

Privatization and Right to Education in Indian Perspective

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Abstract:

Education is universally recognised Human right. It is not merely a right but it is enabling in nature, because this right enabled an individual to aware about several rights and at the same time build capacity to claim this right. Without education the true tenets of democracy cannot be enjoyed. In present days state is under obligation to free and compulsory education available and accessible to all. To fulfil this obligation state takes the help of the private institutions and voluntary associations. This change partnership is known as privatisation in education.

This is the era of change and transformation in this changing scenario the role and responsibility of the state has changed drastically. So in the same line significant changes in the governance of the education systems have been put into place as international institutions, governments firms, philanthropies and consultants have promoted more hybrid partnership arrangements, involving new combination of state and non-state actors engaged in a range of activities within the educational sector. But this arrangement highly debated in the education sector because of the widely held view that the education is a complex social and political activity that should remain largely, if not wholly, in the public sector serving public interest.

As India is in transforming stage and bearing much more responsibility being a welfare state so to effectively meet out these emerging requirements, changes should be accepted as an experiment at least. This experiment so far, proved better it fill the gap and inculcates the competitive trend in the educational governance also. India being a liberal democracy allows the participation by all not intact the all responsibility in the single institution. India does the good experiment and put the social responsibility on the private institutions also. Right of Children to Free and Compulsory Education Act, 2009, to increase the choice and to promote an inclusive education systems and classroom diversity. The Act requires all private schools to allocate at least 25% of the seats to the children from officially defined minority groups and economically weaker section of the society.

This new relationship in education system is a welcome step in Indian context. It increases the availability and accessibility. It makes available the choices to the parents. It makes the education an inclusive concept and adds the new dimension in the right to education. Sometimes this trend has been criticised on the ground of the deepening inequality but it can be checked and controlled and the Act of 2009 has a provision which restricted the private institute to charge capitation fee. It is just like a helping tool in the hand of the government and at the same time student has more option to enhance their knowledge and make positive contribution in the development of the country. It has the potential to improve the quality in education, which is a big concern to deal with India's present education system.

Keywords: Privatization, Transformation, Educational system, Equality, Quality in Education.

Introduction:

“Education is not a privilege of well to do, it is an inalienable right of every child”

Education means knowledge-and-knowledge itself is power. As John Adams, rightly observed, “The preservation of means of knowledge among the lowest ranks is of more importance to the public then all the property of all the rich men of the country”.

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Without education being provided to the citizen of the country, the objective set forth in the preamble to the constitution cannot be achieved and the Constitution would be failed. Education is universally recognised Human right. It is not merely a right but it is enabling in nature, because this right enabled an individual to aware about several rights and at the same time build capacity to claim this right. Without education the true tenets of democracy cannot be enjoyed. Now education is a universally recognised human right in the international human rights law. In present days state is under obligation to make available and accessible free and compulsory education to all.

Privatisation is mechanism, in which some non governmental bodies or institutions shares power and responsibility with the state and at the same time makes some profit from this sharing. Incorporation of this mechanism in the educational system in India is a matter to deal with. There is a widely held view that education is a complex social and political activity that should remain largely, if not wholly, in the public sector so this view oppose the privatization in educational system. But on the other hand another opinion based on the logic that a quality education want good investment which is practically not possible to bear solely by the state so state should take the help of the private hands to ensure better availability, accessibility, acceptability and adaptability of the quality education to all. But the one thing which should keep in mind by the state is that equity and social justice must remain the focus of education services in a country where nearly 37% continue to live below the poverty line.

Right to Education as a Fundamental Right:

In 1950 India gained independence and being a republic have its own Constitution, which provided fundamental right to equality, to freedom against exploitation, to freedom of religion and several other rights. The right to free and compulsory education is retained in part-IV of our Constitution that incorporate directive principle of state policy in original Constitution. Article 45 of our Constitution declares, the state shall endeavour to provide, within a period of 10 years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years.

As the scheme of fundamental right and directive principle of the state policy is totally different because the former is legally enforceable, the latter is a policy directive of the state. So in original constitution right to education was a directive in nature and not a fundamental right. The Indian Constitution has provisions to ensure that state will strive to provide education to all its citizens. In original constitution education was listed as a state subject but in 1976, constitutional amendment placed education in the concurrent list and now it is the federal responsibility of both the state and the centre.

