



## Justice of Education in China: An Analysis from the Perspective of Legal Sociology

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### Abstract

Nowadays, justice of education has become a basic human right of citizens. Therefore, we must, through the making and enforcing of laws, regulate the relations between educational interests, balance educational interests, integrate educational resources, maintain educational order; permeate the whole lawmaking process with the values of fairness and justice, strictly enforce relevant laws and national policies; carry out the responsibility system, tighten up supervision, and ensure the correct enforcement of laws, so as to gradually realize and maintain educational justice in China.

**Keywords:** Educational justice, Equal opportunity for all, Right remedy

Good education means possibility of the improvement of a person's life. Equal opportunity of education is a key fulcrum for the pursuit of social fairness and social harmony. The issue of educational justices is an extension of the issue of social justices in the field of education. In the present world, receiving education has become a basic human right of citizens. Education, able to considerably improve the state of human existence and forward the improvement of population quality and the sustainable development of the whole society, is considered the most important means of realizing social justices. Therefore, the author will elaborate upon the issue of educational justices against the background of a harmonious society from the perspective of legal sociology, so as to offer a practical mechanism through legislation to solve this contemporary social problem.

### 1. Legal system and educational justice

#### *1.1 To ensure the opportunity of every citizen's right of educational justice*

The essence of fairness and justice pursued by laws is first and foremost that everyone should have the notion that people are essentially equal, and law must have the pursuit of justice and fairness as its ultimate value. Lawfully justice pursuit is the justice based on fairness. Thus, legal systems should guarantee the justice of competition rules, and provide every member of the society equal opportunities and means of free development. Equal opportunity for all demands that educational resources should be equally accessible to the main body of the market; all those who should receive education should be on the same starting line; all those who should receive education should equally enjoy means of receiving education. Obviously, justice of educational opportunity is also a value under the condition of market economy. Only injustice of the results of education under the condition of equal opportunity for all is a comparatively reasonable phenomenon. Hence, only legal systems which ensure that all citizens have the same starting point for education are just.

Therefore, legal systems must first ensure justice of the starting point. Justice of educational right means that individuals do not have different educational rights in spite of their race, nationality, sex, profession, family origin, financial state, and religion; that is, everyone enjoy equal educational right, which has been clearly fixed in the form of a legal clause. Equal treatment is the concrete requirement of the rule of everyone being equal before the law in the respect of social justice and justice; it is also the carrier and prop of fairness and justice. Thus, we must oppose the enjoying of different privileges and treatment by people of equal conditions; we must rigorously prohibit legal discrimination, giving special groups legal and social care and help in accordance with the requirement of the principle of justice and justice. At the same time, legal systems must ensure justice of educational opportunity and make education available to everyone. Just because the opportunity of receiving education is itself a rare resource, justice of opportunity means providing everyone with this resource through the interference of the country and law.

### *1.2 To provide education-receivers with a set of procedural norms of reasonable allocation of educational rights*

Not only should justice be realized, but it also should be done in a way that is observable by people, which is where the value of procedural justice lies. Procedural justice not only is a prerequisite and guarantee of the realization of entity justice but also has its own value. Practice has proved that the procedural justice of law can guarantee the realization of entity justice. Entity justice is a justice of result and any result is realized after a process. A prominent function of procedural justice is to limit and restrict the possible abuse of power. At the same time, the procedural law can guarantee the right to receive education, and it can combine with the entity law so as to fully ensure the right of citizens to receive education.

Facts have proved that people of different statuses have different demands for the exercising of educational right. Even under the condition of equal opportunity for all, they are not completely the same because of differences of the subjects' existence. Furthermore, in society, the exercising of educational right of individuals and the interests of others and the society might come into collision. Therefore, the various demands for educational right of the social subjects certainly form different interest relations and interest strata. Thus, there should be a just and reasonable program design to ensure the realization of fair distribution. The program justice of the distribution of educational right requires that the law provide a stereotypical norm so as to ensure that that the subjects of education can make suitable and reasonable choices regarding their educational right. The justice of the educational process is mainly embodied in the input of school educational resources and facilities, which include the provision of teachers, and roughly the same possession of educational material conditions as similar schools so as to successfully carry out teaching activities; the curriculum and teaching contents should not only meet the needs of social development and the law of physical and mental development of the students, but also pay attention to the individual differences of the students so as to meet the needs of the development of different types of students; judging from teaching practice, justice of teaching is needed and teachers should treat all the students alike, etc.

### *1.3 To provide citizens with effective mechanisms of deviation-rectifying or compensation*

In the complicated social life, people's enjoying of educational resources can be affected by various factors, so as to cause imbalance of the distribution of educational resources and even very serious imbalance. Under this kind of condition, the state should strive to eliminate negative factors that affect the fair distribution of educational resources so to restore the rights that the subjects of education should enjoy and social justice. If the distribution mechanism of a society's educational resources harms some people's interests, then, the principle of the rectifying justice will demand that the country and the society return what should have belonged to those whose interests have been harmed, or give the disadvantaged communities certain compensations to show the justice in the field of education. So, when there appears in the social life injustice in the distribution of educational resources and when the rights of the education receivers are harmed, legal systems must take on the responsibility and role of the rectifying justice. Of course, when the legal systems are not yet sound, we still have to depend on the power of the country and the government; for example, the country should carry out redistribution, should offer education and training to those citizens who lack knowledge, skills, etc. to make them more capable of sharing fruit distribution; those who are poor in the ability to take part in economic activities such as the invalid, the disabled, the pregnant and the young, should be given transferred payments and proper help to ensure the realization of their right to receive education. However, we think that the solving of these problems still has to depend on the making and enforcement of legal systems. Only in this way can educational justice be realized.

