

MAKING RIGHTS REAL; EMPOWERING OPPRESSED CHILDREN THROUGH HUMAN RIGHTS EDUCATION IN SRI LANKA; A PATHWAY TO DIGNITY

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Abstract

Despite race, religion and color differences all children inherit equal access for Right to Education. Though it is a universally accepted human right, philosophers from cultural relativist schools criticize the concept of 'universality,' due to geo-political realities.

They are often deprived of their basic right to be educated due to various reasons like poverty, abuse or cultural discrimination. In numerous initiatives worldwide, Human Rights Education has proven successful in empowering those vulnerable children. Education *about, through and for* Human Rights, foster the oppressed groups to speak out and act in the face of injustices.

Sri Lanka is a signatory to a plethora of International Human Rights instruments including the United Nations Convention on the Rights of the Child (1989). Hence, is legally and morally obliged to protect, promote and fulfill these rights of its citizens. But Right to Education is not enshrined in the fundamental rights chapter of the 1978 Constitution and has only been recognized through Judicial Activism. Researches reveal that, there are children

who have been deprived of equal access to education in Sri Lanka even today.

In this article the author suggests Human Rights Education as an empowerment tool of those marginalized and recommends avenues for its inclusion in legislations and Policy making process. If the ultimate goal of human rights is to establish dignity of people, justice should be meted out to all innocent children to seek their social emancipation through Education in Sri Lanka.

Key Words: Human Rights Education, Right to Education, Empowerment, Sri Lanka

1. Introduction

*"I raise up my voice – not so that I can shout, but so that those without a voice can be heard. Those who have fought for their rights: Their right to live in peace. **Their right to be treated with dignity.** Their right to equality of opportunity. **Their right to be Educated.**"* **Mala Yousafza.**

The United Nations Convention on the Rights of the Child (UNCRC) defines the child as "every human being below the age of 18 years"². Despite the race, religion, gender and language all children inherit

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² Article 1

equal access for Right to education. Though it is a universally accepted human right, Philosophers from cultural relativist schools criticize the concept of “universality” (Palau-Wolffe, 2016) due to geo-political realities. For instance, in India “Dalits” and “Adivasi” (Indigenous) communities, or members of “scheduled castes” still face considerable discrimination in accessing resources and opportunities for social mobility (Bajaj, 2012).

Census reveal, today, almost 75 million children across the world are prevented from going to school each day (UNICEF, n.d.). The most recent figures show that 57 million children are currently not attending primary school (United Nations, 2013). In addition, 250 million of primary school aged children lack basic skills (Muedini, 2015).

Children are often deprived of their basic right to be educated due to various reasons like poverty, abuse or cultural discrimination. In numerous initiatives worldwide, Human Rights Education (HRE) has proven successful in empowering those vulnerable children. ***Education about, through and for Human Rights***, foster the oppressed groups to speak out and act in the face of injustices (Bajaj, 2012).

The literacy rate of Sri Lanka is 93.2% for males and 90.8% for females (Central Bank of Sri Lanka, 2012). Though Sri Lanka is gifted of free education along with a high literacy rate and had ratified a plethora of International Human rights instruments including the UNCRC (1989), Right to Education is not enshrined in the Fundamental Rights Chapter in the 1978 Constitution, and only had been recognized

through Judicial Activism. Researches reveal that, there are children who have been deprived of equal access to education up until today in Sri Lanka. Since Sri Lanka is a signatory to the UN is obliged to ***protect, promote and fulfill*** these rights of its citizens.

In this article the author addresses the vital role (Palau-Wolffe, 2016) of **Human Rights Education** as an empowerment tool to be applied to the marginalized children and suggest it to be included in Policies and legislations regarding Education. Institutional measures are also vital in this context. The ultimate goal of human rights is to establish dignity. Hence justice should be meted out to all innocent children to seek their social emancipation through education.

1.1. Methodology

This is a theoretical study. Primary and secondary sources are used in this study. It relies on a number of previous reports, publications, laws and policies. The information has been taken from many readings, articles, books, web sites, newspapers, case law, statutes and International Human Rights treaties and conventions.

1.2. Objective

The objective of this article is to identify particular marginalized groups of children who have been deprived from the right to education in Sri Lanka, (sexually exploited, displaced, refugees, orphans, working children etc.) and to suggest HRE as a tool to empower them. It also aims to identify the major loopholes in the existing laws and policies and suggest appropriate measures

to protect the right to education of the vulnerable children in Sri Lanka.

2. Discussion

Literature reveals that, the scriptural words “*Sa Vidya Ya Vimukthaye*” emphasize “Learning is in fact the real learning that becomes the cause of liberation” (Patel, 2008). According to Paulo Freire, “Education does not transform the world. Education changes people. People change the world” (1972). Hence, Education is intrinsically valuable as humankind’s most effective tool for personal empowerment (Claude, 2005).