Initially due to the practical reasons and lack of resources with the nation, educational right placed under part IV of the constitution as a Directive Principle of The Human Rights. But judiciary since a long time considering the importance of education for the individual as well as for the society declared it as part of the article 21 of the constitution and given it the force of enforcement by leading judicial pronouncement in the year 1992, Mohini Jain V. State of Karnataka 1992(3) SCC 666. declared it as a

fundamental right. And after that Supreme Court upheld its own judgment and once again declared right to education as a fundamental right. This time the Supreme Court put obligation on the state of mandatory nature to provide free education to the children belong six to fourteen age group and then as per the economic capacity further educational opportunities should be provided. The most leading judgment in this regard from educational point of view- Unni krishnan Judgement, in which Supreme Court held that article 45 of the DPSP must be read in harmonious conjunction with Art-21 since right to life and personal liberty loses its meaning if a child is deprived of elementary education. In this judgement, in order to make the right to education free and compulsory as good as a fundamental right, this judgment ruled against commercialisation of education. The Supreme Court also held that economic and financial constraint could be a ground for restricting the state from making provisions of post basic and higher education, but not in the case of elementary education. The Unnikrishnan judgment 1993 AIR 2178, 1993 SCR(1) 594 stimulated several civil society groups to demand incorporation of the right to education as a fundamental right in part III of the Constitution. Finally by (eighty-sixth amendment) Act,2002 right to education became the fundamental right and Article 21 A added in the Constitution. Introduction of this new article provide a new opportunity to reduce the increasing inequality in education at the elementary level and achieve the goals of justice- social economic and political-as pledge in the preamble. In Rohit Singhal V. Principle Jawahar N. Vidhyalay and others 2003 SCC 687 apex court held that “children not only the future citizen but also the future of the earth. Elders in general, and parents and teachers in particular owe a responsibility for taking care of the well being and welfare of the children. The world shall be a better or worse place to live according to how we treat the children for harvesting of future crop of responsible adults, productive of a well functioning society. In pursuance of these judicial pronouncements Finally the 86th constitutional amendment make the education as a fundamental right and inserted a new article-21A in the constitution which says that, The state shall provide free and compulsory education to all children of the age group of six to fourteen years in such manner as the state may by law determine. But without proper arrangement and suitable infrastructure this right cannot be enjoyed in real terms so to establish the proper mechanism government of India enacted the Right of Children to Free and Compulsory Education Act 2009. With this move, India has joined the league of over 130 countries which have legal guarantees to provide free and compulsory education to children. According to UNESCO’s global monitoring report 2010, about 135 countries have constitutional provisions for free and non discriminatory education for all. This act entitles children to free and compulsory education in a neighbourhood school. To ensure quality education, The Act also makes provision for the recognition of the schools, teacher-students ratio, presence of teacher in the school etc. This Act is not free from controversy but a remarkable beginning has been made and in course of time effective realisation of the right shall be ensured.

Origin, Legitimacy and perspective of Privatization in India:

The wave of privatisation begins in the United Kingdom in 1980's and subsequently spread almost all the countries of the world. Privatisation is the process, which can be defined as the "transfer of assets, management functions or responsibilities, previously owned or carried out by the state to private actors. Privatisation is one of the central components of the neo-liberal reform process. The liberalisation of the economy, which begins from 1991, opens the doors for the private players to play role in the development of the country and the responsibility of the government. Privatisation is not occurred in a vacuum. There are various forces that influence the course of privatisation and among all forces; the force of globalisation has various strands, growth of international trade and financial flows, weakening of democratic nation state, the movement of human population across borders and so on. These process intensified range of new situations, in which what is rationale for individual actors produces socially undesirable outcomes. They have extremely changed the settings within which specific experiments in privatisation occurs. The historical background shows a paradigmatic shift in the allocation of task between the public sector and the private sector. The 'Washington Consensus' emerged during the mid 1980's reflect that paradigm shift for the development and poverty reduction agendas. The neo-liberal ideals asserted that economic crisis occurred due to the regulation policy of the Government. India's economic reform since 1991 was the result of serious financial crisis, at that time India's foreign exchange reserves were barely adequate for two weeks imports. This was the cause of market liberalisation. The public sector has with the passage of time, become a burden rather than an asset to the government. That time public sector exhibited a number of problems-low productivity, poor project management skills, over manning, lack of technology up gradation. These problems and other economic compulsion led the emergence of privatisation.

