

Promoting the Right to Education through Social Security System in India

Younes Charbgo

Faculty of Law, Jamia Millia Islamia University, New Delhi, India.

Corresponding author: ss.younes@gmail.com

Abstract

Statistical data from the International organizations indicate that more than 57 million children were out of school in 2011. Globally, access to primary schooling has increased modestly in recent years. The right to education is a basic human right and a necessary piece of government social policy for the prevention and alleviation of poverty. In addition, one of the basic social security guarantees is providing access to education. Promoting the right to education through universal primary education cannot be achieved unless children are removed from child labour and are supported by social protection schemes. Studies have shown that if properly managed through social protection mechanism, education section improves all parts of the development of a country. In India, There are innovative policy and legislative approaches about improving universal education through social protection programmes. The question of the role of Social Security in promoting education system has been recently debated in International Law and Indian law field. However, these works have not adequately addressed this issue. This article will discuss the practical problems related to the extension to the right to education through social protection mechanism in India. It further examines the strengths and weaknesses of international standards and Indian social security system, and suggests ways and means by which better social protection of Right to education can be achieved.

Keywords: Right to education, social security, protection, India.

Education is the most important lever for social, economic and political transformation. A well-educated population, equipped with the relevant knowledge, attitudes and skills is essential for economic and social development in the twenty-first century. Education is the most powerful tool for socio-economic mobility and a fundamental instrument for building an equitable and just society. Education provides skills and competencies for economic well-being. Education strengthens democracy by imparting

to citizens the tools needed to fully participate in the governance process. Education also acts as an integrative force in society, imparting values that raise social cohesion and national identity¹. (Planning Commission, 2013)

The right to education is one of highest significance for the welfare of people in international development framework. It is a basic human right and an essential part of government social policy for the prevention and alleviation of poverty. Achieving Education for All is also one of the Millennium Development Goals. In addition, one of the basic social security guarantees is providing access to education. Promoting the right to education through universal primary education cannot be achieved unless children are removed from child labour and are supported by social protection schemes. Studies have shown that if properly managed through social protection mechanism, education sector improves all parts of the development of a country.

Importance of Education Right

Human rights are rights that are basic in nature and entitled to every human being, irrespective of his nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status. Such rights would include right to life, equality before the law, freedom of expression, the right to work, right to social security, right to education, collective rights, such as the rights to development and self-determination, etc. Therefore as is evident human rights are inseparable, interrelated and interdependent. The improvement of one right makes the progress of the others possible. Correspondingly, the denial of one right has negating effects on the others. The basic right that is protected by the term human right is right to life with dignity. A human rights-based approach to education is therefore necessitated since it promises every child a quality education that respects and promotes her or his right to dignity and optimum development. The right to education is marked priority on the agenda of the international community since the right to education is not only a human right in itself, but also is quintessential for the exercise of all other human rights. A number of human rights conventions accepted and recognized internationally, identifies right to education as a fundamental aspect for development and social transformation.

In summary, the reasons for the importance of education are:

I. Education is an empowerment right

If the current two education-related MDGs have improved access to education, they didn't come up to the expectations regarding the targets of quality and equity encompassed in the right to education.

Democracy and good governance (peace and security, sustainability – citizenship, economic growth, and environment) request that all human beings be enabled to develop active participation and autonomy, to take decisions and to assume responsibility. Having equally access to relevant knowledge, information and training/skills development is indispensable in this regard. It is not conducive to define education goals that are only measurable if these goals cannot tackle the issues of quality and equity². (Dieter Beiter, 2006)

II. Education is an enabling right

Education is both a fundamental right and an indispensable lever for realizing other human rights and ensuring a human sustainable development.

The right to education is an effective lever for the assertion of the right of expression and to information, the right to food, the right to decent work, the right to highest attainable standard of health, the right to participate in cultural life of the community and the right to enjoy the benefits of scientific progress and its applications. Education reinforces freedom and develops the opportunities available to young people, adults and communities. It also permits to promote social mobility, scientific and technological development, to strengthen safeguards social cohesion, peace and health as well as the environment, and to act as active citizens and autonomous human beings. Education and learning are dynamic sources for research and innovation, which play an essential role in shaping solutions to global issues and challenges.

III. Education is a social, economic and cultural right (art. 13 ESCR)

The education system (formal and non-formal) has to ensure the right to have access to relevant knowledge and skills. Children, young people and adults should be able to pursue their educational program, ensure their transition from adolescence to adulthood and their integration into the social and professional life. The system should allow them to exercise their citizenship.

The general comment on the article 13 has defined four measures to appreciate the relevance, the coherence, the efficiency and the effectiveness of an integrated educational system (formal and non-formal): Acceptability, Adaptability, Accessibility and Availability. These four standards or capacities of the education system could be used as a universal framework, for which regional and national values and priorities could be defined and used to build a framework for action. These four standards would respond in this regard to the need of a flexible framework.

