



RIGHT TO EDUCATION ACT 2009 (MAHARASHTRA): ROLE OF JUDICIAL ACTIVISM IN ANNIHILATION OF THE CASTE SYSTEM.

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Abstract

This paper focuses on the Right to Education Act (RTE) 2009, Maharashtra, with specific importance to the role of annihilation of the Indian caste system and the role of judicial activism with regards the same. It is important to note in this regards that the Indian Constitution, Art. 21, Right to Education Act 2009 Maharashtra (under Art. 8 and 9), refers to cases for judicial activism Since education is intrinsically related to a just and free society, it ought to be inexorably related to the radical praxis of the programme of the annihilation of caste. This paper also focuses on the social movement in Maharashtra and the struggle for equal and free education. Despite critiques of the RTE, it seems that making the right to education a fundamental act, is indeed a revolutionary step. Yet, because of the inbuilt caste-mentality prevailing in large parts of India, there are severe side effects, like casteism in midday-meal scheme in schools, school admissions, etc. And because of the adverse effects of globalization, where the rule of money is made final, its impact of the social justice movement has been severely affected

Keywords: *Education, Caste, Judicial Activism*



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Introduction

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Since education is intrinsically related to a just and free society, it ought to be inexorably related to the radical praxis of the programme of the annihilation of caste. This paper also focuses on the social movement in Maharashtra and the struggle for equal and free education. According to Jyotiba Phule, “primary education of masses should be made

compulsory up to a certain age say least 12 years”². One may refer to the 18 Oct 1882 Memorandum to the Hunter Commission in this regard. This paper consequently explores the functioning of the modern education system and its role in the annihilation of caste system. The role of both social dignity and economic equality shall be emphasized.

Despite critiques of the RTE, it seems that making the right to education a fundamental act, is indeed a revolutionary step. Yet, because of the inbuilt caste-mentality prevailing in large parts of India, there are severe side effects, like casteism in midday-meal scheme in schools, school admissions, etc. And because of the adverse effects of globalization, where the rule of money is made final, its impact of the social justice movement has been severely affected. According to Bhai Vaidya (a well known social thinker based in Pune) “because of the commercialization of education from KG to PG; Dalits, OBCs, minorities and women have been actually been deprived from taking education by the government which claims to be giving rights to these same people.”³

This paper will be analyzing radical critics of commercialization of education in this regard.

1. History of Indian Education and The Social Movement in Maharashtra and the Struggle for Equal and Free Education:

To claim that India has a long history of organized education is a rather an imagined narrative. One hears so often that the Gurukul system of education was one of the oldest on earth. But one forgets in this romantic narrative, that beneath education in India lies the grotesque called “caste”. Gurukuls were traditional Hindu residential schools of learning where only students belonging to Brahmin and Kshatriya communities were taught in these Gurukuls. That education in Buddhism and Jainism was also present is largely forgotten.

It was Jyotiba Phule along with his wife Savitribai Phule, followed by Shahu Maharaja, and Babasaheb Ambedkar, that not only the critique of this upper caste romanticism was shattered, but also new democratic form of education was espoused. It is in this new democratic setting that we intervene and ask: “*can caste be annihilated through radical education and if the Indian state has largely failed to perform this democratic role, then can judicial activism do so?*”

A slight note on this radical history is necessary. One knows that it was Shahu Maharaj who started separate hostels in Kolhapur for students from the all communities and the boarding especially for the students from the untouchable communities. One also knows that he offered

scholarships to the needy and intelligent students from the backward castes so that they could continue their education. He made primary education compulsory and free for all in his Princely State. His royal decree held up the cause of women's education. To abolish untouchability, He introduced reservation for the untouchables in government jobs.

Before him it were the radical Phule duo, Jotiba Phule and his wife Savitribai Phule who pioneered women's education in India. His remarkable influence was apparent in fields like education, the critique of the caste system, gender and the removal of untouchability. In more than one way they were much more radical than the Brahma Samaj led by Raj Ram Mohan Roy and the Arya Samaj Movement by Swami Dayanand Saraswati, or the Aligarh Movement led by Sir Syed Ahmed Khan.

