

Education, the Dream that is Materializing

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Abstract

The right to education is a fundamental aspect of human rights. It shapes life for a better tomorrow with a chance of an increase in better employment opportunities. It not only instills hope for a brighter future but also leads to the realization of other rights.¹ Progress in human life is impossible without education, but despite this fact, refugees struggle to have access to education. Importance of the right to education increases when it comes to refugees because of its ability to uplift the standard of living. This paper will look at the right to education as a concept and the meaning attributed to the word education. It will shed light on the nature of the right; whether it is a socio-economic and cultural right or a political right. The paper will further examine international instruments which recognize the right to education in emergencies and comprehend how it has been applied to the case of refugees. It points out two positive examples where access to education has been provided by community-based organizations in collaboration with NGOs, governments, and other organizations. The paper acknowledges the barriers to higher education but is not ignorant of the fact that there is progress today as compared to forty years ago. The paper concludes that despite the conscious movement of the international community towards the right to education of the refugees, there is much that has to be done for the complete realization of this right.

Understanding Education as a Right

The right to education is a globally recognized human right. Many regional and international instruments iterate the importance of the right to education. It is also essential to delimit the definition of 'education', although there is much interest in the right and its importance. In *Brown*,² the Supreme Court of the United States of America stressed the importance of education by highlighting that it is one of the most important functions of the state. It portrayed education as a precondition for the performance of an array of other functions and responsibilities. The Supreme Court also laid forth the fact that if any child was to be denied education today (in 1954), the child cannot reasonably be expected to succeed in life. It is the responsibility of the state

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¹ United Nations Human Rights Council, Tomás Ojea Quintana, *Progress Report of the Special Rapporteur on the situation of human rights in Myanmar*, 10 March, 2010, A/HRC/13/48.

² *Brown v. Board of Education of Topeka*, 347 U.S. 483 (SC 1954).

to provide education to everyone on equal terms. The idea of equal terms originated as a response to the inequality that was present in the system with the segregation and the 'separate but equal' practice.

It becomes difficult to conclude as to whether the right to education is to be understood as a social right or a political right. This situation arises because it is difficult to delimit the function of the right from these two spheres; which is also the case with many other rights.³ The Supreme Court in *Brown* remarked that the realization of this right was a pre-requisite for any citizen to exercise their rights and duties, the reason being that an uneducated person cannot make an informed decision on any matter unlike an educated one. From the Court's interpretation of education, what we can understand is that it is also required to accelerate the cause of nation-building and democracy. It is only the educated citizens who can effectively exercise the rights guaranteed. This perspective leads to the opinion that the right to education is a political right. However, when it is thought in terms of social, economic, or cultural aspects, the right inevitably becomes socio-economic in nature. The right to education of a child is very essential to mold their future. As pointed out in *Brown*, it is through education that values of culture and society are passed down from one generation to another generation. Further, education helps a person inculcate skills for survival and to earn a living. It enables everyone to face day to day life and challenges.

Deprivation of the right to education has dire consequences for human welfare and can diminish political power.⁴ Education is a tool through which minds can be tapped. The individuality and independence of thought of each person play a vital role in keeping the population informed.⁵ Education, at times, can even provide a platform to resist totalitarian regimes and many forms of exploitation. For example, if a person is underpaid for their manual labor, they can approach a relevant forum and seek redressal. But, this is possible only if one is educated or informed about what is rightfully theirs. Education does not always need to signify the formal way of schooling. As long as some minimum degree of knowledge is imparted, vocational training can also be used to educate the population.

Education under International Law

Article 1(a) of UNESCO consists of the term education and the Recommendation on Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms of 1974 has provided a wide meaning to it. According to it, education implies:

The entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit

³ Klaus Dieter Beiter, *The Protection of the right to education by international law: including a systemic analysis of Article 13 of the International Covenant on Economic, Social, and Cultural Rights*, Martinus Nijhoff Publishers, Leiden, 2006.

⁴ Ibid.

⁵ Ibid.

of, the national and international communities, and the whole of their personal capacities, attitudes, aptitudes, and knowledge.

UNESCO's Convention against Discrimination in Education has also defined education in Article 1. It refers to all types of education and all levels of education including the access, standard, and quality of education along with the conditions under which it is imparted.