2.1. Historical Background of Right to Education

All human rights documents give a prominent place to Education and stress the importance of education in promoting human rights (Patel, 2008). Prior to 1948, Neither the American Declaration of Independence (1776) nor the French Declaration of the Rights of Man (1789) articulated right to Education (Right to Education, n.d). In its initial steps, it was only recognized as a “Second-generation right”³.

The Universal Declaration of Human Rights (UDHR) (1948) was the first document which stated in article 26, that “Everyone has the right to Education” and it is directed towards “the full development

of human personality”. Subsequently, it has been legally recognized in core human rights treaties.⁴

2.2. What is Human Rights Education and Empowerment?

Seth Kreisberg says, “Empowerment is a process through which people and or communities increase their control or mastery of their own lives that affect their own lives and the decisions that affect their lives” (1992). According to Amnesty International “*Human Rights Education is a way to empower people so that they can create skills and behavior that would promote dignity and equality all over the world*” (Bajaj, 2012).

After the World Conference of Human Rights in Vienna (1993), the UN declared 1995-2004 as the International Decade for HRE. In 2011 under the United Nations Declaration of Human Rights Education and Training (HRET), HRE became a right in itself (Palau-Wolffe, 2016).

HRET Declaration (2011) defines that HRE as “*Education, training and information aimed at building a universal culture of Human Rights*”. It not only provides knowledge but mechanisms to protect them, develop skills needed to promote and apply human rights in daily life (World program for Human Rights Education, 2012).

Child (CRC) (1989) article 28-29. In the Convention on the Elimination of all Forms of Discrimination against Women CEDAW (1979) article 10, In International Convention on the Elimination of All Forms of Racial Discrimination 1969 (ICERD) article 7, also recognize the Right to Education of Children.

³ Second-generation Human Rights are related to equality and began to be recognized by governments after World War II. They are fundamentally economic, social, and cultural in nature.

⁴ In the International Covenant on Economic, Social and Cultural Rights ICESCR (1966) article 13, In Convention on the Rights of the

The three prepositions linking human rights and education is that “Education *about* Human rights, Education *through* Human Rights and Education *for* Human Rights” weaves together the process of HRE and their intended outcomes (Bajaj, 2012).

2.3. India and Human Rights Education

The Supreme Court (SC) of India, in *Unnikrishnan, J.P. vs. State of Andhra Pradesh*(1993) held that “right to Education is an inherent part of Right to Life under Article 21 of the Constitution”.

Thereafter, article 21(A) was inserted to Indian Constitution, making “Right to Education” a fundamental right for children between age group 6-14. (Gupta, 2018). Subsequently, Right to Education Act (RTE Act) was enacted by the Parliament of India in 2009, which describes the importance of free and compulsory education for children. (Provisions of the Constitution of India having a bearing on Education, 2010).

2.3.1. Real life experience of Empowerment; The story of Premalatha

“*A path to dignity*” is a film⁵ that demonstrates, Successful practices and projects in India, Australia, and Turkey which illustrate the power of human rights education in transforming people’s lives and empowering individuals to make a

difference in their communities (Bruno, 2012).

Premalatha girl who lives in Madurai, India belongs to a Dalit caste family, she was often asked to engage in household chores while her brother enjoyed leisure. When she questioned her parents about why they value only boys not girls at all she was beaten. Premalatha, had thought to commit suicide. But she decided to discuss it with her human rights teacher hoping that she could help her solve the problem. She further stated that children have started to question these practices. Even boys have asked “why don’t you send my sister to a school?” (ibid).

3. Right to education in Sri Lanka

3.1. The Legal Regime

During 1658–1796, the Dutch colonial government introduced a free and compulsory education system in Sri Lanka (Rajapaksa, n.d.). In 1945, Dr. C.W.W. Kannangara, made education free for all the children (ibid). Sri Lanka is a signatory, UN member country which has signed plethora of International Human Rights instruments,⁶ also has ratified the UNCRC in 1991. (National Action Plan for the Protection and Promotion of Human Rights, 2017-2021). Since Sri Lanka is a dualist country as held in *Nallaratnam Singarasa V Attorney General* (2006), the application of international

⁵ "A Path to Dignity: The Power of Human Rights Education" is a 28-minute-long documentary. The film is a collaborative effort between Human Rights Education Associates, SokaGakkai International, and the Office of the United Nations High Commissioner for Human Rights.

