

The Essence of the Concept of the Right to Education and Legal Nature

Bokiev Jakhongir Nurmatjon o'g'li

Senior lecturer of Constitutional law department of the Tashkent state university of law

Abstract: Nowadays, one of the main tasks of the state is to ensure human rights in all countries. One of the crucial human rights that guarantees the fulfillment of several other rights is the right to education. Furthermore, education plays a crucial part in the future and growth of the entire country. Thus, protecting a person's right to education is not just the state's responsibility; it is also a matter of worry for the state's future. In order to ensure that everyone has the right to an education, it is critical to consider the unique features of education. This article examines the idea, substance, and legal framework of the right to education.

Keywords: human rights, education, higher education, right to education, complex rights, constitutional rights, the right to choose forms of education.

Since young people are a nation's future, every nation guarantees their right to an education. Raising the nation's educational system to a new level, introducing the most beneficial teaching strategies for students, and maintaining educational continuity are the objectives of the reforms implemented in our republic's educational system today. The fact that the right to education is extremely urgent was also noted by our country's president, Sh.M. Mirziyoyev, who recognized that "supporting education is the biggest investment for New Uzbekistan" and "Salvation is in education, salvation is in upbringing, salvation is in knowledge." "If we develop school education, both higher education and science will develop in the future," he said.[3]

Indeed, it is an urgent issue to ensure the rights and interests of young people and to create all conditions for them to study, work, gain knowledge, and fully demonstrate their abilities, because young people are the guarantee of the development of New Uzbekistan.

In order to have certain knowledge about the institutions and concepts existing in each field, first of all, it is necessary to analyze their content and characteristics. The right to higher education, as a separate part of the right to education, is not excluded from this. Thus the right to higher education and its provision determine the future development prospects of the country.

Since the right to higher education is a component of the right to education, discussing the idea of the right to education is acceptable prior to delving into the details of the right to higher education.

The "International Standard Classification of Education" defines the concept of education, which explains that education is a purposeful activity that includes a certain form of communication aimed at learning.[5]

The Law of the Republic of Uzbekistan "On Education" also defines the concept of education, and education is a systematic process aimed at providing students with theoretical knowledge,

skills, and practical skills, forming their general and professional knowledge, skills, and abilities, and developing their abilities. In this definition, the position of the state covers not only the educational process but also the level of education achieved by the individual and the development of his practical skills and abilities.[2]

Based on the above, if we define the concept of education, it is a process that education is aimed at providing a person with theoretical and practical knowledge, forming and developing his skills and practical skills, characterized by the continuity of the learning process and educational activities, and the systematic achievement of clearly expressed goals in a certain sequence.

The right to education is defined in Article 26 of the Universal Declaration of Human Rights, according to which "everyone has the right to education. At least primary and general education should be free. Primary education should be compulsory. Higher education should be based on everyone's ability and within the scope of sufficient opportunity.[4]

As we can see, the Universal Declaration of Human Rights envisages the right to education in a general sense; that is, some types of education should be compulsory and free, and equal opportunities should be created to ensure the right to education for all.

Article 50 of the newly revised Constitution also strengthened the right of everyone to receive education. In this case, compulsory general secondary education, free general secondary education and the right to primary professional education were guaranteed by the state.[1]

Also, the "right to education" is partially expressed in Article 5 of the Law "On Education," which states that everyone, regardless of gender, race, nationality, language, religion, social origin, faith, personal, and social status, is entitled to education. guaranteed equal rights. However, it should be noted that the organizational issues of the right to education, i.e., the guarantee of education by the state, the creation of equal opportunities for everyone in education, and the essence of the right to education, are not fully revealed in this law.