The latter provides a narrow sense of interpretation while the former provides a wider sense of interpretation. The distinction between the two definitions was drawn in *Campbell*⁶ by the European Court of Human Rights. The court emphasized that education in a wider sense refers to the whole process where there is the transfer of knowledge, culture, and beliefs from one generation to another, while the narrow concept of education refers particularly to the transmission of knowledge for only intellectual development. This paper will link the right to education of refugees in the narrow sense, the formal process of education which includes primary, secondary, and higher/tertiary education.

Although children are the main beneficiaries of the right, it does not mean that the adults are not entitled to the right to education.⁷ It accrues to adults equally. Article 26 of the Universal Declaration of Human Rights declares that everyone has the right to education, making the right universal in nature.

Under the 1951 Convention, a Refugee is a person who flees his or her country on well-grounded fear of persecution on grounds of race, religion, nationality, membership to a particular social group, or political opinion and is unable to or unwilling to avail the protection of the home country. Refugees are non-citizens of the host country and hence are outside the purview of many state obligations including education.

Today, education is seen as an important public function which states are obligated to provide. It is virtually the goal of every government.⁸ This obligation arises from the International Covenant on Economic, Social, and Cultural Rights. According to Article 13 of the ICESCR, it is the duty of the state to achieve the full realization of the right to education. The state parties to the Covenant recognize that the primary, secondary, higher, fundamental education and a system of schools must be provided by the state.

The World Declaration on Education for All 1990 adopted by the World Conference in Thailand called for new and vitalized partnerships at all levels such as partnerships between government and non-government organizations, private sector and local

⁶ *Campbell and Cosans v. United Kingdom*, 1982, ECtHR, App no7511/76; 7743/76.

⁷ Margaret Sinclair, 'Education in Emergencies', *Commonwealth Education Partnership*, 2007 available at https://www.researchgate.net/profile/Margaret_Sinclair/publication/44827068_Education_in_emergencies/links/55e7ef5108aeb6516262ed9e/Education-in-emergencies.pdf, accessed on 27 March 2019.

⁸ Tony Waters & Kim LeBlanc, 'Refugees and Education: Mass Public Schooling without a Nation-State', vol.49, no.2, *Comparative Education Review*, 2005 available at https://www.researchgate.net/profile/Tony_Waters/publication/44836857_Refugees_and_Education_Mass_Public_Schooling_without_a_Nation-State/links/574c81cf08ae061b3300cc14/Refugees-and-Education-Mass-Public-Schooling-without-a-Nation-State.pdf, accessed on 30 March 2019.

communities, religious groups and families, etc. This is even more warranted in the case of education in emergency situations. It refers to education for the population affected by unforeseen situations and refugees also fall within this spectrum.

Emergencies cause a major disruption of education systems. School buildings are either damaged or are used to give shelter to the affected people. States struggle to pay attention to the right to education amidst war and conflict. If the schools are in the conflict zone, the quality of education cannot be guaranteed as states struggle to pay attention to the right to education and allocate funds to educational institutions amidst war and conflict. The 1990s saw the rise of organizations contributing to support the education of the affected population. It was this period when the concept of 'education as a humanitarian response' gained momentum. Although the Refugee Convention does not speak about the right to education, it is implied that refugees have this right by virtue of being human. The almost universal acceptance of the Convention on the Rights of the Child in 1989 implied that there was no room for an argument against the right to education of refugees in the host country. They cannot wait until the refugee children returned home as the wait is not measured and specific. So, the Convention persuades state parties to facilitate access to education to all children within their territory regardless of their status. These views were endorsed in 2000, in the World Education Forum held at Dakar. Following this, in November 2000, the Inter-Agency Network for education in Emergencies was created. The governing body of this Network comprises of the UNHCR, UNICEF, UNESCO, the World Bank, and other leading NGOs. In 2004, the Network came out with Minimum Standards for Education in Emergencies, Chronic Crisis, and Early Reconstruction which has been widely endorsed.

