in Part III and Part IV of the Indian constitution

In the early years of the Indian constitutional experience, civil liberties and the protection against deprivation of life and liberty were understood mainly as imposing duties of restraint on governmental agencies as well as private citizens. However, in contrast to these justiciable 'negative' rights the directive principles of state policy allude to several socio-economic objectives which had a 'positive' dimension. Even though the directive principles are non-justiciable, there language is couched in the terms of positive obligations on governmental agencies to enable their fulfillment ^[7]. The fundamental rights of citizens enumerated in Part III of the Constitution are justiciable before the higher judiciary, Part IV deals with the 'Directive Principles of State Policy' that largely enumerate objectives pertaining to socio-economic entitlements ^[8].

The Directive Principles aim at creating an egalitarian society whose citizens are free from the subject physical conditions that had hitherto prevented them from fulfilling their best selves. They are the creative part of the Constitution, and fundamental to the governance of the country. However, the key feature is that the Directive Principles are 'non-justiciable' but are yet supposed to be the basis of executive and legislative actions. The primordial importance of these principles can be understood by the following words of Dr. B.R Ambedkar, when he insisted on the use of the word 'strive' in the language

of Article 38 which mentions the governmental objective of an equitable distribution of material resources:

"We have used it because it is our intention that even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these directive principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfillment of these directives. ... Otherwise it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go." [Constituent Assembly Debates, 19-11-1948]

Thus, the enforceability of measures relating to social equality though incorporated in aspirational terms was never envisaged as being dependent only on the availability of state resources. In some instances, the Courts have privileged fundamental rights over directive principles while in others they have creatively drawn a harmonious relationship between the two. An example of this is the expansion of the conception of 'personal liberty' under Article 21 of the Constitution which was traditionally invoked in the civil political context to check governmental abuses. The judicially expanded understanding of the same now includes several socio-economic entitlements for citizens which place positive obligations on the state. What is interesting is that the reading in of these socio economic entitlements by judges has often directly referred to the language of provisions contained in the part dealing with directive principles. In this sense, judicial creativity has transformed the substantive character of the protection of life and liberty. In the words of Justice Bhagwati: ^[9]

"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 one self in diverse forms."

Notably, over the decades, the Supreme Court has affirmed that both the Fundamental Rights and Directive Principles must be interpreted harmoniously. It was observed in the *Kesavananda Bharati* case ^[10], that the directive principles and the fundamental rights supplement each other and aim at the same goal of bringing about a social revolution and the establishment of a welfare State, the objectives which are also enumerated in the Preamble to the Constitution. Furthermore, in *Unni Krishnan, J.P. v. State of Andhra Pradesh* ^[11] Justice Jeevan Reddy declared:

"The provisions of Parts III and IV are supplementary and complementary to each other and not exclusionary of each other and that the fundamental rights are but a means to achieve the goal indicated in Part IV".

The court has also recognized access to free education as a justiciable right ^[12]. This decision prompted a Constitutional amendment which inserted Article 21-A into the Constitutional text, thereby guaranteeing the right to elementary education for children aged between 6-14 years. The Courts have also pointed to Directive principles in interpreting the prohibitions against forced labour and child labour. The enforcement of these rights leaves a lot to be desired, but the symbolic value of their constitutional status should not be underestimated ^[13].

'Throughout the world, literally hundreds of millions of children continue to be victims of the most egregious forms of exploitation, violence, abuse and neglect. Children are sold outright or forced into bondage to work off family debt; over

one million children are trafficked each year; over one million children, predominantly girls, are exploited in the sex industry; "as many as 100 million women and girls alive today have been genitally mutilated"; hundreds of millions of children are still engaged in exploitive child labor, with close to 6 million of these children working in virtual slavery; children grow up in war zones-- facing death, maiming as targets or combatants in violence; millions of children are starving, homeless, living on the street, increasingly forced to witness or participate in horrifying acts of violence in war refugee camps; and, in their own homes, children are subjected to beatings, sexual abuse, neglect and domestic violence--forced to watch acts of violence between parents and other loved ones' (UNICEF 2005; UNICEF 2000; ILO 1998; WHO 2002; Garbarino *et al.* 1991) [14].

6. The Millennium Development Goals (MDGs) Report, 2015 [15].

MDGs points out that India has witnessed significant progress towards meeting the MDGs, with some targets having been met ahead of the 2015 deadline. It says that India has made significant progress in universalizing primary education, and is moderately on track to achieve this Millennium Development Goal. Enrolment and completion rates of girls in primary school have improved and are catching up with those of boys, as are elementary completion rates. It also addresses the issue of large number of children remaining out of school and failing to complete primary education, particularly in the case of girls, children in rural areas and those belonging to minority communities.

The survey commissioned by the Ministry of Human Resource Development (MHRD) through an independent agency in 2014 reported an overall decline in the number of out of school children in the age group of 6 to 13 years in the country. While there were 134.59 lakh out of school children in 2006, it decreased to 81.50 lakh in 2009 and the number further reduced to 60.64 lakh children in 2014 in the same age group. The latest figure accounts for 2.97 percent of the total children in the said age group.

Census 2011 showed that about 32 million children aged between 6 to 13 years have never attended any educational institution, even though government estimates of out of school children show substantial lower number. This variance may be due to different criteria for identifying out of school children and the nature of data used for research study [16].

7. Dr. B. R. Ambedkaron Education

Dr. Bhimrao Ramji Ambedkar (1891-1956) stated in the Constitution Assembly, —I know today we are divided politically, socially, and economically. We are a group of warring camps, and I may go even to the extent of confessing that I am probably one of the leaders of such a camp (Mukherjee 2011, p. 209). 'Ambedkar gave so much importance to education. He believes that education is essential to moralize and socialize the individuals, especially the backward classes to have a cognizance of self. For him, education facilities should be provided to those who are illiterate and backward, and on the other, to those who want to wipe out the roots of caste system in order to realize the ethos of democracy at the ground level. In this context, Ambedkar observed: —To give education to those who want to keep up the caste system is not to improve the prospect of democracy in

India but to put our democracy in India in greater jeopardy (Ambedkar 1956, p. 31). Article 46 further, as argued earlier, emphasizes his vision which directs the state to take steps to promote the education of the weaker sections—most impotently the Scheduled Castes and Scheduled Tribes. The credit also goes to Ambedkar for the illiteracy programmes and free education up to matriculation guaranteed by the different state governments. Later, the Right to Education' (Article 21 A) has become the internal part of the Constitution which is earlier part of directive principles as Article 45' [17]. Dr. Ambedkar " In enacting this part of the constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the execute power they will have surely it is not the intention to introduce in this part, these principles as more pious declarations. It is the intention of the assembly that in the future both the legislature and the executive should not merely pay lip-service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country".

8. Conclusion

According to Mahatma Gandhi said, "The real difficulty is that people have no idea of what education truly is, we assess the value of education in the same manner as we assess the value of land or of share in the Stock exchange market, we want to provide only such education as would enable the student to earn more, we hardly give our thought to the improvement of the character of the educated." To quote Swami Vivekananda, "Education is not the amount of information that we put into your brain and runs riot these, undigested, all your life. We must have life building, man-making, character-making assimilation of ideas. If you have assimilated five ideas and made them your life and character, you have more education than any man who has got by heart a whole library. So that Human dignity gets when child acquired self-respect, independent thinking and education in this perspectives. The Right to education Act 2009 is the means to achieve the goals enumerated in Indian Constitution.

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