Scholars on the right to education have also put forward different views. S. Federenko evaluates the right to education as a fundamental human right as a key element in building the entire institution of human rights.[6] Other researchers, T. Shlyuk and N. Jabin, recognize the right to education as a right that a person is born with, based on the importance of education in the modern world.[7]

A. Belyakina notes that there are many views on the interpretation of the "right to education" in science and puts forward the idea that the right to education combines the dual legal nature of the right and the elements of duty.[8]

Analyzing these opinions, it should be noted that the right to education is one of the fundamental rights of a person. Along with ensuring the right to education, it also imposes certain obligations (compulsory general secondary education). However, in the above opinions, the right to education is stated in a general sense, and the main purpose of the right to education and the procedure and conditions for its implementation are not disclosed in these given opinions.

The researchers in our republic also expressed different opinions on the right to education. According to S. Shermuhammedova, the right to education is one of the basic rights of every citizen of the Republic of Uzbekistan, which provides equal access to all forms of education, regardless of their social status.[9]

B. Kadirov explained that the right to education is one of the basic rights of an individual, and it is a process that includes imparting knowledge and education as one of the priority areas of socio-economic, spiritual and cultural development of society.[10]

It should be noted that the right to education is recognized by these authors as one of the most basic rights that belongs to a person regardless of his material and social status. Indeed, the right to education is one of the basic rights guaranteed to any individual, regardless of age, health status, social origin or social status.

Also, it is not possible to fully agree with the definition of the right to education as the main criterion of the right to education. Because the right to education, as a certain process, includes not only imparting knowledge and education but also processes aimed at forming certain skills in a person through education.

Based on the opinions of the above authors and the analysis of legal norms, the right to education can be expressed as follows: ***"The right to education is a subjective right that every person can freely use on the basis of equal rights, which belong to the person based on the guarantees given by the state."***

When it comes to the notion of the right to a higher education, the legislative texts provide definitions for the terms, categories, and formats of education. But the phrase "right to higher education" has a definition that hasn't been made clear.

Scientific literature does not provide a clear and uniform classification of the "right to higher education." Nevertheless, there are views on theoretically revealing the essence of this concept by several scientists. In this way, each scientific researcher focused on one or another aspect of this concept and examined it within the scope of their scientific problem.

While acknowledging that individuals with only a primary education can pursue higher education, T. Amin maintains that the right to higher education entails the duty to end discrimination in the educational system at all levels, to acquire knowledge in particular fields of study based on minimal requirements, and to enhance quality. When it comes to the notion of the right to a higher education, the legislative texts provide definitions for the terms, categories, and formats of education. But the phrase "right to higher education" has a definition that hasn't been made clear.[11]

Manfred Nowak argues that although the right to higher education is generally considered a cultural right, it is related to other human rights. In modern human rights law, the right to higher education is a set of knowledge that includes educational freedom and academic freedom.

M. Shaw and T. Cowans noted that it is a means of learning, a way to obtain a certain degree, that all individuals can use equally.[12]

In agreement with these opinions, it can be said that the right to receive higher education is a subjective right that every person can freely use, and it is a set of knowledge, skills, and abilities in the relevant field acquired by students based on certain standards (state education standards).

Furthermore, as Manfred Nowak points out, the right to education cannot be viewed as a cultural right. Since the primary goals of exercising one's right to an education, including a higher education, are to train a specialist in a certain field by establishing his credentials and skills and to supply oneself with scientific-theoretical knowledge in certain disciplines or specialties.

The core idea behind the right to higher education can be approached in different ways. For instance, according to S. Myshenko, obtaining professional knowledge, skills, and qualifications while maintaining the required level of basic education and receiving official recognition in line with the standards and educational programs set forth by a scientific organization or higher education institution constitutes the right to higher education.[13]

V. Drobysh acknowledges that the right to higher education is a subjective one and feels that it is a genuine chance to get the information and skills required for the good of the person, the community, and the state, which is protected by the government and the global community.[14]

N.A. Pavlova stated that the right to higher education is one of the human rights that everyone can exercise voluntarily. She defined it as the ability to obtain professional and cultural knowledge, practical skills, and credentials of a person in a relevant field. [15]

The views of the authors regarding the recognition of the right to higher education as a subjective right and its guarantee by the state and the international community should be given special recognition. Also, as the authors note, the right to higher education means the right to

acquire knowledge, skills, and abilities in the relevant field through the voluntary use of this right.

