

Right to Education as a Fundamental Right: A Review on Sri Lankan Perspective

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“Education is the most powerful weapon which you can use to change the world”

– Nelson Mandela –

Abstract

Education is nothing but an instrument to explore new knowledge for the progress of human civilization. Accordingly, education is the socially organized and regulated process of continuous transference of socially significant experiences from previous to following generations (Naziev,2017). Education is a process that begins at birth and continues until the end of life, (Arslan,2018) hence it is said that ‘learning’ is a lifelong journey. The role of education in creating, preserving and sustaining the right knowledge, skills and attitudes in the context of the social value system are crucial for the wellbeing of any civilized society. (Alawattegama,2020). Thus, education should be identified as a fundamental factor which essential for every human being to achieve social, economic, cultural and political well-being.

Sri Lanka is the only country in the entire South Asian region where the government provides free education from primary to university. The Free Education system in Sri Lanka plays a very significant role in achieving sustainable development and strengthening social, cultural, historical and integral development, and is often called the backbone of the society. Free Education is not only to provide ‘education’ free of cost but to provide equitable access to education to every child irrespective of any social, economic and cultural ground. Although, education has not been recognized as a fundamental right by the constitution, providing education for the citizens has been recognized as a state obligation in Sri Lanka.

Keywords – Free Education, Right to Education, Sri Lanka

Introduction

Many countries in the world recognize education as a fundamental right. In the constitution of Philippine, Article XIV. Section (1) states, ‘The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.’ In India, providing free and compulsory education for all children in the age group of six to fourteen years is recognized as a Fundamental Right under Article 21(A) of the Constitution. In terms of Article 29, of the Constitution of South Africa, everyone has the right to basic education, including adult basic education; and further education. Cuba’s constitution states that education is a right for all. According to Article 73 of the Cuban constitution, ‘Education is a right of all people and the responsibility of the State, which guarantees free, accessible, and quality education services to its citizens for their holistic development, from preschool until the postgraduate level.’

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In Sri Lanka, the 'Right to Education' does not recognize as a Fundamental Right. However, this island nation provides free education from kindergarten to university. One of the main social values that Sri Lanka is proud of as a country is the free education. According to article 27(2)(h) of the constitution “the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels” is recognized as a state obligation. The Supreme Court of Sri Lanka has also interpreted the Right to Education as a Fundamental Right in several landmark judgements.

Education as a Human Right

Education is not a privilege. As well as it is not a commodity. According to General Comment 13, adopted by the Committee on Economic, Social and Cultural Rights, which provides an interpretation and clarification of Article 13 of the International Covenant on Economic, Social and Cultural Rights, ‘Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.’ (GC 13 ICESCR, 1999)

Article 26(1) of the Universal Declaration of Human Rights (UDHR) states that everyone has the right to education. Also, this article further defines that, education shall be free, at least in the elementary and fundamental stages and elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. (Art.26(1), UDHR, 1948).

According to sub-article 2 of article 26 of the UDHR, ‘Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.’ (Art.26(1), UDHR, 1948).

In addition to the UDHR, the right to education is widely recognized and developed by many international normative and legal instruments elaborated by the international community, including the International Covenant on Economic, Social and Cultural Rights (1966, ICESCR), the Convention on the Rights of the Child (1989, CRC), and the UNESCO Convention against Discrimination in Education (1960, CADE).

The International Covenant on Economic, Social and Cultural Rights (ICESCR), provides a comprehensive and complete idea of the right to education. Article 13 of the ICESCR recognizes the universal right to education without any discrimination and sets forward a framework to achieve the full realization of this right. Also, according to sub-article 1 of article 13 of the ICESCR, the States Parties have an obligation to recognize and fulfil the right of everyone to education, and under article 4 of the UNESCO Convention against Discrimination in Education, the state parties should undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education.

Accordingly, the right to education contains both entitlements and freedoms, including: the right to free and compulsory primary education, the right to available and accessible secondary education (including technical and vocational education and training), the right to equal access to higher education on the basis of merits, the right to fundamental education for those who have not received or completed primary education, and the academic freedom of the academics. Thus, it can be recognized that the 'right to education' is an inclusive and progressive human right that advances individuals and societal values to the development and harmony of the civilization.

Free Education in Sri Lanka

Sri Lanka is a country which has a historical foundation for a well-formed education system since the 3rd century BCE. Also, this small tropical island nation boasts the highest literacy rate in South Asia. (*According to the statistics from UNESCO, the adult literacy rate in Sri Lanka is 92.3% by 2019*) Before the colonial period, the entire education system of the country was centralized around Buddhism and Buddhist *Pirivena*. During the British colonial period, the colonial dominants introduced the western education system to train native Sri Lankans as civil servants for the empire.

The introduction of the free education policy in 1944 was a paradigm shift in the history of the education system in Sri Lanka. (Alawattegama,2020). In 1943, Dr C.W.W. Kannangara, as the president of the executive committee of education, proposed a comprehensive education reform to the state assembly. The committee mainly recommended among others, that;

- Education should be free from Kindergarten to University.
- Mother tongue should be used as the medium of instruction in Primary Schools.
- English shall be taught in all schools.
- A curriculum for the child which would develop its "head, heart and hands" should be introduced. In other words, the education of emotions is as necessary as the education of intellect and practical ability for the well-being of the child.

