

On Nature of Right to Education

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Abstract—Educational circles in China pay close attention to right to education, its status and role in school education, and its guarantee in practice. But the general study of its value from the perspective of international human rights law is lacking. The paper gives an analysis of its nature from this standpoint.

Keywords—right to education; human rights; equality of right; freedom of right

I. INTRODUCTION

Right to education was established as a human right in Universal Declaration of Human Rights passed by the United Nations in 1948. According to the 46th article of the 1982 Constitution of the People's Republic of China, citizens of the PRC have the right and obligation to education. The state should promote overall development of youth, teenagers and children in virtues, intelligence and health. The article has great legal significance, which established citizens' right to education and the state's obligation to protect it.

Right to education, as a basic human right, has found expression in constitutions of most countries. Its protection is dependent on the fulfillment of states' obligations. In this sense, it is by nature a right in national laws. On the other hand, right to education has also found its way into international human rights laws. Its content and its position in national laws are influenced by development of international human rights laws. Once a country signs the international human rights convention, it is obliged to abide by the convention. From this perspective, right to education is also by nature international.

II. RIGHT TO EDUCATION AS A BASIC HUMAN RIGHT SHARED BY CITIZENS

Theories of human rights have gone through three stages in development. When the concept of human rights originated in the West, it referred to civil and political rights, which were priorities for the bourgeoisie of the time. In the 20th century, society-centric law theories were put forward to cure the maladies in capitalist society, and to ensure social justice and public interests. Theories of citizens' social rights emerged and were reflected in post-WW II international conventions. In the 1970s, the joint efforts of developing countries brought about the third-generation concept of

human rights, including the right to peace, to a harmonious environment, to humans' common heritage, to development, and to education. In accordance with the development of human rights concept, interpretation of the nature of right to education also went through three phases.

A. Political Right

According to the theories prevalent in the 18th and 19th century, though human liberty has been confirmed in constitutions, people have to study and understand the fundamental political principles, and the rules of political mechanism, before they can truly enjoy liberty. Therefore, right to education is indispensable for achievement of human liberty. For example, Japanese scholar Nakamura Mutsuo holds that right to education is meant to armor citizens with certain political abilities for the consolidation of democratic politics. This understanding of the right reflects the relationship between citizen education and human liberty, reveals its nature of political right, and shows the political function of education, so that it is placed in the same category with freedom of speech and freedom of press. As the premise to achieve other political rights, it occupies a considerably high position in the rights system. However, too much emphasis on its political function tends to turn education into a political tool for the instilling of ideologies, so that individual's personal choices are ignored.

B. Right to Survival, or Social Right

The social right theory in the early 20th century states that social maladies in monopoly capitalism deprive underprivileged classes of human dignity, so right to education is established to improve their abilities of survival.[1] It is in essence an economic right demanded of the nation to provide necessary and equal education opportunities, so that better survival abilities can be acquired. In the sense of social right, right to education is the minimum standard of human rights. Another requirement of right to education in the constitution is for the nation to make laws to guarantee it, especially in providing compulsive education and equal education opportunities.

C. Right to Development

In the 1960s to 1970s, the theory of development right came into being to interpret education from a development perspective. Right to development as a human right is closely related to survival right and all the other basic rights

and freedom. It's a combination of the rights to develop politically, economically, culturally and socially, with right to education the primary part. In modern society, education is essential for an individual to adapt to society, to take part in the development of society, and to pursue survival and a better life. Without education, it would be unlikely for one to tap into his or her potential or to achieve overall development. Inadequate right to education constitutes obstacles to sustainable development. In the educator and jurist Lao Kaisheng's view, right to education is a right to develop and perfect one's own personality, which is embedded in human nature. The theory, a significant fruit of modern education and law study, enables the concept to break through the conventional constitutional sense, and to extend to each individual's inborn right to development and growth through study. The state has to engage in creation of favorable conditions to ensure the right and comprehensive development of individual abilities. This theory also emphasizes the subjects' initiative and freedom in enjoying the right.

The combination of three attributes reveals the comprehensive nature of right to education, and enables us to give concrete description of its function and its subjects' obligations as well as right. From the perspective of civil right, right to education plays an important role in the guarantee of citizens' political rights. And the state mostly carries duties of abstention to protect it. From the perspective of economic right, it has significant impact on citizens' lifelong economic interests. The state is obliged to take active measures to protect and expand the right, and to boost the achievement of it by individuals or groups. From the viewpoint of development right, it meets citizens' demand to exploit their own potentials and to adapt to social development.

III. NATURE OF RIGHT TO EDUCATION

Taking initiative of the subjects into account, right to education is citizens' right to learn science, culture and professional skills in schools and other educational facilities or channels.[2] Considering the state's obligations, right to education is citizens' demand and acquisition of equal opportunities to receive education from the state.[3]

A. *Right to Education as Citizen Right*

According to article 46 section 1 of the current China constitution, education is both a right and an obligation for the PRC citizens.[4] The revision of constitution reflects the opinion that education is not only a right, but also an obligation for every citizen, especially for the legal guardians of every child. It is also closely linked to the purpose of China's education — to serve national politics and economy, and connected to its state-centric principle of education. However, this approach is considered inappropriate by many scholars.