C. Martin touched on the concept of the right to higher education, noting that it occupies a central place in the life of society and is a subjective right belonging to an individual, and he emphasizes that it is one of the rights guaranteed in the international arena, aimed at the gradual transfer of knowledge in a certain area.[16]

X. Brighouse and K. Mullanes emphasize that the right to higher education as a constitutional right is a natural right of a person, and unlike other natural rights, they evaluate this right as the right of a person to acquire a certain range of knowledge and acquire skills at a certain stage of social development.[17]

If we analyze the opinions given by these authors, we can fully agree with S. Martin, Kh.Brighouse, and K. Mullane's view that the right to higher education as a constitutional right is a subjective right belonging to the individual. Because the right to receive higher education has been established today at the level of the constitutional norm and is a part of the right to receive education belonging to a person as one of the fundamental rights.

Also, it is not possible to fully agree with the status of the assessment of the right to higher education as a natural right. The reason is that the natural right arises from the birth of a person and belongs to the person in any case. To obtain higher education, a person is required to have completed certain requirements, including general secondary and secondary specialized or professional education.

There are other approaches to the essence of the concept of the right to higher education. For example, K. Joamets and M. S.Vasquez evaluates the right to higher education as an opportunity for each person to acquire educational programs in a certain direction based on their own wishes and capabilities. [18]

T. Zhukova considers this right to be a non-property right that is implemented on the basis of the principles of equal rights, property independence, and freedom of citizens' will of the participants in the civil-legal relationship.[19]

Partially agreeing with these opinions, it can be said that in higher education, parents, including students, have the right to choose educational institutions and forms of education (full-time, part-time, distance) according to their wishes. In this case, the learner acquires educational programs based on the requirements established in accordance with the state educational standards.

Moreover, if we analyze these points on the example of the right to receive higher education, the person receiving education can choose the institution of higher education based on their own will; each student who is admitted to the institution of higher education (on the basis of a payment contract) can study on the basis of a contract with the educational institution as a participant in the civil-legal relationship.

This situation shows that the right to education as a civil-legal relationship is included among personal non-property rights, and based on the principle of freedom of contract, a student can receive education on the basis of a contract. It is worth noting that law students are also entitled to receive a second and subsequent higher education under the contract.[2]

At the same time, some aspects of the right to higher education from the point of view of constitutional law have been revealed in the above opinions. In our opinion, the most important feature of constitutional law is that the right to education, including higher education, is a subjective right belonging to an individual. Accordingly, by analyzing the characteristics of the right to higher education as a subjective right, we will try to reveal the legal nature of this concept.

The subjective right to education is a legally guaranteed opportunity to acquire knowledge, develop skills, personal characteristics and other competencies for the harmonious development of each person and the development of society as a whole.[8]

The authors include the following characteristics of the right to higher education as a subjective right:

- constitutionality of the right to education;
- that it is related to personal interests and limited by the interests of other persons and objective legal norms;
- provision of legal obligations to other persons.[20]

Of course, although the right to higher education is considered a constitutional right of a person as a subjective right, this right is also limited within certain limits. That is, during higher education, a person should not interfere with the rights and legal interests of third parties during the implementation of his subjective right (education).

As some authors rightly point out, there were restrictions on the exercise of the right to higher education for certain groups of the population at different times. The reason is that the right to education is associated with changes in various legal relationships, and its implementation is considered a complex process.[21]

It should also not be forgotten that there are some limitations in the exercise of any rights, including the right to higher education (insufficient coverage of higher education, limited admission quotas, not creating the same opportunities for all forms of education, including the absence of distance education in all educational institutions; it is a natural situation that there is insufficient allocation of admission quotas for this form of education, non-use of modern approaches in the development of educational programs, and organization of the educational process through outdated mechanisms).