Whilst the Aligarh Movement led by Sir Syed Ahmed Khan to educate the Muslims of the Indian subcontinent after the defeat of the rebels in the Indian rebellion of 1857 had enormous success and had a profound impact on the future of the subcontinent, the impact of the Phule led revolution went much deeper. Phule nor Ambedkar could establish institutes like the Muhammadan Anglo-Oriental College at Aligarh, which later became Aligarh Muslim University, but their institutional foundations were of a very different kind.

It is important to note that the Education Commission of 1882 promoted the role of government responsibility for education and in 1911 an Elementary Education Bill - Gokhale's Bill – was introduced to establish compulsory elementary education as a state responsibility. In a way the contemporary neo-liberalization of education that is being promoted by the Ambani-Birla ideology of education would be totally different from the pioneers of the national movement like Lajpat Rai, who wrote *The Problem of National Education in India* in 1920 which outlined efforts in 'national' education, from the Swadeshi Movement.

A little note on education, caste and the now market driven programme of education is necessary. It ought to be noted that after independence, education became the responsibility of the states. The Central Government's only obligations were to co-ordinate in technical and higher education and specify standards. This continued till 1976, when education became a joint responsibility of the state. After 1992 when India accepted the ideology of globalization and the rule of the commercialization of education then education policy were governed by the ideology of PPP (Public Private Partnership). Many student and teachers' organizations fought against the against this process of commercialization like the Maharashtra Federation

of University and College Teachers Organization's (MFUCTO), Pune University Teachers Association (PUTA), Students Federation of India(SFI),All India Law Students' Association in New Delhi, Youth for Equality, (YFE), Chhatra Bharati, All India Revolutionary Students' Federation (AIRSF).

The aim of the Constitution in 1950, was to achieve the goal of Universalization of Elementary Education (UEE) within the next ten years. To facilitate the achievement of Universal Elementary Education goal, institutes like the National Council of Educational Research & Training (NCERT), the National Institute of Educational Planning & Administration (NIEPA) were set up. But neither universal education nor the annihilation of caste came into their paradigm of operation.

2. Nature of RTE Maharashtra,

Whilst we are dealing with the annihilation of caste and judicial activism one needs to have a brief look at the important provisions in Maharashtra RTE Act:

1. Right to Education for children age limit 6 -14 Years (1st to 8th class) in nearest school. This nearest school will be established till 2013.
2. Every child have right to achieve full time primary education.
3. The hours of teaching and a number of teachers in every school completed till 2013.
4. All teachers must be completed his or her educational qualification till 2015.
5. According to RTE act 25% reservation must be implementation in any Private school, military school, central school, CBSC school, minority school, etc. they should gave socially and economically backward student have free education.
6. No one school not given the donation or any kind of found from the child or his parents. And the child admission should not depend on the interview of child or his parents.
7. No one child should be not faces any physical punishment and mental harassments and also not repeats in same class.
8. Every school should established 'school management committee' which is mainly participations of parents. This committee should control for management of economy and school development plan.
9. The State Government and Central Government have responsibility to provide found and support and implementation but mainly responsibility of State Government and local Self Government.

10. The responsibility of implementation of RTE on The National Commission for Protection of Child Rights(NCPCR) and The State Commission for protection of Child Rights (SCPCR).
11. The school should not discrimination on basis of Caste, Religion, Gender, language, and Economy to give free Education.
12. Others, the school infrastructure, toilet for separate boys and girls, mid – day – meal scheme, drinking water, and teaching hours for teacher, and so many provisions in RTE.

3. RTE and Judicial Activism

Judiciary is played the important role for make a powerful education system time to time. I want refer some important cases for understanding the role of judiciary activism for universal education and the annihilation of caste. It is Anand Teltumbde who recently said that if “free and compulsory education through common neighbouring school system for all children” was set up then not only would Indian be free from malnutrition, but also free from caste. Whilst one notes this very important observation one also has to note some judgments:

1) Mohini Jain vs. State of Karnataka 1992:

In this case asked important question that “is give education right to people in Indian constitution?” and judiciary says according to Indian constitution art... no 21,38,39,41 and 45,the State have responsibility and compensation to do the provision to give the all citizens of education. In this judgment judiciary clear the role of State for education

2) J.P Unnikrishnan vs. State of Andhrapradesh 1993:

In this case The Supreme Court says: Every citizen in country has fundamental right of education and he is including in Art. No21 of Indian constitution but it is not absolute. So it has a limitation according to Art no 41&45 of Indian constitution. The Supreme Court have not answered of the question of the education is occupation or not?