As for as legitimacy of privatisation in India is concerned, Indian Constitution proclaimed it as a 'socialist', 'Democracy'. Which apparently shows that state will hold the public responsibility and education is one of them but 'socialism' cited in our constitution is not of the foreign ideology. This idea has been adopted in India after adaptation of it as per the Indian needs and situation it is not based on the perceptions and experience of others. Our socialism is derived from our own heritage, developed to meet our needs, and based on the values that have been espoused in our freedom struggle. Our socialism is based on the ethical perception that all humanity is a single family-one big family without any walls, or barriers, but in our socialism the stronger member have an obligation to the weaker member. International human rights law gives it legitimacy and take this as a quick means to increase enrolment rates and as a way to introduce market competition into the education space. Private education is being promoted and explored as a solution to the lack of sufficient public provision in education. But there are two principles which should be considered one is progressive realisation and the other is retrogressive measure-former considered as a tool for state to ensure that they are fulfilling their human rights obligations through continuous and progressive steps, but it is also a means of ensuring that state do

not completely shifted its obligation with excuse of limited resources. Retrogressive measures are restricted by international law and state cannot take backward step in achieving the right to education.

Role of Privatization in Right to Education:

Education is the second highest sector of budgeted expenditure after defence, the outlay on education is woefully inadequate to the needs of the people. This has provided an opportunity to private educational institutions to fill the void, both in terms of meeting the need and more particularly in the matter of quality of instructions. The state is not in a position to devolve more resources and also because the need is constantly growing. So the central government adopted the policy to involve private players and voluntary efforts in the education sector in conformity with the accepted norms and goals. In 1986 the central government evolved the new education policy, according to it “in the interest of the maintaining the standards and for several other valid reasons, the commercialisation of technical and professional education will be curbed. An alternative system will be devised to involve private and voluntary efforts in the sector of education. The hard reality is that, private educational institutions are a necessity in the present day context. The private sector should be involved and indeed encouraged to augment the much needed resources in the field of education, thereby making as much progress as much possible in achieving the constitutional goals in this respect.

This is the era of change and transformation, in this changing scenario the role and responsibility of the state has changed drastically. So in the same line significant changes in the governance of the education systems have been put into place as international institutions, governments firms, philanthropies and consultants have promoted more hybrid partnership arrangements, involving new combination of state and non-state actors engaged in a range of activities within the educational sector. But this arrangement highly debated in the education sector because of the widely held view that the education is a complex social and political activity that should remain largely, if not wholly, in the public sector serving public interest.

By considering the role of the privatization Ministry of Human Resource Development has asserted a concept of inviting private sector in the name of public private partnership (PPP). This move of HRD is encouraged by the World Bank research study; ‘Public Private Secondary Education for Developed Countries- A comparative study’ this study presents inferences on cost and achievement of performance in public and private schools in developing countries. This study conclude that-Students in private school performs better than students in public school and private schools has greater authority of decision making at the school level and better emphasis on enhancing student achievement. So presently India takes private school as a solution to budget crisis and an effective measure for elementary education for all.

Right of Children to Free and Compulsory Education Act, 2009-to increase the choice and to promote an inclusive education systems and classroom diversity. The Act requires all private schools to allocate at least 25% of the seats to the children from

officially defined minority groups and economically weaker section of the society. Due to this provision the validity of the act has been challenged in the case *Unaided Private Schools of Rajasthan V. Union of India (2012) 6SCC 1*. The Supreme Court has upheld this provision subject to the clarification that it shall not apply to unaided minority schools.

This new relationship in education system is a welcome step in Indian context. It increases the availability and accessibility. It makes available the choices to the parents. It makes the education an inclusive concept and adds the new dimension in the right to education. Sometimes this trend has been criticised on the ground of the deepening inequality but it can be checked and controlled and the Act of 2009 has a provision which restricted the private institute to charge capitation fee. It is just like a helping tool in the hand of the government and at the same time student has more option to enhance their knowledge and make positive contribution in the development of the country. But it should be very clear that to what extent privatisation should be allowed in education sector. There should be “some minimum core obligation” which should lie on the state only like developing a national education plan, ensuring non-discrimination, maintain national minimal standard for educational institutions, maintaining a regulation and inspections systems and achieving universal free primary education. Privatisation in education has positive implications in Indian context but if they allow being violator instead of enabler than it will spoil the whole system. The relationship of public and private should allow being work but within constitutional limits.

