



Research Article

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Building the Builders to Ensure Delivery of Good Quality Education in South Africa: A Critical Legal Insight

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Abstract

This paper examines how educators are playing a dynamic role in ensuring the realisation of the right to quality education through their educational pedagogies. Teaching and learning have now become an essential tool in shaping the right to access quality education. The paper articulates the intervention by the judiciary through its pronouncements, laws, structures, policies and salient programmes in promoting the right to quality education. It emphasises the importance of capacitating educators with relevant expertise and knowledge so that they will impart that education to the learners. It also hints the importance of having good infrastructural amenities as they augment the delivery of the right to quality education. This paper emphasizes that jurisprudentially speaking, the right to education is inalienable and as such, it is incumbent on the government and institutions responsible for delivery of education to ensure that the right is promoted and always provided for. The paper adopted a non-empirical approach generally acceptable in legal research activities. It recommends that government must capacitate and empower educators as this will enable them to improve their pedagogic methods and as a result deliver an education of good quality and high standard.

Keywords: Builders, Capacity, Educator, Realization, Quality Education

1. Introduction

After the advent of democracy in 1994, the newly elected autonomous government under the African National Congress (ANC) adopted the 1996 Constitution. The adoption brought along changes aimed at eliminating discriminatory practices fuelled by the colonial and apartheid system. These autonomous changes include the integration of schools, the promulgation of laws such as the South African Schools Act (SASA), implementation of a fee-free elementary schooling system and feeding schemes in schools across the country (Van Wyk & Van der Westhuizen, 2015:126). These changes were as a result of the government's task to transform the South African educational system hence to effect changes appears to be a common practise to advance the prevailing practises in the educational arena (Elstad, 2008:36). Since then, challenges have also existed particularly in disadvantaged schools situated in the remote areas usually riddled by poverty and illiteracy.

In addressing these dares, government institutions and other stakeholder entrusted with the promotion of quality education implemented measures in an attempt to improve the conditions in schools. However, it is undisputed fact that such measures have not been realised yet, hence some schools are still not performing according to expectations particularly the underprivileged schools and

consequently cause serious hindrances for schools management (Fleisch & Christie, 2004:25; Van Wyk, Van der Westhuizen & Van Vuuren, 2014:12).

2. Conceptual Clarification

It is imperative to pronounce the meaning and connotation of some concepts embodied in this paper. In observance of the fact that outlining the exact meaning of most legal concepts is controversial and will, as a result, be subject to different meaning in the context of this paper, the following are some of the relevant definitions:

2.1 Quality education

According to United Nations International Children's Emergency Fund (UNICEF) 1946, quality education includes:

- Learners who are in good physical shape, fed, prepared to take part in the learning process and supported by those who live with them;
- Educational institutions that are harmless, defensive, promote gender equality and make available ample educational amenities and resources;
- Curricula, materials and programmes comprising applicable and necessary basic skills (such as the ability to read and write) and the acquaintance of relevant information regarding the core social aspects such as gender, health, nutrition, and HIV/AIDS prevention;
- Practises whereby educators implement child-centred teaching and learning methodologies in a manageable teaching space and educational institutions where inequalities are diminished;
- Results that incorporate the necessary knowledge, skills and assertiveness concomitant to the optimistic contribution in the society and advancing the national objectives of education (UNICEF, 2000:3).

2.2 Less capacitated educator

For this paper, the phrase “less capacitated educator” means that an educator is unable to do something because that person does not have the ability or is too weak (Jones & Roach, 2011). In the context of this paper, this means that an educator cannot yield good learners’ performance owing to inadequate capacities and skills needed to discharge their pedagogical responsibilities.

2.3 Educator

According to Thompson, the word ‘educator’ refers to a person who offers and provide scholarly, ethical, and social education, teaching or training particularly to a child or any learner (Thompson, 1995:431). According to SASA the word ‘educator’ refers to “any person, excluding a person who is appointed to exclusively perform extracurricular duties, who teaches, educates or trains other persons or who provides professional educational services, including professional therapy and education psychological services, at a school” (SASA,1996:sec1).