After World War II, human dignity and human rights were held as the ultimate goal of national laws. Many previous obligations turned into rights, including right to education, which is confirmed in many international human

rights documents. To receive education is no longer seen as children's legal obligation, but their right. On the other hand, to ensure the right is an obligation of the state, society, schools and parents. Article 26 in Universal Declaration of Human Rights, article 13 in International Convention on Economic, Social and Cultural Rights and article 28 in the Convention on the Rights of the Child all reflect the transformation. Citizens' obligation in the Meiji Constitution became a right in the 1946 Constitution of Japan. Compulsory Education Law of the PRC article 4 gives the clear statement that the state, society, schools and families are legally obliged to ensure children's and teenagers' right to receive compulsory education.

B. *Right to Education as Obligation of the State*

International Convention on Economic, Social and Cultural Rights article 13 serves as the basis to establish states as the obligatory subjects to protect and promote right to education. The U.N. Committee on Economic, Social and Cultural Rights believes states generally have three obligations: to respect, to protect, and to fulfill the right. The obligation of respecting requires them to avoid taking measures unfavorable to the right. The obligation of protecting requires states to prevent hindrance to the right. And to fulfill the right means the states actively taking measures to make sure individuals or groups can fulfill it.

However, it is worth noting that right to education is complicated, so is national obligation. With the improvement of education level around the world, demands from citizens of different countries are changing, so is the national obligation. Better protection of education right can only be realized when concrete analysis are given from multiple perspectives based on conditions of different countries and corresponding obligations of the states. Therefore, the nature of education has gone through the transformation from mere obligation to the combination of right and obligation, then to the current education right. Especially after World War II, education has been defined as a basic human right in most constitutions, for which the governments are undeniably responsible.

IV. CONTENT OF RIGHT TO EDUCATION

Right to education has different forms and components. Much more than the right to compulsory education, it is defined as a lifelong right to various forms of education in the constitution of China as well as other countries. In a broad sense, citizens' right to education includes:

A. *Equality of Right to Education*

In a society where higher education is not accessible to everybody, when there are varied education levels and huge disparity between education institutions, equality of education right is especially important. Apart from scores, any differences in family backgrounds, birth places, ages and general health conditions must not become the factors to influence admission. According to Universal Declaration of Human Rights article 26 section 1 and International Convention on Economic, Social and Cultural Rights article

13, higher education should be available to everyone based on their scores. Similar statement can be found in Education Law of the PRC: Citizens have equal right to education with regard to admission, graduation and employment, etc. Therefore, equality is a significant factor of right to education.

Equal right to education is also the inherent requirement of social fairness and justice. The society must be impartial and indiscriminate to all its members, giving each of them the same opportunities of development and growth. Equal opportunities to pursue interests are actually a whole process based on equal rights. First, everyone get the same opportunity to start. Second, in spite of different abilities and expectations, everyone should get the same respect, care and help from the society.[5]

B. Freedom of Right to Education

Freedom of right to education is citizens' freedom to choose the types and content of education they want. Universal Declaration of Human Rights gives an interpretation of freedom of education right: Education aims to fully develop individual personalities and to nurture respect for human rights and basic freedom. Education should promote mutual understanding, tolerance and friendship between ethnic or religious groups as well as nations, and support the UN's peace-keeping activities. Parents are given priority in the choice of education types for their children. The bourgeois philosopher Wilhelm von Humboldt believes that education is supposed to make men rather than any given types of citizens, and that public education should operate without the influence of states.[6] Nonetheless, due to different understandings of education, so far only few countries deal with freedom of right to education in their laws.

Right to education is a complex, compact and profound system. As a significant area of the developing theories and practice of human rights, it is not a static or closed concept, but an open one in constant evolvement. Therefore, a combination of various factors — human rights, human beings, societies, economy, culture, politics, religions, theories and practice — all play a part in understanding the realization of everyone's right to education.

REFERENCES

- [1] Lao Kaisheng, On Education Laws, Nanchang: Jiangxi Education Publishing House, 1993, p.93
- [2] Xie Pengcheng, Basic Rights of Citizens, Beijing: China Social Sciences Press, 1999, p.110
- [3] Gu Mingyuan, Dictionary of Education, Shanghai: Shanghai Education Publishing House, 1998, p.1439
- [4] Xiao Weiyun, Birth of China's Current Constitution, Beijing: Beijing University Press, 1986, p.140
- [5] Niu Xianfeng, "Multiple meanings of social fairness and their significance in policy-making," Theoretical Exploration, 2006, Vol. 5
- [6] Susanne K.Langer, Feeling and Form: A Theory of Art, Beijing: China Social Sciences Press, 1986, pp.72-75