Impact of Privatization on Right to Education: Critical analysis:

Right to education is a well established right of each and every person and being the welfare state it is expected from the state to fulfil this basic need of the citizen. Presently India is a home of the maximum youth population so the huge resource is required to avail them all the right to education. State instead of bearing the whole burden in its own shoulder take the help of others in educational governance of the Country. With the large consensus four basic characteristics regarding educational right has been formulated and state is under obligation to take into consideration these characteristics while formulating national laws, plans and policies of education at all levels. These 4A frameworks on the right to education are availability, accessibility, acceptability and adaptability.

With the incorporation of the policy of privatization the role of the state in the matter of the governance is being minimized and the maximum scope is being endowed with to the private individuals. They are not covered under the definition of state under article 12 of the Indian Constitution so the enforcement of Constitutional scheme becomes difficult in privatization.

The current trend shows that privatization ideology is associated with the ideal that the role of education is largely about meeting the skills requirement of business. Ultimately it deepening social inequality and stratification among the citizenry. There are both kinds of responses about the privatization in educational governance. For example Millennium development report 2014: Assessing progress in Africa towards MDG's (UNDP) recently

published shows that privatization has positive impact in the African education system and proved as a big supporter in achieving the MDG's. And this report further recommended that Private sector involvement should be increased in education as a solution to the education and development challenges faced by developing countries. On the other hand U.N. second committee discussed role of private sector in Achieving MDG's asserted that- the ideological agenda of education is social cohesion and social equity through the provision of education that is of high quality for all members of society. Reducing education to business deports the purpose of good quality education. with the choice shifting towards the private education in some countries there is examples of resistance against this alternative system also presents, several community around the world demanding good quality good education. Chile is best example of this fact, where education policy has been reformed in response to the protest and resultantly privatisation in elementary and secondary education has been curbed. United States also give the same example-here also teachers have campaigned against privatization of education in New York and Chicago.

As for as impact of privatisation in India is concerned, data reveals that India has one of the largest school systems in the world with, 13,62,324 elementary schools and 195,000 secondary and higher secondary sections. Government committed to achieve elementary education for all by various legal and policy measures. But there is growing shift towards private schooling in India. This is not limited to urban areas but also extend to rural areas also. In rural areas low-fee private schools are mushrooming and carrying the fashionable tag of English medium. National statics reveal that in 2010-11, 67.4% of children were enrolled in government and public schools and just over 30% students enrolled in private (aided and unaided) schools. Study based particularly on Andhra Pradesh reveals that in year 2002 only 23.2% students enrolled in private schools but this figure turns double in 2009-44.1% as for as the position of higher education is concerned, there are about 637 universities-out of which 42 are central university, 300 state universities,167 are private universities and 130 are deemed universities. Many private and deemed universities are illegally collecting huge capitation fees for admission, especially in medical and engineering college. Several time news comes that students are suffering because they done there education or course in fake universities or college which do not have any recognition. Regulatory bodies which have been constituted to check such practices are proving insufficient in practice.

Conclusion:

Adoption of privatisation in the education system of India is a reflection of change in the ideology. Now India experiencing the fruits of globalisation and liberalisation which put emphasis on the shared and joined responsibility of several institutions like state, private players, NGO's, voluntary groups to achieve a common goal. Incorporation of this change relationship in the education system is a welcome step and it in no way mean that state is no more have any role to play. But in my opinion with this emerging relationship

now state has much more responsibility to play, responsibility of co-ordination, supervision, enabler, motivator, and regulator and so on.

Now the privatisation of education in Indian context is the need of the time but there is one more need simultaneously required which is much more important to save our country from the bad impact of the privatisation deepening inequality. There is the need of proper, effective and quality based regulation on the functioning of the private institution in India to maximise the all available resources in the most cost effective manner in pursuit of the constitutional objective. At any cost education which has its own social, economic and political implication for every country should not allow to be commercialised.

Private players are filling the gap which was existing with the public players in the education sector. But this system has some loopholes like underperforming private schools are really a matter of concern and most of the time it proves that marginalised groups are not able to avail the choices created by this system because fee charged by these institutes are not affordable for them. State should ensure that non-state private players comply with the human rights norms like they are not exploiting the teaching staff and other clerical staff by excessive working hours and giving fewer wages. Sometimes private schools appoint unqualified teaching staff just because they ready to work on less salary. In that they are not bearing the obligation with the state in ensuring right to education but playing with the right to education itself and working just for earning money at any cost.

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