

Democracy, right to Education and the role of teachers: A critical study in the light of Bhartiya Seva Samaj Trust Trustee's Case^x

By

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1. The State is under a Constitutional obligation to provide educational opportunities to children, besides providing protection and prevention of health and strength and also to protect children of tender age against abuse of opportunities.¹ The promotion and welfare of the children together with educational opportunities to them has become a necessary Constitutional mandate. Educational opportunities must include all the infra-structure needed to impart education and also highly competent, qualified and experienced teachers to impart education to the children.
2. In Mamata Mohanty's case², the cases of teachers appointed without possessing the eligibility came up for consideration and the Supreme Court held

“that if the appointment order itself is bad in its inception, it cannot be rectified and a person lacking eligibility cannot be appointed unless the statutory provision provides for relaxation of eligibility in a particular statute and the order of relaxation has been passed in terms of the said order”

In the event of such an appointment being made, it would be an illegal appointment (where there is no provision for relaxation), and in setting aside such an illegal appointment, it will revive another illegal order, it should not be set aside. The Supreme

^x Bhartiya Seva Samaj trust Trustee & another Vs. Yogeshbhai Ambalal Patel & another, AIR 2012 SC P.3285 hereinafter referred to as 'BSS Trust'.

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¹ For details see Art 21 of the Constitution read with Art 39, 41 and 42 of the Constitution.

² 2001 AIR SCW P.1332.

Court ruled:"In such an eventuality, the illegality would perpetuate and it would put a premium to the undeserving party/person".³

3. The role of teachers in the gigantic task of educating children in terms of constitutional mandate has been laid down by the Supreme Court in Andhra Kesari Education Society's case⁴ as follows :-

- (i) Recognize the importance of eligibility fixed by the legislature;
- (ii) Persons have to handle with tiny children. Teacher alone can bring out their skills and intellectual activities;
- (iii) Teacher is the engine of the educational system;
- (iv) Teacher is a superb instrument in awakening the children to cultural values;
- (v) He must possess potentiality to deliver enlightened service to the society;
- (vi) His quality should be such as would inspire and motivate into action the benefiter;
- (vii) He must keep himself abreast of ever-changing conditions;
- (viii) He is not to perform in wooden and unimaginative way;
- (ix) He must eliminate unwarranted tendencies and attitudes;
- (x) He must infuse nobler and national ideas in younger generation; and
- (xi) His involvement in national integration is indispensable.

4. In order to make 'the right to education' a reality, the Supreme Court in Miss. Mohini Jain's case⁵ held:-

- i) Fundamental rights under part III should not remain beyond the reach of the larger majority which are illiterate;

³ State of Uttarchal & another Vs. Ajit Singh Bhola & another (2004)6 SCC P.800; See also Gadde Venkateshwara Rao Vs. Govt. of A.P. & others, AIR 1966 SC P.828; Maharaja Chintamani Saran Nath Shah Deo Vs. State of Bihar & others, AIR 1999 SC P.3409; Mallikarjuna Mudhagal Nagappa & others Vs. State of Karnataka & others, AIR 2000 SC P.2976 and Chandra Singh Vs. State of Rajasthan, AIR 2003 SC P.2889.

⁴ Andhra Kesari Education Society Vs. Director of School Education & others, AIR 1989 SC P.183.

⁵ Miss. Mohini Jain Vs. State of Karnataka & others, AIR 1992 SC P.1858.

- ii) The State is under an obligation to make an endeavour to provide educational facilities at all levels to its citizens;
- iii) The right to education is concomitant to Fundamental rights enshrined under part III of the Constitution to provide educational institutions at all levels for the benefit of the citizen;
- iv) The educational institutions should function to the best advantage of the citizens; and
- v) Opportunity to acquire education cannot be confined to the richer sections of the society.

The Supreme Court further held in Unni Krishnan's case⁶ thus:-

- (i) Right to education as contained in Art 41, 45 and 46 of the Constitution highlights the importance attached to this right by the framers of the Constitution;
- (ii) In part III (Fundamental rights Art 29 and 30 mentions about education) and
- (iii) The right to compulsory and free education upto the age of 14 years is a fundamental right of every child.⁷

5. Explaining the concept of education, the Supreme Court observed in BSS Trust case⁸ as follows:-

- (i) Education does not mean only learning – how to read and write alphabets but to get more information; and the means to acquire knowledge and wisdom, so that he may lead a better life and become a better citizen to serve the nation in a better way;
- (ii) The policy frame-work behind education in India is based on the belief:-
 - (a) That the values of equality, social justice and democracy and creation of a just and humane society which can be

⁶ Unni Krishnan J.P. & others Vs. State of A.P. & others, AIR 1993 SC P.2178.

