From the Right to Education to the Freedom of Education
من الحق في التعليم إلى حرية التعليم

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Abstract:

This article analyzes the conceptual and legal shift from the right to education to the freedom of education within the modern rule-of-law state. It differentiates between the right to education as a positive duty borne by the state and the freedom of education as an extension of that right, reflecting a composite freedom grounded in pluralism, freedom of choice, and educational neutrality. The article also outlines the legal and functional grounds for entrenching this freedom, particularly its role in personal and societal development, human capital building, anti-corruption efforts, and the promotion of intellectual diversity. It concludes that recognizing the right to education alone is insufficient without constitutional protection of educational freedom.

keywords: Right; Education; Freedom; Pluralism; Diversity.

الملخص:

يتناول هذا المقال بالدراسة والتحليل التحول المفاهيمي والقانوني من الحق في التعليم إلى حرية التعليم في إطار الدولة القانونية الحديثة. ويقوم على التمييز بين المفهومين، حيث يُعد الحق في التعليم التزامًا إيجابيًا تتحمله الدولة، بينما تمثل حرية التعليم امتدادًا له وحرية مركبة تقوم على التعددية وحرية الاختيار وضمان حياد العملية التعليمية. كما يبرز المقال الأسس القانونية والوظيفية التي تبرر تكريس حرية التعليم، لاسيما دورها في تنمية الفرد والمجتمع، وبناء الرأسمال البشري، ومكافحة الفساد، وتعزيز التعددية الفكرية. ويخلص إلى أن الاكتفاء بالحق في التعليم دون دسترة حرية التعليم لا يكفي لمواجهة تحديات العصر.

الكلمات المفتاحية: الحق؛ الحرية؛ التعليم؛ التعددية؛ التنوع.

1. Introduction:

Education is regarded as an organized process aimed at enabling individuals to acquire information, knowledge, experience, and skills (UNESCO, 2011). It constitutes a vital necessity that is indispensable for human beings in modern societies, which view the uneducated individual as insufficiently capable of contributing to self-development and of participating effectively in the advancement of society. Mere recognition of the right to education is no longer sufficient to achieve this objective; rather, it has become necessary to liberate education from cultural, economic, and ideological constraints, as well as from the limitations of classical pedagogy. This development has led to the emergence of a new concept, namely freedom of education.

In light of this evolution, most legal sources addressing the right to education have also come to refer to freedom of education, a development that raises a number of legal questions, including:

- What are the legal distinctions between the right to education and freedom of education?
- What legal considerations have driven the expansion from recognition of the right to education to the entrenchment of freedom of education?
- Conversely, what are the conditions required for the realization of this freedom?

This article seeks to address the foregoing issues by adopting multiple research methodologies. The analytical method is employed as the most appropriate tool for examining both the right to education and freedom of education, as well as for elucidating the trajectories of the development of the right to education leading to freedom of education. The comparative method is also utilized to distinguish between the two concepts, in addition to drawing on the historical method in certain aspects of the article in order to trace the historical evolution of the subject. To comprehensively cover all elements of the study, the article is divided into two sections.

2. Distinguishing the Right to Education from Freedom of Education

In its early stages, humanity recognized the concept of freedom of education prior to the entrenchment of the right to education; however, this concept differed fundamentally from its contemporary meaning. In primitive societies, the prevailing notion was that individuals were free to receive education or to refrain

from it, such that a person could choose not to learn without incurring any legal obligation. This perception persisted until the early formation of modern societies during the Middle Ages, when education was transformed into an individual right accompanied by a corresponding duty incumbent upon the state to provide and guarantee it.

Nevertheless, the evolution of rights within the modern state brought the concept of freedom of education back to the forefront, but within a new semantic framework distinct from the traditional conception, thereby raising the question of the legal distinctions between the right to education and freedom of education.