## **2. Legal measures to realize educational justice**

At present, injustice of education, which has become one of the focuses of public attention, prominently manifests itself in insufficient educational input and imbalance of the distribution of educational resources, increasingly conspicuous differences in education, public policies going against educational justice, etc. These problems have been caused to so extent by the imperfection of laws concerning education and their faulty implementation, or at least closely related to them. For the realization of the basic goal of educational justice of different phases, the educational interests of citizens have to be embodied in laws and these laws are enforced. In this sense, the legalization of education is the essential way to attain the goal of educational justice and is also its legal safeguarding. So, we should start from the perfection of legal systems concerning education and how to promote their implementation so as to facilitate solving the problem of educational injustice.

### *2.1 To closely combine the gradual perfection of law and the government's active coordination*

The present variety of phenomena of educational injustice are themselves the results of the imperfection of laws and regulations, policies, and systems. Thus, it is necessary to further improve educational laws, to revise the Law of Compulsory Education, the Law of Higher Education, the Law of Teachers, and the Law of Vocational Education, to make the Law of Compulsory Education Input, the Law of Special Education, etc., to make and perfect the system of rules and regulations concerning education, and to ensure the realization of educational justice with the help of legal force.

Faced with the reality of imperfect legal systems, the country and the government should act actively to regulate interest conflicts, resolve contradictions, and ensure that educational justice should become an important responsibility of the government. It is up to the government to attain the aim of educational justice. As to specific measures, the first and foremost is to increase educational input. Educational input is the prerequisite for educational reform and development and the basis for the realization of educational justice. Secondly, the government should set up and perfect systems of financial aid for the education of disadvantaged groups especially the children of poor rural and urban poor families and disabled children, and promote the realization of educational justice. In the direction of investment, educational resources, especially those of the phases of compulsory education, should favor the disadvantaged areas and groups, especially poor rural areas and western areas, the children of poor urban and rural families and disabled children to ensure that they enjoy the right of compulsory education. Thirdly, the government should coordinate the educational resources to promote the balance of education. The government must take on the responsibility of compulsory education of the whole people, coordinate and reasonably allocate the educational resources of the whole country to ensure relative justice of the education of all the strata and the individuals' right to be educated.

### *2.2 To actively perfect supervision mechanisms to effectively make up for the right to receive education of those whose right has been infringed*

To maintain and realize educational justice needs supervision. The degree of effectiveness of supervision determines to a certain extent the degree of the realization of educational justice. At present, the infringement of the right of education receivers has become one of the reasons for the imbalance of interest relations in our society and the loss of social justice and justice in varying degrees. According to accepted political laws, the loss of the right to supervise will definitely bring about corruption and abuse of power. Just because "all power has the tendency to corruption, and absolute power causes absolute corruption", and "all people with power are liable to abuse power, which is an eternal truth", when there is no effective supervision, educational justice and justice will not be maintained or realized.

Therefore, we must impose more restriction on power with the help of legal systems and other means. We must impose further supervision on educational organs of power and related personnel, widen and perfect supervision channels, and put the exercise of power under effective restriction and supervision; we must effectively combine the scientific allocation of educational power and the effective supervision of related departments and personnel, and set up and perfect restriction mechanisms of lawful exercise of power; we must earnestly intensify supervision of educational departments and related departments and leaders, especially the main leaders of leading groups at various levels; we must set up and perfect as soon as possible versatile educational supervision mechanisms to ensure that power operates along the track of systemization and legalization. At the same time, we must set up effective and unblocked relief mechanisms of educational rights. In the United Kingdom, the United States, France and other countries, "If there is right, there is relief" is an ancient principle of common law. In modern society, relief has a more important meaning for right. The Chinese government signed, respectively in December 1997 and December 1998 the International Pact of Economic, Social, and Cultural Rights and the Pact of Civic Rights and Political Rights. In February 2001, the Standing Committee of the National People's Congress passed the International Pact of Economic, Social, and Cultural Rights. These two international pacts have quite high requirements concerning relief and safeguard of rights. This shows that the construction of educational laws in our country will surely face the challenges from home and abroad concerning how to perfect the system of the relief of rights as soon as possible, and how to ensure that the unalienable rights of education receivers should be realized through such means as administrative relief and legal relief.

It needs a protracted period for the citizens to actually enjoy their equal rights to receive education. However, we should not expend less effort on and pay less attention to this issue on the pretext that it need a very long time.

Facts have proved that without educational justice and the development of people, the aim to construct a harmonious society will be very hard to achieve. Therefore, narrowing the gap of education should be an important issue for public policies. Promoting educational justice is not only the theme of humanistic care in a harmonious society but also the firm basis of the realization of sustainable development. So, we must, through the making and enforcement of laws, regulate different relations of educational rights, balance educational interests, coordinate educational resources, and maintain educational order to attain the goal of constructing a harmonious society. We should improve the legal safeguard mechanism of educational justice, let the values of justice and justice permeate the whole process of law-making, strictly implement related laws and national policies, carry out the responsibility system, and tighten up supervision to ensure the right implementation of laws. Of course, whether all these policies and measures can be actually carries out should depend on the present government.

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