2.4 Realization

The Oxford dictionary meaning of the word realization means the fulfilment or achievement of something desired or anticipated. For this paper, the word realization means making real or giving the appearance of reality. In the context of this paper, it means making the right of access to quality education not only as a constitutional provision but also as an achieved reality.

2.5 Rural education

Rural education refers to schooling for remote groups or communities living in isolated geographic areas categorised with inadequate access to the common social amenities, high levels of poverty and low levels of educational facilities (Seroto, 2011:139).

3. Statement of the Problem

The right to education in South Africa is guaranteed, provided for and promoted by the Constitution. Ample literature has extensively covered the issues concerning access and promotion of the right to education. Consequently, there was a fundamental transition in the educational sector which promulgated laws, policies and programs aimed at promoting quality education since the advent of democracy in 1994. However, challenges still exist in the areas of providing and delivering quality functional education. This is so because the existing obstacles such as less capacitated educators are hindering the realisation of this right. The reason why educators are part of the problem is that if they are not properly trained, they will not be able to impart knowledge and provide quality pedagogic services to the learners.

4. Research Methodology

The approach adopted in this paper is a qualitative approach generally acceptable in legal research. This study utilises a desktop analysis of secondary materials more in particular library resources and relies heavily on scholarly legal literature which includes textbooks, articles, case law, legislation, policies and regulations and primary information from reports of relevant departments and or ministries of education dealing with the right to education in South Africa.

5. Purpose of the Study

This paper is aimed at examining laws, regulations, policies and strategies dealing with the provision and the promotion of the right to education which reinforced the actual physical delivery of quality education to the learners through capacitating the educators in South Africa to make them be skilled and able to impart relevant knowledge and skills to the learners to enable them to fit in and be able to discharge responsibilities given in a work-place or be able to be self-employed and also create employment. The objectives of this study are therefore to interrogate the capacity of educators in South African schools including the critical analysis of education provided by such educators.

6. Significance of the Study

This study will make the following contributions to the body of knowledge thus:

- Establishes the development of legal reforms that will improve the capacity for educators.
- It will be beneficial to school leaders and management, curriculum advisors, and other professionals who support teaching and learning to assist in developing relevant programmes for capacity building of educators.
- Contribute to how the law and policies can be implemented to realize the right to quality education as mandated by the Constitution.
- It will assist the government to improve existing delivery strategies by ensuring ample quality access complying with salient laws and enforce the law where compliance is failing. It emphasises the use of laws to strengthen the delivery of quality education by employing good developmental strategies and educational mechanisms which will educate and equip educators to enable them to impart the necessary knowledge to the learners.

- The paper will also be beneficial to stakeholder entrusted with skills development in that they will learn the best practices in promoting this right and to make education their priority and to invest in it.

7. Literature Review

According to the Centre for Enterprise Development (CED, 2015:23) “there is a lack of ‘accountability’ on the part of educators because they are not properly equipped to impart knowledge and skills and contribute to the realisation of quality education”. The rationale for this is that most educators fail to deliver quality education due to their incapacity and as a result, there is poor performance in South African schools. Adedeji and Olaniyan affirm that “capacitated educators are the important instruments which a country can utilise for the development and improvement of its educational system” (Adedeji & Olaniyan, 2011:73). Adedeji and Olaniyan further assert that “any socio-economic strategy, aimed at improving schools and human development must, consider continuous educators’ development programs”. Adedeji and Olaniyan further indicate that “for a country to improve its educational system and to have the best quality education it must provide sustainable pedagogical innovative strategies that will improve the capacity and conditions of educators and teaching in schools” (Adedeji & Olaniyan, 2011:73). This paper, therefore, submit that capacitating the educators must be used as a tool to bring profound social change in values and norms and betterment of people’s lives.