2.1 The Concept of the Right to Education

Education has been enshrined as a human right in numerous international instruments, most notably Article 26 of the Universal Declaration of Human Rights of 1948. It has also been affirmed by the two International Covenants, particularly the International Covenant on Economic, Social and Cultural Rights of 1966, as well as by the majority of modern state constitutions (Article 65, 2020; Article 19, 2018; Articles 29–30, 1992; Article 10, 1926; Article 34, 1962; Article 13, 1958; Article 34, 1947; Articles 7- 19, 1999; Article 92, 1867),[1] which have recognized education as a fundamental right and a duty incumbent upon the state. This, in turn, raises the question of the legal essence of the right to education.

2.1.1 Definition of the Right to Education

From a linguistic perspective, the term "the right to education"—or its equivalent in French, *Le droit à l'éducation*, and in English, *The Right to Education*—is composed of two elements: "right" and "education." Linguistically, the term "right" denotes that which is established and verified, the opposite of falsehood, and signifies justice and obligation, as stated in *Lisān al-ʿArab*(Ibn Manzur, pp. 49-50). As for "education," it refers to imparting knowledge to another after ignorance; it is said "he taught him something," meaning that he instructed or transmitted it to him (Ibn Manzur, p. 417). Education is also defined as a process of transferring knowledge and experience from the teacher to the learner through organized and intentional means (Academy of the Arabic Language Cairo, p. 624).

1- The United States Constitution of 1787 did not mention the right to education due to the circumstances under which it was drafted and its greater focus on political rights.

It should be noted that some recent studies use the expression "the right to learning" instead of "the right to education," corresponding in French to *Le droit à l'apprentissage* and in English to *The Right to Learning*. However, this usage is legally inaccurate, since learning is an individual mental faculty and cognitive capacity that varies from one person to another (Ibn Manzur, p. 416), and it cannot be conceived as the subject of a direct legal obligation imposed on the state. Education, by contrast, constitutes an institutional activity that is capable of regulation and legal guarantee.

In terminological usage, legal and jurisprudential definitions of the right to education have been numerous. From a jurisprudential perspective, Professor Abd al-Rahman al-Najjar defines it as "an organized process aimed at developing the individual's intellectual and behavioral capacities and transmitting knowledge, values, and skills" (Al Najjar, pp. 21-23).

Professor Sulayman al-Tamawi defines it as "a social activity of public benefit, organized and supervised by the state, and considered one of the fundamental rights guaranteed by modern constitutions" (Al Tamawi, 2005, p. 349).

Meanwhile, Professor Abd al-Karim Alwan considers education to be "a fundamental social right that aims to enable the human being to develop his or her personality in an integrated manner, and constitutes an essential means for the exercise of other rights and freedoms" (Alwan, 2015, p. 209).

At the international level, the Convention on the Rights of the Child of 1989 defined the right to education through its objectives. Article (29) stipulates that education aims at "the development of the child's personality, talents, and mental and physical abilities to their fullest potential, and the strengthening of respect for human rights and fundamental freedoms" (Commission on Human rights, 1989).

The International Covenant on Economic, Social and Cultural Rights likewise provides in Article (13) that education "shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen respect for human rights and fundamental freedoms."

At the level of national legislation, Law No. 08-04 on the Orientation of National Education defines education as "a continuous process of formation aimed at preparing the citizen intellectually, morally, and professionally" (Framework Law on National Education No 08-04, 2008).

In summary of the foregoing definitions, the right to education is the entitlement recognized by law for the individual to enable him or her to engage in

an organized and continuous process aimed at transmitting knowledge and developing intellectual and behavioral capacities. In legal terms, it is regarded as an activity of public benefit, a fundamental right, a public service, and a means for achieving human dignity and social development.