Education is an enabling human right which allows the person to access other rights.⁹ It is a central component of development strategies linked to economic growth, poverty reduction, and better lives for communities, families, and children.¹⁰ Internationally, the right to education has always been thought of as the right of a child because of its direct impact on a child's future. The Convention on the Rights of the Child casts a duty on the state to promote free and compulsory schooling at the primary level and create access to secondary level and tertiary education based on the capacity by all means. The Convention on the Elimination of All Forms of Discrimination against Women has supplemented this, urging states for non-discrimination between men and women in educational provision. Although states have acknowledged these provisions in principle, there is no explicit mandate forcing states to provide education to refugees.

The Refugee Convention does not have a specific provision for their right to education. The right to education falls under the International Covenant on Social Economic and Cultural Rights, where the complete realization of this right is progressive. The obligation of the state toward citizens regarding the right to education is incomplete as the realization of this right depends upon the availability of resources and capacity of the state. However, it is accepted, that the right to primary education must be fulfilled

⁹ Sinclair (n 7).

¹⁰ Sarah Dryden-Peterson, 'The Politics of Higher Education for Refugees in a Global Movement for Primary Education', vol.27, no.2, *Refuge*, 2010 available at <https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/34718/31548>, accessed on 29 March 2019.

by the state parties through the guarantee of compulsory and free primary education to all, regardless of their statuses.

Implications for Refugees

The problem is that 85% of the world's displaced population is in developing countries.¹¹ The top hosts of the refugee population are other developing countries like Iran, Pakistan, Uganda, Lebanon, and Turkey. An estimated 68.5 million people have been forced out of their homes around the world, of which almost 25.4 million are refugees and half of them are under the age of 18.¹² An estimated 10 million people are stateless and have been denied a nationality.¹³ This has hindered access to basic rights like the right to education, employment, and healthcare.¹⁴ Education can help restore a sense of normalcy for the refugee community. It can convey life skills and values of gender equality, health protection, conflict resolution, and environmental awareness, peace-building, and responsible citizenship. It is NGOs that organize educational classes for refugees, as refugee camps are located in remote areas and the local schools lack the space to accommodate more students along with the problem of the language barrier.¹⁵ There is also the issue of security and blockade of access to schools outside the camp. This issue intensifies when the host countries are not parties to the Refugee Convention. Assuming that primary education and vocational training are made available by NGOs, access to higher education becomes difficult. Universities in the host countries may not recognize the certificates from the previous schools of refugees. The students may not meet the required criteria and may not have necessary documents such as identity cards. The cost of attaining higher education is also considerably high and is not affordable unless there is some form of lump-sum scholarship made available to them.

The operation of schools also depends on the national consensus about who is to be considered a citizen in the future and the feeling of patriotism.¹⁶ In such cases, the status of refugees presents us with a paradox.¹⁷ This is because; the capacity of the refugees to consider themselves the national of the host country is punctured. The state of their nationality may leave them unattended and lacking a role in shaping the future of their origin country.¹⁸ They are left at the mercy of the host state, which is not obligated to fulfill the access to their rights.

Cases of Tibetans in India and Burmese in Thailand

Refugees have an unclear status in the host country, especially if the host country

¹¹ UNHCR, Statistical Yearbooks, available at <https://www.unhcr.org/figures-at-a-glance.html>, accessed on 2 April 2019.

¹² Ibid.

¹³ Ibid.

¹⁴ Peterson (n 10).

¹⁵ Sinclair (n 7).

¹⁶ Waters & LeBlanc (n 8).

¹⁷ Ibid.

¹⁸ Ibid.

has not signed the Refugee Convention. For instance, the Tibetan Refugees in India have an unclear status under Indian Law.¹⁹ They are still non-citizens, although they are protected and their culture and religious identity have seen comparatively less opposition from the Indian host.²⁰ This attributes to restriction in job opportunities. The Tibetan Youth Congress leader has pointed out to education being the key to their development. It is education that can create necessary lasting change in terms of behavior, attitude, and values. It is an educated youth who have to keep the Tibetans abreast of the current geopolitical situation in Tibet. The SOS Tibetan Children's Village School (TCV) has extended across India to ensure that all Tibetan refugees receive free and equal opportunities for education. They also have access to universities across India for higher studies. However, lack of documentation becomes a barrier to access higher education. Voting rights were granted to the children of refugees born in India, however, many of them are wary to claim full Indian Citizenship because of fear that it would indicate disloyalty to their national identity. Access to education, specifically higher education in the case of Tibetans in India seems bright in comparison to refugees around the world.