International Recognition of Education as a Human Right

There are a large number of human rights problems, which cannot be solved unless the right to education is addressed as the key to unlock other human rights. The right to education is clearly recognized in the United Nations' Universal Declaration of Human Rights (UDHR), adopted in 1948, which states:

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. 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. ...”
(Article 26)

Apart from UDHR, right to education is affirmed, protected and promoted in numerous international human rights treaties, such as the following:

- Convention concerning Discrimination in Respect of Employment and Occupation (1958) - Article 3

- Convention against Discrimination in Education (1960)
- International Covenant on Economic, Social and Cultural Rights (1966) - Article 13
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1981) –Article 10
- The United Nations Convention on the Rights of the Child (1989) – Article 28 and 29

The right to education has therefore long been recognized by these international treaties as encompassing not only access to educational provision, but also the obligation to eradicate discrimination at all levels of the educational system, to set minimum standards and to improve quality. With respect to applicability of these treaties in India, it is worthwhile to mention that India is a State party to the ICESCR, the CERD Convention, the CEDAW Convention and the Convention on the Rights of the Child.

The prominent organizations around the world striving for promotion of Right to Education are:

1. United Nations Educational, Scientific and Cultural Organization (UNESCO)

UNESCO leads the global Education for All movement, aiming to meet the learning needs of all children, youth and adults by 2015. The six internationally agreed education goals of UNESCO:

- (1) Expand early childhood care and education,
 - (2) Provide free and compulsory primary education for all,
 - (3) Promote learning and life skills for young people and adults,
 - (4) Increase adult literacy by 50 per cent,
 - (5) Achieve gender equality by 2015,
 - (6) Improve the quality of education.
2. United Nations Children’s Fund (UNICEF)
 3. World Bank
 4. International Labour Organization (ILO)

Social protection programs and right to education

80% of the global population has no access to comprehensive social protection. Social protection programmes tackle multiple dimensions of poverty and deprivation (decent work, education, health care, food security, income security) and can therefore be a dominant instrument in the battle against poverty and inequality. Social protection can play a fundamental role in creating more inclusive and sustainable development pathways. In the absence of social protection, people, especially the most

vulnerable, are subjected to increased risks of sinking below the poverty line or remaining trapped in poverty for generations.

The ILO and other United Nations bodies use the terms *social security and social protection* interchangeably to refer to the benefits incash or in kind to secure protection in case of social risks and needs.

Social protection measures secure protection against, *inter alia*:

- (a) Lack of work-related income (or insufficient income), caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member;
- (b) Lack of access or unaffordable access to health care;
- (c) Insufficient family support, particularly for children and adult dependants;
- (d) General poverty and social exclusion.

These social protection measures include e.g.:

- Cash transfer schemes,
- Public work programmes,
- School stipends,
- Unemployment or disability benefits,
- Social pensions,
- Food vouchers and food transfers,
- User fee exemptions for health care or education
- Subsidised services³. (ILO. 2010)

The social protection promotes income security through a basic set of guarantees. One of them is that all children enjoy income security through family/child benefits aimed at facilitating access to nutrition, education and care.

In order to achieve the goal of achieving education for all, the Social Protection places a strong emphasis on both creating effective demand for education services, e.g. through transfers that cover direct and indirect costs of school attendance as well as by ensuring an adequate supply in terms of geographical access and minimum quality of the educational services delivered. Findings show the importance of working on both the supply and demand side.

Social protection programmes can lead to higher school enrolment rates, less school dropouts and child labour by removing demand-side barriers to education, reducing the need for families to rely on harmful coping strategies, and addressing barriers to gender equality and empowerment of women (MDG 2, 3

and 5). Social protection policies can also support inclusive education by introducing changes in the supply side to address the specific needs of children who are marginalized or excluded (such as children with disabilities and learning difficulties or girls who may not go to school if families consider it unsafe for them) to ensure they can access and benefit from education.

Conditional cash transfer (CCT) programs have spread rapidly over the last decade in the developing world. CCT programs provide cash transfers to poor families that are contingent on children's educational and health investments, typically school attendance and regular medical check-ups, with the goal of breaking the intergenerational cycle of poverty. As of 2010, all but two countries in Latin America and over 15 countries in Asia and Africa had a CCT program as part of their social protection systems. In Latin America alone, CCT programs benefit over one hundred and ten million people. Cash transfers, removal of user fees, and school feeding programmes have been shown to lead to higher enrolment and attendance, and lower incidence of child labour. In addition, there is some evidence of better cognitive and language skills and fewer behavioural problems. With few exceptions, the increases as a result of these programmes are as strong, or stronger, for girls.