Some authors, reflecting on higher education reforms, have noted the issue of inclusion of high school and college graduates with higher education in ensuring the right to higher education as an urgent problem in the field of higher education.[22]

We can conclude that in order to understand the legal nature of the right to higher education, it is also necessary to know the ways of its implementation. These issues are partially defined in our legislation. In particular, Article 5 of the Law "On Education" stipulates that all types of education, including the right to higher education, will be ensured through the following:

- a) development of educational organizations, support of their innovative activities, implementation of educational programs, and educational processes using innovative technologies;
- b) organization of various forms of education (separated from production (daytime) and without separation (external, evening, remote));
- c) personnel training, retraining, and qualification improvement;
- d) getting general secondary, secondary special education, and primary professional education free of charge;
- e) to grant the right to pass the attestation in public educational institutions to citizens who have received education in the family or through independent study and to persons who have not received general secondary education.

The mentioned methods of education apply to all types of education, and the guarantees given by the state are important in the implementation of the right to education.

Based on the results of the analysis mentioned above, the following conclusions can be drawn:

1. It is appropriate to analyze the current legal norms and, based on the opinions of scientists, to explain the concept of education as follows:

"Education is a systematic process aimed at providing a person with theoretical and practical knowledge, forming and developing his skills and practical skills, characterized by the continuity and continuity of the learning process and educational activities, and achieving clearly expressed goals in a certain sequence.

2. Due to the fact that the meaning of the concept of the right to education is not fully disclosed in the current legislation and there are different opinions of scientists regarding this concept, the following author's definition of this concept was developed.

"The right to education is a subjective right that every person can freely use on the basis of equal rights, which belong to the person based on the guarantees given by the state."

3. Due to the fact that the concept of "right to higher education" does not exist when analyzing the existing norms in the legislation and that this concept is controversial in the opinions given by scientists and there is no consensus among them regarding this concept, the following author's definition of this concept was given.

"The right to receive higher education is a subjective right of a person who has the relevant information according to the specified requirements, aimed at acquiring in-depth professional knowledge, qualifications, and skills in the fields of education, based on certain guarantees given by the state for the purpose of training highly qualified specialists of society and the state.

4. The Law "On Education" generally defines the ways of exercising the right to education, and in order to further expand them, it is appropriate to include the following as ways of ensuring the right to education, including higher education, in the second part of Article 5 of this Law.

- *ensuring continuity of education and organizing it;*
- *compulsory general secondary education;*
- *organization of inclusive education and training for children with special educational needs in educational organizations;*
- *providing academic freedom, self-management, research, and teaching freedom in higher education institutions in accordance with the law.*

References:

1. The Constitution of the Republic of Uzbekistan. <https://lex.uz/docs/6451070>
2. Ўзбекистон Республикасининг "Таълим тўғрисида"ги Қонуни // Қонун ҳужжатлари маълумотлари миллий базаси, 24.09.2020 й., 03/20/637/1313-сон.
3. Шавкат Мирзиёев раислигида 2022 йилнинг 28 январь куни мактаб таълимини ривожлантириш масалалари бўйича видеоселектор йиғилиши // <https://president.uz/uz/lists/view/4945>
4. The Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
5. Международная стандартная классификация образования (МСКО): утв. 5 октября 2011 г. на 36 сессии Генеральной конференции ЮНЕСКО. М., 2011., п.12. С.3.
6. Федоренко С.П. Метавселенная и право на образование: теоретико-правовой аспект // Северо-Кавказский юридический вестник. 2022. №1. URL: <https://cyberleninka.ru/article/n/metavselennaya-i-pravo-na-obrazovanie-teoretiko-pravovoy-aspekt> (дата обращения: 23.07.2023).
7. Шилюк Т.О., Жабин Н. А. Право на образование и его защиты //Актуальные проблемы российского права. – 2013. – №. 6. – С. 698-705.