2.1.2 Characteristics of the Right to Education

In addition to the characteristics shared by all human rights—such as indivisibility, inalienability, and universality—the right to education possesses a number of specific features that distinguish it from other human rights. Among the most prominent of these are the following:

A. The Right to Education as a Fundamental Human Right

The right to education is regarded as one of the fundamental rights without which human dignity cannot be realized. It constitutes a necessary condition for the exercise of other rights and freedoms, as it is a right inherent in the human person by virtue of being human (Philip Alston & Katarina Tomaševski, 1984, pp. 07-09). This right accrues to the individual upon reaching a certain age determined by law, and the state is obligated to respect it, protect it, and ensure its effective enjoyment. By virtue of this characteristic, the right to education:

- Is not linked to nationality or legal status;
- Rather, it is established solely on the basis of personhood (Favoreu, 2016, pp. 12-14);
- Is a universal and comprehensive right, exercised without discrimination on the grounds of sex, origin, language, religion, or any other criterion;
- Is a right that may not be revoked or arbitrarily suspended (ECHR, 1976, pp. 48-49).

B. A Positive Right

The right to education is not a negative right limited to non-interference; rather, it is a positive right that imposes upon the state an accompanying obligation to realize it concretely within society at all stages through:

- enacting legislation,
- establishing institutions,
- allocating financial resources,
- providing ancillary services necessary to the educational process, such as healthcare and security, etc.,
- ensuring the quality of education and overseeing the effectiveness of educational programs (Constitutional Council of France (Conseil constitutionnel français, 1977).

The state's obligation toward citizens with respect to this right is characterized as an obligation of both due diligence and result simultaneously. Accordingly, the state cannot evade responsibility merely by providing an enabling environment for the exercise of the right to education; rather, it must ensure that all members of society effectively enjoy this right(Al Tamawi, 2005, p. 99).

C. A Dual Right: An Individual Right and a Social Obligation

The recognition of the right to education constitutes a fundamental means of achieving development at both the individual and societal levels simultaneously. The positive effects resulting from this right are not confined to the individual beneficiary of education alone; rather, they extend to society as a whole by preparing individuals with an adequate level of knowledge and learning that qualifies them to participate effectively in economic and social life and contributes to reducing illiteracy and ignorance (Alwan, 2015, pp. 219-221).

Education, as a fundamental social right, contributes to the construction of an informed society capable of achieving sustainable development across various fields. This explains the tendency of modern legislation to expand the scope of state intervention in the organization and supervision of education, in order to ensure the realization of the public interest(Al Tamawi, 2005, p. 97).

Within this framework, contemporary legal systems have recognized supervisory and monitoring powers for public oversight bodies affiliated with the executive branch, while granting parliamentary investigative committees within the legislative branch the authority to oversee educational policies. In addition, the public prosecution, within the judicial branch, has been empowered to intervene to protect the right to education, particularly in cases involving violations of compulsory schooling or infringements of the best interests of the child (Al Tamawi, 2005, pp. 382-384).

2.2 The Concept of Freedom of Education

The term "freedom of education" (*Liberté de l'enseignement / Freedom of Education*) emerged historically in the nineteenth century, in connection with the development of the modern liberal state and the conflict between the state's monopoly over education on the one hand and the freedom of individuals and groups (religious and intellectual) on the other. The Belgian Constitution of 1931 is considered the first legal text to have explicitly enshrined freedom of education (Favoreu, 2016, p. 290), followed by the Falloux Law (*Loi Falloux*) of 1850 in France (Rivero, 2003, pp. 12-14). Thereafter, the use of this term spread across the

constitutions of various states (Article 7, 1949; Article 33, 1947; Article 27, 1978; Article 19, 1999; Article 206, 1988). In order to encompass the concept of freedom of education in all its dimensions, it is necessary to address the definitions that have dealt with this freedom, as well as its characteristics.