- Transfer programmes in Ethiopia, South Africa, Malawi, Mexico, Nicaragua, Brazil, Ecuador, Cambodia, Pakistan and Turkey have all demonstrated significant percentage point increases in enrolment and/or attendance.
- Between 2002 and 2005, the gross enrolment rate in Kenya increased from 88% to 112%, linked to the abolition of school fees.
- Between 1996 and 2002/3, girls' net primary enrolment in Bangladesh increased from 48% to 86%. Many researchers attribute this increase in part to the stipend program for girls' education.
- In the Malawi cash transfer scheme, new enrolment was twice as high in participating households (8.3% vs. 3.4%) within a one year period.
- Oportunidades in Mexico had little impact at primary level (where enrolment was already high), but at increased secondary school enrolment of girls increased by 11-14%, compared to 5-8% for boys. It also resulted in a reduction in probability of working for children aged 8-17.
- In Brazil, the Programme for the Eradication of Child Labour (PETI) reduced both the probability of children working and their likelihood to be engaged in higher-risk activities.⁴(Kulke, 2011)

Right to Education and social protection schemes in Indian Perspective

The Indian Constitution is known to be a document committed to social justice. Literacy forms the cornerstone for making the provision of equality of opportunity a reality. The Indian Constitution has therefore recognized education as the essence of social transformation, as is evident from its education specific Articles. The Indian constitution (Article 45 of the Directive Principles) provides that the State shall endeavor to provide, within a period of ten years from the commencement of the Constitution, for

free and compulsory education for all children until they complete the age of fourteen years. A laudable object as it is, but it had remained an impossible task and in 2002, through the Eighty-sixth Amendment, a new article (21A: Right to education – ‘The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.’) was inserted and made education a fundamental right – another example of the ‘norm-right transition’. The National Policy on Education (NPE), 1986 modified in 1992 had the objective that education play a positive and interventionist role in correcting social and regional imbalances, empowering women and in securing rightful place for the disadvantaged and the minorities. This policy was a national level effort towards providing quality education to talented children at affordable rates. This policy led to the establishment of Navodaya schools and undertaking of schemes ‘Operation Black Board’ in the country.

The judicial decision from which the right to education emanated as a fundamental right was from the one rendered by the Supreme Court in *Mohini Jain vs. State of Karnataka*⁵. ((1992) 3 SCC 666) In this case the Supreme Court through a division bench comprising of justices Kuldeep Singh and R.M Sahai, deciding on the constitutionality of the practice of charging capitation fee held that:

‘The right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.’

This rationality of this judgment was further examined by a five judge bench in *J.P.Unnikrishnan vs. State of Andhra Pradesh*⁶ ((1993) 1 SCC 645) where the enforceability and the extent of the right to education was clarified in the following words:

“The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.”

The same has also been reiterated by the Hon’ble Supreme Court in *Bandhua Mukti Morcha, etc. vs. Union of India*⁷ (JT 1997 (5) SC 285) specifically referred to the earlier judgments made in this connection as under:

“In Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi, right to education at the secondary stage was held to be a fundamental right. In J.P.Unnikrishnan v. State of Andhra Pradesh, a constitution Bench had held education up to the age of 14 years to be a fundamental right.... It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.”

The Constitutional guarantee has required the achievement of universalization of elementary education in a time bound manner through a number of social protection schemes of the central government:

- (1) Sarva Shiksha Abhiyan (SSA: National Program of Universal Elementary Education)

Launched in 2001, this flagship programme aims to achieve the objectives:

- (i) All children of 6-14 age in school/EGS (Education Guarantee Scheme) centre/bridge course by 2005;

- (ii) Bridge all gender and social category gaps at primary stage by 2007 and at elementary education level by 2010;
- (iii) Universal retention by 2010;
- (iv) Focus on elementary education of satisfactory quality with emphasis on education for life.

SSA seeks to provide quality elementary education including life skills. It has a special focus on girl's education and children with special needs. It also seeks to provide computer education to bridge the digital divide. The revised SSA provisions have been aligned with the legally mandated norms and standards and free entitlements mandated by the RTE Act⁸. (Srivastava, 2013)

- (1) SSA is complemented by another national flagship program, the Mid-Day Meal Scheme.
- (2) The National Programme of Nutritional Support to Primary Education (NPNSPE), popularly known as Midday Meal Scheme, introduced in August 1995, has the following objectives: (a) the educational objective of universalisation of primary education with the specific goals of increasing enrolment in primary schools and encouraging regular attendance and retention, and (b) and of improving the nutritional status of children in the primary school age group.
- (3) National Programme for Education of Girls at Elementary Education (NPEGEL) Launched in July, 2003 as a focused intervention aimed at enhancing girls' education, NPEGEL provides for development of a "model school" in every cluster (in about 3,164 educationally backward blocks in 25 States) with more intense community mobilization and supervision of girls' enrolment in schools. Gender-sensitization of teachers, development of gender-sensitive learning materials and provision of need-based incentives like stationery, workbooks and uniforms are some of its objectives.