Tang posits that “the development of human capital and the improvement of the mentality and intellectual capacity of a nation must be a priority of every nation if such nation is to be a developed country”. Tang highlighted further that “focusing on these areas will enable the country to raise its capacity for knowledge, creativity, and innovation, which are critical elements in the context of globalization” (Tang, 2015: 128). Tang further asserts that “since educators play a key role in the implementation and assessment aspect of learners and undergraduates, they are the first to be instilled with relevant practical skills and they must be creative in designing their teaching modules to integrate the relevant skills”. Tang is of the view that “the educators’ pedagogic methods must be student centred where learners and undergraduates are expected to participate actively in the learning process, while the educator undertakes the role as a facilitator and oversee learners’ activities. Problem-based learning, case study, and other relevant teaching and learning techniques such as presentations and group work must be widely used in place of the traditional teaching and learning methods to enhance their skills” (Tang, 2015: 130).

Tang concluded by alluding that “educators must be taught the necessary skills of today for the jobs of tomorrow and how to shape teaching and learning so that learners and undergraduates involved can acquire occupational-relevant skills and competencies needed in the foreseeable future. This is because the quality of teaching and learning depends heavily on how much value the educational process has added to the educator” (Tang, 2015: 130). Salazar maintains that “education, vocational training and lifelong learning are central pillars of employability, employment of workers and sustainable enterprise development within the decent work agenda, and thus contribute to the reduction of poverty and starvation” (Salazar, 2008:1). Salazar further asserts that “skills development is key in stimulating a sustainable development process and can make a significant contribution to facilitate the transition from the informal to the formal economy”. Salazar highlighted that “skills development is also essential to address the opportunities and challenges to meet new demands as this can also assist governments and social partners to work in a framework of social dialogue for shaping national, regional and international skills development programmes that can promote the integration of the economic, social and environmental dimensions of sustainable development” (Salazar, 2008:1).

Salazar avers further that “skills development is an essential factor for achieving the objective of decent work both by increasing the productivity and sustainability of the enterprise and for improving working conditions and the employability of workers” (Salazar, 2008:2). Salazar maintain in his

conclusion that “effective skills development requires a holistic approach which approach encompasses among others:

- development of core skills – including literacy, numeracy, communication skills, teamwork and problem-solving and other relevant skills – and learning ability – as well as awareness of workers’ rights and an understanding of entrepreneurship as the building blocks for lifelong learning and capability to adapt to change;
- development of higher-level skills – professional, technical and human resource skills to capitalize on or create opportunities for high-quality or high-wage jobs;
- employability (for wage work or self-employment) results from all these factors – a foundation of core skills, access to quality education, availability of training opportunities, motivation, ability and support to take advantage of opportunities for continuous learning, and recognition of acquired skills –is critical for enabling workers to attain decent work and manage change and for enabling enterprises to adopt new technologies and enter new markets” (Salazar, 2008:2).

This paper emphasizes that the profound foundation to achieve and realise the effective skills development depend on educating the educators and thoroughly train them so that they can produce high quality and skilled learners.

Quintini and Pouliakas concurrently opined that “building basic skills early on, by broadening and improving the quality of early childhood through capacitating educators, is essential and it is also crucial to ensure that skills taught and knowledge imparted at school are relevant for the working world; that they are maintained and further improved during working life; and that they are recognized and used by employers once people are in the labour market” (Quintini & Pouliakas, 2014:5). Quintini and Pouliakas recommend that educators must also be taught on how to bring education at school and the working world closer together as that is necessary for a successful nation. A synchronised approach is a prerequisite to building a robust skill through education on the part of educators so that they can impart work-based knowledge and specific skills throughout a learner’s life (Quintini & Pouliakas, 2014:8). Kamakura avers that “to avoid skills shortage that would minimise poverty and reduce unemployment in the medium and long term and to enable growth, the country will need to develop educators and skills development policies that will assist to equip the learners with relevant knowledge and skills”. Such policies may require an amalgamation of strategies, comprising of a leaning and training strategy for the educators (Kamakura, 2012:10).