8. Беляйкина А.И. Конституционное право на образование и проблемы его реализации // Вестник РУК. 2022. №2 (48). URL: <https://cyberleninka.ru/article/n/konstitutsionnoe-pravo-na-obrazovanie-i-problemy-ego-realizatsii-1> (дата обращения: 23.07.2023).
9. Шермухамедова С.Б. Таълим-тарбия жараёнини ташкил этишнинг ҳуқуқий-меъёрий ҳужжатлари модули бўйича ўқув-услубий мажмуа. Тошкент – 2018. 32-бет.
10. Кодиров Б. Некоторые вопросы совершенствования образовательного законодательства // Обзор законодательства Узбекистана. – 2018. – №. 2. – С. 10-12; Содиқов Н. Профессинал таълимнинг ижтимоий-иқтисодий зарурати // Iqtisodiyot va ta'lim. – 2023. – Т. 24. – №. 3. – С. 398-404.
11. Amin T. Right to Education of the Autistic Children: An Overview //ASA University Review. – 2015. – Т. 9. – №. 2; Black D.W. The fundamental right to education //Notre Dame L. Rev. – 2018. – Т. 94. – С. 1059.
12. Shaw M. P. The public right to education //U. Chi. L. Rev. – 2022. – Т. 89. – С. 1179; McCowan T. Reframing the universal right to education //Comparative Education. – 2010. – Т. 46. – №. 4. – С. 509-525.
13. Мышенко С.А. Право на высшее образование в России и Германии (сравнительно-правовое исследование) //URL: <https://www.dissercat.com/content/pravo-na-vysshee-obrazovanie-v-rossii-i-germanii-sravnitelnopravovoe-issledovanie>. – 2015.
14. Дробыш О.В. Понятие, содержание и структура конституционного права на высшее образование. – 2017.
15. Павлова Н.А. Право на высшее образование и многообразие институтов высшего образования в США //Региональные особенности рыночных социально-экономических систем (структур) и их правовое обеспечение. – 2015. – С. 70-75.
16. Martin C. The right to higher education: A political theory. – Oxford University Press, 2022.
17. Brighouse H., Mullane K. The right to higher education and the gap between ideal theory and non-ideal decisions //Theory and Research in Education. – 2023. – Т. 21. – №. 1. – С. 77-81.
18. Волохова Е.Д. Законодательное обеспечение права на образование в Российской Федерации: монография. М.: Готика, 2004. 320 с.
19. Жукова Т.В. О праве на образование как о личном неимущественном праве // Законы России: опыт, анализ, практика. 2012. № 4. С. 42–47.
20. Беляйкина А.И. Правовая позиция // Правовая позиция Учредители: Государственное образовательное учреждение высшего профессионального образования «Донбасская аграрная академия». – №. 7. – С. 7-14; Куров С. В., Гаврищук В. В. Безопасность права на образование //Право и образование. – 2014. – С. 60-68.
21. Шошина М.А. Конституционное право на образование и проблемы его реализации // Алтайский вестник государственной и муниципальной службы. 2015. №13. URL: <https://cyberleninka.ru/article/n/konstitutsionnoe-pravo-na-obrazovanie-i-problemy-ego-realizatsii> (дата обращения: 24.07.2023).
22. Чубоева О, Хусаинов Р. Таълим ислохотлари – давр талаби //Finland International Scientific Journal of Education, Social Science & Humanities. – 2023. – Т. 11. – №. 1. – С. 12-16.
23. Nurmatjon o'g'li B. J. RIGHTS TO EDUCATION IN DEVELOPED COUNTRIES' CONSTITUTIONS //Conferencea. – 2022. – С. 176-179.