2.2.1 Definition of Freedom of Education

It has previously been indicated that the emergence of freedom of education resulted from an intellectual and legal conflict between a conservative current that upheld state dominance over the educational process and another current that called for the liberalization of this process. Even after the liberal current succeeded in entrenching freedom of education in various modern legal texts, there was no agreement on a unified meaning of this freedom. Consequently, this current itself became divided into two trends:

A. Definition of Freedom of Education According to Proponents of the Organic Approach

Proponents of this approach—most of whom are legal scholars with liberal economic backgrounds—argue that the decisive element through which freedom of education is realized lies in permitting private actors to establish educational institutions. Among the definitions of freedom of education advanced by this school of thought are the following:

Professor Jean Rivero defined it as "the relaxation or removal of the State's monopoly over educational activity and the opening of space for individuals, groups, and private entities to engage in education, within a legal and regulatory framework established by the State and subject to its oversight" (Rivero, 2003, p. 357). This definition makes clear that, in Rivero's view, freedom of education does not imply a complete withdrawal of the State, but rather a transition from monopoly to regulation.

Similarly, jurist Louis Favoreu defined the entrenchment of freedom of education as a public freedom encompassing the freedom to establish educational institutions and the freedom to choose curricula, subject to constitutional and legislative oversight (Favoreu, 2016, p. 291). This conception was adopted by legal scholarship in Belgium and Spain and was incorporated into the constitutions of both states.

For his part, Professor of Administrative Law René Chapus considers freedom of education to mean transforming education from a monopolized public service into a regulated service, partially managed by the private sector under State

supervision (Chapus, 2001, p. 657). This definition suggests the use of management contracts as a means of achieving freedom of education.

Professors Philip Alston and Katarina Tomaševski view freedom of education as the recognition of the right of individuals and entities to establish educational institutions independent of the State, provided that minimum educational standards are respected (Philip Alston & Katarina Tomaševski, 1984, pp. 47-48).

Professor Prosper Weil, meanwhile, argues that freedom of education is realized through the possibility of engaging in educational activity outside the monopolistic framework of the public service, while the State retains its role as a regulatory and supervisory authority to ensure public educational order (Weil, 2007, p. 289).

In the same vein, constitutional scholar Georges Vedel considers it to be the freedom of individuals and groups to establish educational institutions and to choose their curricula and pedagogical methods, without State monopoly over education, subject nonetheless to legal oversight imposed in the public interest (Vedel, 1970, p. 512).

This doctrinal trend, in its attempts to define freedom of education, focuses primarily on the element of recognizing the right of natural persons and private legal entities to establish educational institutions. However, it is criticized for neglecting other highly fundamental elements that contribute to the liberation of education, such as purging educational programs of ideological content that undermines the integrity of academic material. Critics of this approach further argue that it does not, in fact, aim at freedom of education but rather at the privatization of the education sector, which is considered a serious threat to the right to education.

B. Defining Freedom of Education According to Proponents of the Substantive Approach

In contrast to the previous approach, this perspective focuses on educational programs in its definition of freedom of education, rather than on the legal nature of the educational institution, whether public or private. Among the most prominent definitional attempts are the following.

Professor Manfred Nowak considers freedom of education to be a legal policy aimed at diversifying educational provision by reducing direct state intervention and encouraging private initiatives, thereby safeguarding intellectual pluralism and freedom of choice (Nowak, 2005, p. 246).

This is the concept that was adopted in European debates after the 1970s.

Meanwhile, the administrative law scholar Maurice Hauriou views it as an institutional freedom intended to guarantee intellectual and cultural pluralism and to enable civil society to contribute to the educational process alongside the state (Hauriou, 2015, p. 401).

Compared with the doctrinal approach that emphasizes the organizational dimension in its definition of freedom of education, the substantive approach has received support in the work of international organizations and international judicial bodies. Article 13, paragraph 3, of the International Covenant on Civil and Political Rights adopted this approach in its definition of freedom of education, stating that it is "the right of parents and individuals to choose the type of education and to establish independent educational institutions, provided that the minimum standards set by the state are respected" (UN General Assembly Resolutions, 1966).

European jurisprudence has also affirmed its adoption of this approach in defining freedom of education, considering it to entail the state's non-imposition of a single educational ideology and the guarantee of pluralism and choice, without prejudice to the function of education as a public service (ECHR, 1976, p. 52).