⁶ The UDHR (1948); The International Covenant on Civil and Political Rights, 1966 (ICCPR), (ICESCR) 1966, 1979 (CEDAW), (CRC) 1989, ICERD (1969), and Convention on the Rights of Persons with Disabilities, 2008 (CRPD)

covenants, treaties are not binding until it is domesticated under the municipal law.

In 1992, Sri Lanka introduced the **Children's Charter**, the first Policy Document relating to the protection of the rights, of the children in line with the standards acknowledged by the CRC (Niriella, 2018). The National Child Protection Authority (NCPA) was established by the Act No.50 of 1998 (National Child Protection Policy, 2013).

The Education Ordinance No. 31 of 1939 (as amended) is the only law regarding the right to education in Sri Lanka (Rajapaksa, n.d.). The Sri Lankan Education Policy (1948) mandates free education at the primary, secondary and tertiary levels (Muttiah, Drager, & O'Connor, 2016).

Though, "Right to Education" is not enshrined in the Bill of Rights in 1978 **Constitution** of Sri Lanka, it is stated in the Directive Principles of State Policy, in article **27(2) (h)** that, "*State shall assure to all persons of the right to universal and equal access to education at all levels*" but, they do not confer any legal right.⁷ Even though, in **Palihawadanav. Attorney General**(1978-1980)the Honorable Apex Court held that, "*Article 12 of the Constitution denotes equality before the*

law and equal protection of law". This case was the beginning of embracing the Equality doctrine in Fundamental Rights Jurisprudence which was developed by the United States SC under the reasonable classification principle.

In **Haputhantirige v. Attorney General** (2007)it was held that, "*any questions relating to admission of the students to Grade 1 in National and other schools fall under Article 12(1) of the 1978 Constitution of Sri Lanka*".

In another SC case⁸, Honorable Chief Justice K. Sripavan stated that, "*Article 27(2) (h) of the Constitution is one of the directive principles of state policy which ensure the right to universal and equal access to education at all levels*".

By all the above-mentioned cases it is crystal-clear that the human right to education is well protected by the judiciary in a sequence of cases⁹ by the way of Constitutional protection under the doctrine of Equality (Silva, 2009).

Human Rights Commission of Sri Lanka is also a state funded entity set up under HRCSL Act No. 21 of 1996 to protect and promote human rights (Gomez, 1998). To promote awareness of and provide

⁷ Article 29 of the Constitution of SL 1978

⁸ **Chandani de Soyza v Minister of Education**, SC.FR. NO. 77/2016

⁹ **Kavirathne v Commissioner General of Examinations** SC (FR) No 29/2012, SC Minutes of 25 June 2012, **Seneviratne v. University Grants Commission**, (1978-80), **Perera v University Grants Commission** [FRD] (1) 103, **Ferdinando v Principal, Vishaka Vidyalaya** SC(FR) 117/2011, SC Minutes 25 June 2012; **Lokuge v Principal, Royal College** SC(FR) 492/2011, SC Minutes

12 October 2012; **Jayawardena v Principal, DS Sennanayake College** SC(FR) 231/2012, SC Minutes 18 December 2013; **Amavindi v Principal, Dharmashoka Vidyalaya** SC(FR) 37/2013, SC Minutes 20 January 2014; **Sampath v Principal, Vishaka Vidyalaya** SC(FR) 31/2014, SC Minutes 26 March 2015; **Sakir (on behalf of Minor Shammeha) v Principal, Holy Family Convent** SC(FR) 39/2013, SC Minutes 23 March 2015.

education in relation to Human Rights article 10(f) are one of the primary functions of the HRCSL.

3.2. Issues in Sri Lanka in Right to Education

3.2.1. Vulnerable children

Sri Lanka experienced a civil war for more than two decades. Education has been significantly affected due to the conflict, leaving hundreds of thousands of **children displaced** and recruited as **child soldiers**¹⁰ in the Northern Province (Muttiah, Drager, & O'Connor, 2016).

In **child Sexual abuse** cases, young mothers are deprived from right to education. According to reports, in Sri Lanka, almost 5% of the pregnancies in 2016 were reported of teenage mothers (Suranga, 2019). **Child marriages** are also practiced in Sri Lanka. The marriageable age is eighteen years under the Registration of Marriage (Amendment) Act No 18 of 1995 (Niriella, 2018). But, Muslim Marriage and Divorce Act (MMDA) (1951) do not specify a minimum age for Muslim marriages. Section 23 of the MMDA states that, “a child below the age of 12 can be married with the authorization of a Quazi judge”. (Rodrigo, 2019). Under article 12 of the 1978 Constitution, unequal treatment on the basis of sex, religion is a fundamental right violation. Hence, right to education, is obstructed by “de jure” regulations for the Muslim children in Sri Lanka.