3) T.S.A Pai foundation Vs State of Karnataka 2002:

In this case supreme court judgment of the private educational institute, colleges and schools have freedom of decide fees, admissions of student, recruitment of teachers and professors. According to Prof N.D.Shirolkar(Well-known professor in pune): “For the impact of T.S.A Pai foundation Vs State of Karnataka 2002 the rule is come out that, those who want to take professional education must pay for it.

4) Islamic Academy of Education vs. state of Karnataka 2003, P.A. Inamdar and other Vs State of Maharashtra 2005, Association of private unaided school vs. Maharashtra 2010.

In the cases of Islamic Academy of Education vs. state of Karnataka 2003, P.A. Inamdar and other Vs State of Maharashtra 2005, Association of private unaided school vs. Maharashtra 2010, the Supreme Court gave freedom for the question of student admission, structure of fees for the market forces. According to Supreme Court in P.A. Inamdar Case (12/08/205): “Education used to be charity or philanthropy in good old times. Gradually it became an occupation” According to Prof N.D. Shirolkar: “The Birla Committee Report (2000) says Markets wants to capture all the areas of higher education which are profitable”

When I study all cases I saw the Supreme Court role for education is changeable free and compulsory education to occupation of education, commercialization of education. But an important fact is that education becomes fundamental right.

4. RTE and Annihilation of Caste

If we talk in the language of classical Marxism then one says that the legal superstructure is only a reflection of a hidden economic base of dominant classes. Transform this into the contemporary debate and one finds that the RTE as we know it can only be a superstructure of the neo-liberal market system, where not only would universal education be impossible, but also deep class divisions would perpetuate the caste system.

Whilst it has been recognized that the first annihilator of caste was Gautam Buddha, the modernists like Phule, Shahu Maharaja, and B.R. Ambedkar have played a pivotal role along with so many Ambedkarites, socialists and Marxists. All of them had focused on education. Ambedkar says in his book *Annihilation Caste* that whilst caste is a form of “enclosed class” governed by the laws of graded inequality and division of labourers, his very modernist outlook also made him say that caste was also bound to the oppression of women. Unlike the Marxists he did not follow the agitation mode of politics, but instead talked of social transformation through education.

According to R.C Sharma, “the scheduled castes have been backward socially, economically and educationally. For quite a long time they have been subjected to various forms of social and economical exploitation. The Constitution of India, therefore, extended protection and safeguards for the scheduled caste either specially or by way of general rights of citizen for maintaining and promoting their educational and economic interest and removing certain

social disabilities”⁴ In this way many thinkers or socialist have try to say the education is very effective weapons for annihilation of caste.

I am interested in Article no 8 and 9 of Right to Education Act for Annihilation of Caste System. I also note that the duties of State Government and Local Self Government about Art... No 8 and 9 of RTE have to be implemented for this. The duties No 4 and 5 is very most important for Annihilation of Caste system.

Duties No 4: The State Government or Local Self Government has a duty to control or Direction of No one child have not discriminated on the basis of Caste, Class, Religion, and Gender in his school.

Duties No 5: The State Government or Local Self Government has a duty to control or Direction of No one child of Backward Community or Weaker section have not discriminated on the play ground, Mid-Day-Meal Scheme, place of drinking water, place of toilet and class room.

5. Critically Examine of RTE:

Everything has a two side like a coin. RTE have also two sides mostly critique on under RTE What is alarming is that since Indian democracy has not yet got rid of its feudal past and is yet governed by a bureaucratic elite that has a feudal mindset, the success of schemes can only be disastrous. Consider the provision of mid-day-meal scheme and what happened in the State of Bihar Gandaman (Chhapra) on 16th July 2013, where 27 children were killed from mid-day-meal scheme and 25 children have serious in hospital, and July 17, 2013 where 50 kids taken ill after midday meal in Madhuban(Bihar)”⁵. One of the most important critique is on midday-meal scheme is Prof. Vishakha Khaire he wrote the article “Bhrastacarat sijhari saletil khicdi. (Boiling rise on corruption in the school)”⁶