2.2.2 Characteristics of Freedom of Education

Given the relatively recent emergence of the concept of freedom of education and its close connection with the functions of the modern state, the right to education, and the principles of pluralism and democracy, this freedom has acquired distinctive characteristics that render it a composite and non-traditional freedom when compared to other public freedoms.

A. Freedom of Education as a Derivative of the Right to Education

Freedom of education is a derivative rather than an autonomous freedom, as it cannot be legally conceived in the absence of prior recognition of the right to education. The right to education constitutes the substantive foundation from which freedom of education emanates, insofar as the state does not merely guarantee access to education but also permits diversity in its forms and providers. Accordingly, freedom of education does not aim to abolish the right to education, but rather to broaden the scope of its exercise (Philip Alston & Katarina Tomaševski, 1984, pp. 7-9).

B. Freedom of Education as a Freedom Based on Freedom of Choice

Freedom of education is fundamentally grounded in freedom of choice, whether in terms of:

- the choice of the type of education,
- the choice of the educational institution, or
- the choice of pedagogical orientation.

This dimension is of essential importance, particularly in international law, where the right of parents to choose the education of their children has been enshrined as one of the manifestations of freedom of education (General Assembly Resolution, 1948). Consequently, freedom of choice constitutes the core of freedom of education, rather than merely a consequence thereof (ECHR, 1976, p. 52).

C. Freedom of Education Enables Pluralism and Rejects Monopoly

One of the most important characteristics of freedom of education is that it seeks to prevent the state from monopolizing educational activity, without implying any abandonment of its regulatory role (Rivero, 2003, pp. 356–358). Freedom of education thus establishes a pluralistic educational system that allows the coexistence of:

- public education and private education;
- religious education or specialized pedagogical education.

Pluralism in this context is not merely economic, insofar as it permits the establishment of private educational institutions alongside public ones; rather, it is also intellectual and cultural in nature(European Court of Human Rights, 1976, p. 52).

D. Freedom of Education Is Based on the Prohibition of Ideology in Education

Freedom of education is among the liberties founded on the principle of educational neutrality, which requires the prohibition of imposing an official ideology or a single mode of thought within the educational system, whether by the state or by any other authority.

Freedom of education cannot be realized within a directed or ideologically driven system of education, as such a system is incompatible with freedom of thought and conscience and undermines intellectual pluralism, which constitutes one of the foundations of the democratic state.

Judicial jurisprudence, particularly European case law, has affirmed that the function of education lies in transmitting knowledge in an objective and pluralistic

manner, without seeking to exert compulsory influence over learners' religious, philosophical, or political convictions (European Court of Human Rights, 1976).

Accordingly, educational neutrality constitutes a fundamental condition for the exercise of freedom of education and a guarantee of respect for freedom of belief and opinion. This prohibition does not preclude diversity in ethical orientations—such as the promotion of good morals, virtue, and tolerance—but rather bars the compulsory imposition of ideological or political doctrines(Favoreu, Fundamental Rights, 2009, p. 292).

3. Justifications and Conditions of Freedom of Education

The modern state seeks to achieve comprehensive development as a continuous process that targets both the individual and society, and education constitutes the fundamental instrument for attaining this objective. However, the evolution experienced by the modern legal state—founded upon institutional neutrality and the service of the public interest—has generated a new conception of the function of education, one that goes beyond the mere enshrinement of the right to education to the necessity of recognizing freedom of education.

Accordingly, the logic of the modern legal state requires a transition from the mere guarantee of access to education to the entrenchment of freedom of education, subject to precise legal conditions and regulations.