Child Labor being cheap prevails in many parts of the world. Sri Lanka Department of

Census and statistics declare that the number of working children is around 150,000 (Weerasinghe, n.d.). They also carry the disadvantage of the opportunity for elementary education (ibid, pg.7). **Poverty** and right to education are also strongly interconnected. Out of a total of 3.5 million children in the age group 5-14 years, 391,461 (or 11.3%) are poor, of them 24,276 (or 6.2 %) are not attending school (Nanayakkara, 2017).

Imprisonment of parents also, causes many hardships especially to the **children of imprisoned mothers**. During 18 months from January 1999, 4089 women were imprisoned. 2416 were mothers. Of the 262 children, schooling was affected. Education was considered to have been adversely affected in 59 (23%) (Senanayake, Arachchi, & Wickremasinghe, 2001). **Children whose parents are ex-combatants** also were the Children "orphaned by justice", with the mother imprisoned, when the father is in active combat, may represent a serious denial of child rights (ibid).

According to Dissanayake & Sakalasooriya, the educational aspirations of the **Migrant family children** are significantly lower than non-migrant family children and motivation for higher education is fewer in-migrant families (2017). Results show that maternal migration negatively impact on the educational achievements (ibid). **Children with disabilities** were reported 10.6% as of school-aged children in Sri Lanka, and 10.2% do not attend school because of their disability, meaning only 0.4% of these

¹⁰ According to UNICEF, between November 1, 2006 and August 31, 2007, 262 children were recruited by the LTTE (Wikipedia)

children attend school (Muttiah, Drager, & O'Connor, 2016). The number of **Street children** in Sri Lanka is estimated to be 15,000 (Senaratna & Wijewardhana, 2013). Most children have no, or poor educational achievements and thereby are similar to street children in other countries (ibid).

Finally, it is evident by above information that, undoubtedly a substantial number of children are still out of school and are being denied their right to an adequate basic education in Sri Lanka. Since this study is about transforming the oppressed children's lives, a top-down level implementation as well as a bottom-up models (Bajaj, 2012) is vital to be implemented.

4. Recommendations

As mentioned above, 1978 Constitution does not include judicially enforceable Economic, Cultural and Social rights like basic Education Right. But through judicial activism under the "equality clause" "right to education" is recognized as a fundamental right in Sri Lanka. Since Sri Lanka is in the dawn of a new constitution (Gamage, 2017), there is a dire need of, right to education to be recognized in an advanced Bill of Rights.

Also, special legislations like the **RTE Act** in India should be enacted in Sri Lanka in order to impose regulations on compulsory education. This is not only a duty of the Central government also the provincial councils, local government bodies should give priority since Education is in the Concurrent list of the 1978 Constitution in Sri Lanka.

There should be a national policy on Education in Sri Lanka to Make HRE

compulsory to the school curriculum in (pedagogy and content) (Bajaj, 2012), University Education for students in order to develop responsible citizens.

According to the Human rights commission Act (article 10F) the HRC can recommend and provide guidelines in implementing laws and policies regarding HRE as well as community education programs (Bajaj, 2012) to educate both the marginalized children as well as their parents or guardians to acknowledge them that they have rights and also the Civil society should take measures as the privileged community in providing the underprivileged adequate knowledge on Human Rights.

Need to have databases and advanced researches to identify these groups, the NCPA and relevant ministries on child & women affairs should implement strategic plans to educate the oppressed groups about Human Rights and Education and its importance.

Government in collaboration with the NGOs and UN agencies should implement human rights friendly school projects like the Amnesty International initiatives, and Scholarship programs, must request to provide technical assistance, learning materials and publications etc. from the UN, OHCHR.

5. Conclusion

Kofi Annan stated, "Human rights education is much more than a lesson in schools or a theme for a day; it is a process to equip people with the tools they need to live lives of security and dignity" (2016).

It is crystal-clear by the above study, that in Sri Lanka a number of "untouchable"

groups of children to the equal access to right to education exist. Thus, to make their rights real and to transform their lives, “Human rights-based approach to Education” is vital. The state as the guardian of the rights of the citizens Sri Lanka has legal and moral obligations to take necessary measures to protect, promote and fulfill these rights. Children today are the future of tomorrow. Since “Dignity is our inherent value as human beings” (2013), Justice should be meted out to all vulnerable children in Sri Lanka under the best interest of the child doctrine, in an egalitarian basis to seek their social emancipation and their path to dignity through Education.

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Abbreviations

HRE - Human Rights Education

SC – Supreme Court

UDHR – Universal Declaration of Human Rights

UNCRC – United Nations Convention on the Rights of the Child

UN – United Nations

HRCSL – Human Rights Commission Sri Lanka

OHCHR – Office of the High Commissioner for Human Rights

MANURAWA 2020