After much debate in the state assembly, the free education policy has come into effect on October 1st 1945. The concept of the universal free education policy which was introduced in 1945 aimed to provide equal opportunity for all to gain access to the education system and establish a strong foundation for long-term sustainable development in the human capital of the country. (Alawattegama,2020).

As a result of the free education policy in Sri Lanka, from time to time, the governments initiated many reforms such as providing free textbooks and free uniforms to the students, providing free mid-day meals to the school children, a transportation subsidy program, grade five scholarship, and *Mahapola* scholarship for the students those who study higher education institutions etc. All these programmes have progressively contributed to ensuring the quality of the national education system of the country. (Alawattegama,2020).

Although Sri Lanka has a free education system, the Constitution does not recognize education as a fundamental right of citizens. However, under the directive principles of state policy and fundamental duties of the state, the state has a fundamental duty to ensure the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels. (Constitution of Sri Lanka (1978), Art: 27(2).h)

The free education system of Sri Lanka has been able to push the country forward through decades into a leading position in the South Asian region in terms of literacy rate, school enrollment rate, gender parity in education, human quality index, etc. However, according to the reports of the Central Bank of Sri Lanka (CBSL) the regular budgetary cut down in the annual budgetary provision for state education is a huge problem in the Sri Lankan education sector. Therefore, the Student Movement and teachers' unions continuously emphasize and demand the importance of allocating 6% of the GDP to the state education sector. The suggested increase in the annual budgetary provision for the education sector is a must to ensure the quality of the free education system in Sri Lanka. (Alawattegama,2020).

Right to Education: Sri Lankan Perspective

As discussed previously 'Right to Education' has not been recognized as a fundamental right in Sri Lanka. Although the state has an obligation to ensure and fulfil the free and equitable access to education as a fundamental duty of the state, it is just a constitutional decoration devoid of any jurisdiction. Nevertheless, through judicial activism, the right to education has been interpreted as a fundamental right of the citizens. Also, providing education has also been defined as an inalienable duty of the state.

Visal Bhashitha Kavirathne and Others v. Commissioner General of Examinations and Others (2012) (S.C. (FR) Application No.29/2012) is a landmark judgment delivered by the Supreme Court of Sri Lanka which interpreted the 'Right to Education' as a fundamental right.

In this case, the Supreme Court emphasized Article 26 of the UDHR with Article 12(1) of the Constitution and defined that everyone has the right to education. Accordingly, the court accepted that though there is no specific provision dealing with the right to education in our Constitution as such in the UDHR, the said right can be acknowledged by the Court through the provisions embodied in Article 12(1) of the Constitution.

In the judgement, Chief Justice Dr Shirani Bandaranayake stated that, the Supreme Court has not only considered that the Right to Education should be accepted as a fundamental human right but also accepted the value of such Education, which has been described by James A. Garfield (1880), as, "*next in importance to freedom and justice is popular education, without which neither freedom nor justice can be permanently maintained.*"

This decision became a turning point in the history of the Sri Lankan judiciary and helped a large number of students to get admission to state universities without any obstacles.

M.D. Malik Sachinthana v. University Grants Commission (2022) (SC/FR/311/2019) is a recent judgement delivered by the Supreme Court which recognizes Free Education as a Fundamental Right in Sri Lanka.

In the judgement, Justice S. Thuraiajah PC elaborated that, *“the establishment of the free education strategy in 1944 was a standard shift in the history of the education system in Sri Lanka. This policy provided equal prospects for all to accomplish access to the education system and formed a strong basis for long term ecological development within the human capital of the country. A report recently published by the National Education Commission of Sri Lanka even recognizes education as a right rather than a privilege available to all citizens. Therefore, it must be understood that education must stay equally and freely available to everyone as per C.W.W. Kannangara’s long-term vision.”*

In **Rienzie Perera v. University Grants Commission (1978)** ([79-80] 1 SLR 128) judgement, Justice Sharvananda stated that, *“Education is one of the most important functions of the State today. The large expenditure of money incurred by the State for education signifies its recognition of the importance of education to a democratic society. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education. Such an opportunity, where the State undertakes to provide it, is a right which must be made available to all on equal terms. The Constitution enjoins the organs of Government to secure and advance and not deny this fundamental right of equality of treatment.”*

Although the constitution of Sri Lanka does not expressly recognize the right to education as a fundamental right, through the wide interpretation of the right to equality enshrined in Article 12(1) of the Constitution, the Supreme Court has recognized the right to access to education as a fundamental right which is entitled to citizens.

Conclusion

Education should be understood as a basic human need. It is the tool that breaks down all social, economic and cultural barriers. Therefore, education is part of the foundation of all progress and growth, both as an individual and as a society. Hence, education should be identified as a fundamental human right that everyone should be entitled to equally without any discrimination.

Sri Lanka as a state which provides free education from kindergarten to university tries to allow all the children in the country an equal opportunity to receive formal education. However, there is no normative law in Sri Lanka to recognize the right to education as a fundamental right. The Supreme Court of Sri Lanka in its judicial capacity has tended in many times to uphold the right to education as a fundamental right.

Nevertheless, there are many issues still remain regarding the education sector in Sri Lanka. In particular, the lack of equal access to education and the unequal distribution of resources for education are prominent among them. Thus, it is preferable to allocate at least 6% of the GDP annually for public education and to recognize the right to education as a fundamental right through the Constitution.

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