According to Somavia providing educators with relevant skills required for the current and the future is a prerequisite and strategic concern for the growth and improvement viewpoints of every cohesive country (Somavia, 2010:1). Somavia maintains that “since skills are a foundation of decent work and productivity, many countries have utilised training and retraining of educators as their positive responsive methods towards employment challenges”. Somavia avers that “the building blocks of any skills development strategy must be formed on solid foundation skills and stronger links and interaction between the worlds of education and work” (Somavia, 2010:1). Somavia concludes by alluding that “robust training policies and systems are rooted in the educational training institutions of each country. A country with good educators’ training institutions will ultimately have good skills development system which in turn enable the country to anticipate skills needed, engage employers and employees in decisions about training provision, maintain the quality and relevance of training, make training accessible to all sectors of the society, ensure viable and equitable financing mechanisms and continuously evaluate the outcomes of such training” (Somavia, 2010:2). This paper submits that to keep training relevant there must be an interaction between the training institutions and financial institutions which will consequently build a solid bridge of relationship between schools, innovation and training institutions and the industries. This will assist to continue deepening the relevant knowledge of the society in different sectors to improve and develop their growth and to address their developmental challenges.

8. Legislative Frameworks Promoting Quality Education

8.1 Education and the 1996 Constitution

Section 29 of the 1996 Constitution calls for the promotion of the right to education. These provisions provide that:

Everyone has the right to elementary education, which include elementary education for adults and the right to further education, which the state must make it gradually accessible and available. It is trite to indicate that the state must provide for this education. The section further provides everyone with the right to take delivery of education in government institutions in their languages if such practice is reasonable and practicable. This section states further that in safeguarding access, execution and the feasibility of the right to basic education, the state must reflect equity, viability and the necessity to address and restore the harm caused by the apartheid educational laws and practices.

Bekker avers that “the right to basic education, which includes adult basic education, as enshrined in section 29(1)(a) must be distinguished from other rights in the Bill of Rights”. Bekker asserts further that “while rights such as the rights of access to housing and health care services, and the rights to food, water and social security are qualified to the extent that they are made available subject to the adoption of reasonable legislative and other measures, and progressive realisation, within the state’s budgetary available resources, the right to basic education, including adult basic education, is not subject to such conditions” (Bekker, 2000:8). These provisions were also emphasised in the case of *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others*. This case concerned the learners which were enrolled and attending at *Juma Masjid School*, a public school that was located on private property. In this case, Nkabinde J emphasized that:

“It is salient to understand the nature and meaning of the right to “basic education” under section 29(1) (a) of the Constitution. This is because the right is distinct from other socio-economic rights as contained in the Bill of Rights since it is “immediately realisable”. This means that the right does not depend on the availability of state resources for its realisation and it may only be limited in terms of a reasonable and justifiable law of general application” (Juma Masjid v Essay, 2011 par 37). By so ruling, the main concern of the Court was that the learners should not be left without alternative placements (Juma Masjid v Essay, 2011: par 74& 78).

Section 58B of SASA empowers the Head of Department (HoD) to identify the underperforming public schools and to issue a written notice to such school if he or she is satisfied that:

“The standard of performance of learners in that school is below the standards prescribed by the National Curriculum Statement and or is likely to remain so unless the HoD exercises his or her powers in terms of SASA; there has been a serious breakdown in the way the school is managed or governed which is prejudicing or likely to prejudice the standards of performance” (SASA, 1996: sec 2 a & b).

The HoD must endeavour to assist a school identified as underperforming. This paper submits that if the educators are well trained and capacitated to discharge their responsibilities and impart quality knowledge and skills there will be no underperforming school and as such learners will perform well.

8.2 The White Paper on Education and Training, 1995

The White Paper on Education and Training was the foremost paper by the democratically autonomous South African government regarding “education and training” (White Paper, 1995:3). This White Paper gives directions to how schooling system must be structured in South Africa. The paper intends to build a teaching and learning system that promotes equality and diminishes discrimination in the

educational arena. It must respect innovative teaching and learning methodologies and strive for excellence and serves the people's needs and interests (White paper, 1995:3). According to this White Paper, such education must be preserved and cared for by those it serves (White Paper, 1995:3).

8.3 National Plan of Action, 2003

In 2003, the South African government adopted the National Plan of Action which strives for the improvement of access to quality education for everyone. The plan pronounces that "it is well in the process of accomplishing education of good quality in which financial capacity is not a barrier". It provides that:

"there is a need for quality education for all which means that public funding of learners educational needs need to be ample to cover all the costs for "quality education"; schooling must equip all the learners with the knowledge and skills that will enable them to participate fully in the country's economy; and no learner, particularly of school going-age, should have any impediments to attend school" (National Plan of Action, 2003:8).