⁷ See Art 21-A introduced by the Constitution Amendment, 2002. See also Amendment to Art 45 making it obligatory on the part of the State to impart free education to children. Art 51-A amendment (k) provides obligatory on the part of the parents to provide educational opportunities to their children (between age of 6 to 14).

⁸ See Supra Para 15.

achieved only through provisions of inclusive elementary education to all;

- (b) Provision of free and compulsory education of satisfactory quality to children for disadvantaged and weaker sections of society, is not merely the responsibility of schools run or supported by appropriate Governments but also of schools, which are not dependent on Government funds; and
- (c) Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Education which empowers the future generation should always be the main concern for any nation.

In Ashok Kumar Thakur's case,⁹ the Supreme Court held, "without Art 21A, the other Fundamental Rights are rendered meaningless. Therefore, there has to be a need to earnestly implement Art 21A".

In BSS Trust case,¹⁰ the Supreme Court observed thus:-

"without education, a citizen can never come to know of his other rights. Since there is no corresponding Constitutional right to higher education, the fundamental stress has to be on primary and elementary education, so that a proper foundation for higher education can be effectively laid ... Education is an issue which has been treated at length in our Constitution. It is a well-accepted fact that democracy cannot be flawless, but we can strive to minimise these flaws with proper education. Democracy depends for its very life on a high standard of general, vocational and professional education.

Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.

⁹ Ashok Kumar Thakur Vs. Union of India AIR 2008 SC (Suppl) 2008 AIR SCW P.2899.

¹⁰ Supra Para 16.

In State of Tamil Nadu Vs. K.Shyam Sunder,¹¹ the supreme Court held as follows:-

- (i) In the post-Constitutional era, attempts have been made to create an egalitarian society by removing disparity among individuals and in order to do so, education is the most important and effective means;
- (ii) There has been an earnest effort to bring education out of commercialism / merchantilism;
- (iii) The right of a child should not be restricted only to free and compulsory education but should be extended to have quality education without any discrimination on economic, social and cultural grounds; and
- (iv) As held in BSS Trust case¹² education and particularly that of elementary / basic education has to be qualitative and for that trained teachers are required. The legislature, in its wisdom, after consultation with expert body fixes the eligibility for a particular discipline to be taught in a school. Thus, the eligibility so fixed require very strict compliance and any appointment made in contravention thereof must be held void.

6. BSS Trust case lays down sufficient guidelines for imparting quality education, role of duly qualified and competent teachers in promoting quality education and the relationship between democracy and education. It will be a useful guide to all administrators and educators to keep in mind these guidelines for the very survival of democracy in our society.¹³

7. In conclusion, the following suggestions are made:-

- (i) In the recruitment of teachers, the guidelines laid down by the apex court in Andhra Kesari Education Society Vs.

¹¹ AIR 2011 SC P.3470.

¹² Supra Para 18.

¹³ Supra P.3285

Director of School Education & others¹⁴ may be kept in view and strictly adhered to, to get teachers who can impart quality education to children;

- (ii) Eligibility criteria fixed by the Government should be strictly followed and not departed from. It may be necessary to review the criteria so fixed in tune with the needs of a changing society;
- (iii) Right to education under Art 21-A to be widened to include the right to higher education to the disadvantaged and weaker sections of society.
Art 21-A be amended to provide for this.
- (iv) Right to education should include not merely to learn but to acquire knowledge and for this all the necessary facilities and infra-structure have to be provided for;
- (v) All the guidelines provided by the apex court in various decisions should be framed in the educational rules and be mandatory for all those who are concerned with the educational system should follow strictly;
- (vi) Earnest effort should be made by the State to keep education out of commercialism / merchantilism and
- (vii) Democracy for its survival and to be effective depends on proper education as otherwise several flaws in the working of the democracy may bring irreparable damage to the democratic structure

¹⁴ AIR 1989 SC P.183.