According to Prof. K. N. Panikkar “Post Independence India’s Leaders, particularly Abul Kalam Azad, advocated an education policy that would be liberal and humanitarian, and set the nation on path of progress and prosperity, but unfortunately, in the past few decades, this unfinished agenda has been dumped by successive government. It has been replaced by an educational policy which priorities private profits over public goods encourage cultural and intellectual imperialism.”⁷

6. Conclusion

Lastly I want to conclude my paper. In this paper I was trying to study what really Right to Education Act is and what its role in annihilation of caste system. After all the role of education is to produce a democratic society that is free of caste. However since the project of universal education as a political project has failed, the role of judiciary in RTE comes up. One may thus ask: “Can judicial intervention help in the implementation of universal education and the annihilation of caste? We know that every policy have advantages and disadvantages. We just try to remove the disadvantages and pick up a good policy. Right to education policy is not wrong but its implementation is going the wrong way. Sharmila Rege (well known feminist thinker) says Education is a Trutiya Ratna (third Diamond)⁸. Thus education is very important to abolish the caste and class system. But the neo-liberal project of privatization of education will never help in this process. What one needs is what J.P. Naik emphasized on namely “the common school system”.

Let us have a look at the table given below:

From the below flow chart, we state how education comparison in India takes place. Before the introduction of RTE in 2009, the people who are economically backward could not take education due to high cost since the common school education system never took place. Education was assessable only for economically elite class that dominated the privatization of education system. What one has been recently witnessing after globalization is the movement from government school to private schools. This impact was reflected in attendance of student from government school. There were fewer students admitted in Government Schools. To counter this movement the Government of India has taken decision to provide free education to primary students in government schools. Many educational programmes have been provided by the Government of India like the midday-meal system, free books, stationary, school uniforms, scholarship etc. Therefore, theoretically speaking, the economic weaker section has possibility to take education. But one should not forget that class system has developed where the poor go to the government schools whilst the neo-rich are moving to private (largely English) schools.

What has largely been ignored is the provision of the mid-day-meal system in not only providing good nutrition, but also able to form a form of democratic collectivization that loosens caste boundaries. In this case one asks: “can the mid-day-meal system provide a cannon fodder to fight against caste?” A critical view of the RTE has to be taken.

- ¹ For judicial activism kindly see the following legal cases: 1) Mohini Jain vs. State of Karnataka 1992. 2) J.P Unnikrishnan vs. State of Andhrapradesh 1993. 3) T.S.A Pai foundation Vs State of Karnataka 2002. 4) Islamic Academy of Education vs. state of Karnataka 2003. 5) P.A. Inamdar and other Vs State of Maharashtra 2005. 6) Association of private unaided school vs. Maharashtra 2010.
- ² 18 Oct 1882 – A memorandum to the Hunter commission in *Bahujan Shikshan Vastav Ani Aapeksha* edited by Sarad Javdekar and others, Publication: Aakhil Bhartiya Samajvadi Adhapak Sabha Pune , 2011 topic 20 page no 195
- ³ See *Bahujan Shikshan Vastav Ani Aapeksha* edited by Sarad Javdekar and others, Publication: Aakhil Bhartiya Samajvadi Adhapak Sabha Pune , 2011 page no 4.
- ⁴ I refer in *The Studies in educational reforms in India volume III* Edited by P.R. Panchamukhi (Indian Institute of Education, Pune 1989), chapter 3 *Concessions and Incentives to Educational Institutes for S.C. Student at School stage in Rajasthan* page no 67
- ⁵ I refer in the Times of India, *Poison theory floats as midday meal kills 27 kids*. Dated July 18, 2013 2013, in the Indian Express, *Pesticide in midday meal, toll 22*. Dated July 18, 2013. In Maharashtra times, Madhna Marnace 22 Bali Madhubanethi Visbadhece 52 Vidyarthi Aatevastet. Dated July 18, 2013.
- ⁶ I refers in See *Bahujan Shikshan Vastav Ani Aapeksha* edited by Sarad Javdekar and others, Publication: Aakhil Bhartiya Samajvadi Adhapak Sabha Pune , 2011 page no 124.
- ⁷ See K. N. Panikkar, 'India's Education Policy: from National to Commercial' in *Economic and political Weekly*, April 2011
- ⁸ See Sharmila Rege, Education as Trutiya Ratna: Towards Phule- Ambedkarite Feminist Pedagogical Practice, in *Economic and Political Weekly*, October 2010

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