The other case is of the Burmese Refugees in Thailand. On the Thai side of the border, not just persecuted refugees have access to schools, but many parents in Burma send their children to the camps because the schools in the camps are better than the schools in Burma. Education in the camps is provided by UNHCR and an array of NGOs.²¹ Many community-based organizations are also working to organize schools in collaboration with NGOs. It was found that some of the vocational training certificates given in the camps are recognized by the Thai Government and the Burmese Government, from an interaction with some of these organizations. This has helped to facilitate job procurement. However, when it comes to higher education, most of them replied that the access is limited and the reason remains the absence of documents. The fact that most universities do not recognize the education system of refugee camps only adds to the problem. Efforts have been locally made to bring about a tertiary education system. For example, a number of Karen refugee academics have set up the Learning and Management Training College and offer Bachelor of Arts and Science degrees. But, the sad part is that these degrees are not recognized anywhere outside the refugee camp.

Conclusion

As a concluding note, the first part of the paper put forth the meaning of education and the importance of education as a right. Although international and regional instruments

¹⁹ B. S. Chimni, 'Symposium on the Human Rights of Refugees: The Legal Condition of Refugees in India', vol.7, no.4, *Journal of Refugee Studies*, 1994.

²⁰ Bibhu Prasad Routray, 'Tibetan refugees in India: Religious identity and the forces of modernity', vol.26, no. 2, *Refugee Survey Quarterly*, 2007.

²¹ Duncan MacLaren, 'Tertiary Education for Refugees: A Case Study from the Thai-Burma Border', vol.27, no.2, *Refugee*, 2010 available at https://researchbank.acu.edu.au/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=2354&context=fea_pub, accessed on 2 April 2019.

stress the universality of education, the refugee population at large is excluded from the accessibility of the right to education. There is no guarantee on when refugees might be able to return home. The Tibetans have been in India for as long as six decades while the Burmese have been in Thailand for at least two decades. The right to higher education was then considered a luxury for refugees.²² While this was the thought harbored by the UNHCR and other NGOs, the thought has largely changed today. UN's special rapporteur on human rights in Myanmar observed that education is both a human right and an indispensable means of realizing other human rights.²³ With this progress today, universities like the Australian Catholic University offer diploma courses via the internet enabling many refugees in the Thai-Burma border to benefit from the program. This has also become an example to other universities and the UNHCR and the NGOs to shift focus and pay more attention to the provision of tertiary education to the refugees.²⁴ Most international agencies address immediate relief requirements like food, water, clothing, and shelter.²⁵ Amidst emergency situations, the decisions made regarding the future of the children in the refugee camps have far-reaching implications. These things are directly or indirectly related to concepts of national identity and the belonging to a nation-state, the only irony being that the refugees are devoid of both legally at the time of receiving the relief.

While we talk about hindrances to higher education, what is to be never forgotten is about the right to basic primary and secondary education. The first step on the ladder is to guarantee the refugees access to and the right to primary and secondary education and unrestricted access to higher education based on their capacity and competence. There are questions relating to the pedagogy and recognition of credentials, accreditation, the geopolitics of the region, the role of universities with the host institutions, and much more.²⁶ As exemplified earlier, while the cases of both the Tibetans in India and the Burmese in Thailand are better compared to other refugee populations, there is still a long way to go. Education is a tool that can help democratize values and ideas, which can further the cause of liberation and helps the refugees return to claim their rightful status. The concept of education in emergencies has seeped through to gain recognition among the academics, NGOs, students, and governments across the world, despite the lack of an explicit provision affirming the right to education of refugees. There should be a conscious push towards the realization of this right keeping in mind the future of children in the refugee communities.

²² Ibid.

²³ Quintana (n 1).

²⁴ MacLaren (n 21).

²⁵ Emily Vargas-Baron and Maureen McClure, 'The New Heroics of Generational Commitment: Education in Nations with Chronic Crises', *Education as a Humanitarian Response*, 1998.

²⁶ Sarah Dryden-Peterson & Wenona Giles, 'Introduction: Higher Education for Refugees', vol. 27, no. 2, *Refugee*, 2010 available at <https://refuge.journals.yorku.ca/index.php/refuge/article/viewFile/34717/31547>, accessed on 30 March 2019.