Under the scheme, among others, over 51,345 Early Childhood Care and Education (ECCE) centres are being supported in areas not covered by Integrated Child Development Services (ICDS) scheme to help free girls from sibling care responsibilities and attend schools. Free uniforms have been given as a direct educational incentive to about 20 million girls in educationally backward blocks.

It goes without saying that despite the constitutional authoritative and large scale interventions, education security still avoids many. It has been found that 'multiple forms of inequality – market inequality (poverty), status inequality (membership of "backward" caste), spatial and sexual disparity – render certain social groups incapable of achieving freedom from illiteracy and innumeracy. In precise terms, the groups persistently excluded from basic schooling include: the poor, people in rural areas, religious minorities, Scheduled Castes and Scheduled tribes, and almost in every case, women (girl children).

Conclusion

To quote Justice PN Bhagwati, Former Chief Justice of India:

The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into a fullness of physical and

*vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation.”*⁹
(Planning Meeting, <http://www.cuts-international.org/linkages-Meeting-18.htm>.)

Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Therefore, education which empowers the future generation should always be the main concern for any nation. It is now an undisputed fact that the right to education can be realized on a national level only through compulsory education, or better say, through free compulsory primary education. However, due to the extensive poverty and different prejudices in the society, the efforts to develop an educational system in India with full access, equality and quality of education has not been achieved. The inability to check the dropout rates among the marginalized sections of the population is another cause of worry.

Considerable efforts are therefore crucial to eradicate the social disparities and guarantee quality education on an equal basis and such efforts are needed in the following areas:

- Since a child’s family also plays a major role in getting the child educated it would be in the best interest of the child to have the family involved in the School’s Development Plans through the setting up of School Management Committees. Such Committees made up of parents, local authorities, teachers and children themselves, should be encouraged to be formed so as to include all the stratus of the society to overcome the social disparities, as well. Such SMCs would also help in evaluating the competency of every teacher in the school and also to assess the progress of the students
- To improve the quality of education, Teachers, who are the foundation for imparting exceptional education, need to be paid market-driven compensation. On comparing the meager salary that is handed out to a teacher in India with those in other countries, these wages are evidently not appropriate. Therefore, to motivate the teachers to work hard towards realization of a successful educational system, it would better if the schools are allowed to plan out the salary packages of each of its teachers.
- UNESCO, UNDP, ILO, UNFPA, UNICEF and the World Bank are joined by many partners and stakeholders engaged in achieving Education for All goals around the world. It is very important and necessary, but not enough. Coverage gap of international and national standards has been remained. More effective and comprehensive standards related to education security are vital for global extension of education.
- Human rights framework involves a new defined accountability of many actors (states, teachers, recipients, donors, research, private providers, employers, labor unions, IGOs, CBOs, NGOs) in respecting and implementing the right to education and financing quality basic education and relevant skills development. The increasing role of nongovernmental duty bearers, the

development of public private partnerships as well as private investments in education, have to be better taken into account within the new plan (recognition, regulation and monitoring).

To sum up, there is an utmost need for realizing that provision for universal access to quality school education is the groundwork of development and a fundamental condition in the process of creating India as a knowledge society.

References

- Dieter Beiter, K. 2006. *The Protection of the Right to Education by International Law*. Martinus Nijhoff Publishers.
- ILO. 2010. *Extending Social Security to All: A Guide through Challenges and Options*. International Labour Office. Geneva: ILO: Social Security Department.
- ILO. 2010. *World Social Security Report 2010/2011: Providing Coverage in Time of Crises and Beyond*. ILO.
- Kulke, U. 2011. *Developing sustainable, Country-Specific Social Protection Schemes: Towards Social Protection for All*. ILO.
- Minkler, L. 2013. *The State of Economic and Social Human Rights: A Global Overview*. Cambridge University Press.
- Parliament Library and Reference, R. 2013. *Documentation and Information Service (LARRDIS), Central Government Schemes for School Education*. LARRDIS.
- Planning Commission, G. o. 2013. *Planning Commission Draft Twelfth Five Year Plan (2012-2017) (Vol. III)*. Planning Commission, Government of India.
- Sanfilippo, M. C. 2012. *The Impact of Social Protection on Children: A Review of the Literature*. UNICEF Office of Research.
- Sepúlveda, M. N. 2012. *The Human Rights Approach to Social Protection*. Ministry for Foreign Affairs of Finland.
- Srivastava, R. S. 2013. *A Social Protection Floor for India*. International Labour Office.
- UNICEF. 2007. *A Human Rights-Based Approach to Education*. United Nations Children's Fund/United Nations Educational, Scientific and Cultural Organization.