The current paper submits that for the learners to be equipped with relevant knowledge and skills which will make them be active participants into the country's economy educators must be firstly equipped with such knowledge and impart same to the learners. This means that educators are the driving force to the realisation of the objective of the 2003 National Plan of Action.

9. Setbacks in Realizing Good Quality Education

Several challenges are impeding the realization of good quality education in South Africa. For this paper, the scope will only be limited and focus will only be on one of the major challenges. This paper emphasizes that less capacitated educators are among others one of the core challenges which has a serious negative impact in realizing good quality education in South Africa. Educators must be well capacitated to build other professions. It should be kept in mind that for every profession to come into existence or for one to be a professional, that person must have gone through school or to put it differently, through the hands of an educator. Emphasis must be put on how to intensify post-school training and innovation to equip educators to provide good quality education which would capacitate the learners and equip them with the necessary expertise and acquaintance to be employable, self-employed, create jobs and employ others. Hence, Somavia highlight that providing educators with relevant skills necessary for the present and future jobs is a prerequisite and strategic concern for the growth and improvement viewpoints of every cohesive country (Somavia, 2010:1). It is therefore important for the government to draw its attention into building the educators as the builders of the nation.

10. Proposed Solutions to the Setbacks Impeding the Realization of Good Quality Education

In eradicating challenges and or setbacks standing on the way of realizing good quality education government must conduct robust capacity building inductions and workshops to educate and capacitate every educator on how to discharge their duties in building the capacity of learners. Such inductions and workshops should not be periodical but rather perpetual and ongoing to enhance their skills and capabilities to be able to skilfully train the learners to be employable and to create employment. Judicial pronouncements and relevant laws containing effective provisions on improving the delivery of quality education should be enforced to develop and strengthen how educators should deliver their pedagogic methods to ensure paradigm shift from access to education to actual delivery that will capacitate and equip learners and undergraduates to be employable, self-employed and employers of labours themselves.

11. Conclusion

South Africa has ample legislative measures, frameworks and intervention aimed at developing the educational sector in an attempt to ensure access and realisation of quality education. It is also apparent that the judiciary is proactive in contributing towards the enforcement and realisation of the right to quality education by consistently reiterated in their judgements that “the right to education is an empowerment right that enables people to realise their potential and improve their living conditions”. However, the challenge is lack of introduction of capacity building measures and proper implementation and monitoring of the existing measures that will capacitate educators to fully equip the learners. It must be pointed out that the state must ensure the capacitation of educators to bring their pedagogical responsibility to fruition and to deliver successful fallouts.

12. Recommendations

The paper, therefore, recommends that government must perpetually monitor the enforcement of the existing educators’ skills development programmes and measures and improve training strategies by ensuring ample compliance with salient laws and enforce such laws where compliance is failing. The government must also set aside a budget to ensure that there exist sustainable regular training and teaching and learning programmes or educators’ skills development programmes aimed at capacitating educators in schools. Attendance and active participation in such training and workshops must be made compulsory for fruition results.

It also recommends that adequate educational materials such as textbooks and school furniture must be made available at schools to enhance learners’ performance to motivate educators and to augment the teaching and learning process. This will promote the realisation of the right to quality education and will in turn make every learner to become an asset in the near future. Moreover, good infrastructural amenities such as good classrooms must also be made available to enable the learners to have a conducive learning environment and to enable educators to have adequate teaching space. As a matter of fact, learners cannot perform well if their learning environment is riddled with unfavourable and adverse conditions. Emphasis must be put on how to intensify post-school training and innovation to equip educators to provide good quality education which would capacitate the learners and equip them with the necessary skills and knowledge to be employable, self-employed, create jobs and employ others.

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13.1 Declaration of Conflicting Interests

The Author declares that there is no conflict of interest. Opinions expressed and conclusions arrived at are those of the author and are not necessarily to be attributed to the National Institute for the Humanities and Social Sciences (NIHSS) and the South African Humanities Deans Association (SAHUDA).

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