3.1 Justifications for Realizing Freedom of Education

Education is no longer viewed solely as a public service monopolized by the state, but rather as a cognitive space that must be liberated from social, economic, and ideological constraints, and safeguarded against being instrumentalized as a means of political mobilization or intellectual indoctrination, in a manner that ensures its independence, neutrality, and pluralism. This shift is grounded in a set of interrelated justifications, the most significant of which may be highlighted as follows:

3.1.1 The Rationale of Individual Development

Education constitutes the primary means for the development of the individual's personality, through the enhancement of cognitive, emotional, and behavioral capacities, and by enabling critical thinking and free choice. This objective cannot be achieved within a directed or monopolized educational system; rather, it requires an educational environment grounded in freedom of choice and pedagogical pluralism, as afforded by freedom of education.

Freedom of education strengthens the individual's intellectual autonomy and grants the possibility of constructing a personal cognitive trajectory free from

coercion. This, in turn, benefits both the individual and society, as an aware individual with sound scientific formation represents human capital in the modern state, capable of being utilized across numerous fields (Philip Alston & Katarina Tomaševski, 1984, pp. 7-9).

3.1.2 The Rationale of Societal Development

In the field of education, the eradication of illiteracy is no longer the sole obligation incumbent upon the modern state. New ancillary obligations related to the subject have emerged, in order for the state to attain the highest levels of desired societal development. Among the many examples of these obligations are the following:

- Raising the general level of scientific knowledge;
- Reducing modern illiteracy (the inability to master modern technologies);
- Eliminating destructive concepts and ideas;
- Preserving national identity;
- Exercising cultural influence at the international level;
- Combating racial discrimination;
- Promoting tolerance and acceptance of others.

For the state to fulfill this societal role, it is necessary to establish a flexible and pluralistic educational system capable of responding to the evolving needs of society. Such a system cannot be realized under conditions of monopoly and rigid direction, but rather within the framework of regulated freedom of education, to which all members of society contribute (United Nations Educational, Scientific and Cultural Organization, 2015).

3.1.3 Justification of Human Development

Education is closely linked to the construction of more just and tolerant societies, and to the promotion of greater respect for human rights and fundamental freedoms. Freedom of education constitutes a prerequisite for achieving this objective, as it guarantees an educational process grounded in pluralism and respect for difference, rather than exclusion or ideological entrenchment within a single camp.

Ideologically driven education undermines human development, whereas free education enhances human dignity. History provides numerous examples in which unfree (ideologized) education played a central role in fueling internal and international wars and conflicts marked by grave humanitarian atrocities, such as

the Arab–Israeli conflict (United Nations Educational, Scientific and Cultural Organization, 2009) and the wars of the Balkan states (Council of Europe, 2011).

3.1.4 Combating Corruption

Corruption is a structural phenomenon that emerges within an encompassing environment, beginning with weak training and deficiencies in the educational system, and extending to the stage of holding public office and exploiting it through illegitimate means. Deficient education—based on rote learning, intellectual closure, and the absence of values—contributes to the production of individuals who lack regulatory awareness and a sense of public responsibility.

By contrast, the more open and free education is—grounded in critical thinking, respect for pluralism, and the encouragement of participation and transparency—the more it gives rise to a society that believes in social oversight and fosters a culture of accountability, creativity, and constructive criticism. These elements constitute core pillars of corruption prevention, as they form the first line of defense against the abuse of power and functional deviance within modern societies (World Bank, 2018).

3.1.5 Developing Competencies and Achieving Equal Opportunities

The evolving challenges confronting states within the contemporary international community no longer allow for reliance on the mere existence of an educated class in the traditional sense. Rather, they now require the preparation of distinguished, high-quality competencies capable of comprehending the complexity of these challenges, analyzing them, and addressing them through innovative and appropriate solutions. Rigid, conventional forms of education based on rote instruction and intellectual stagnation are incapable of producing such competencies or ensuring their effective preparation.

Accordingly, free, advanced, and continuously evolving education emerges as the framework capable of cultivating critical thinking, fostering creativity, and building analytical and innovative capacities, thereby enabling the formation of a competent elite able to adapt to global transformations, contribute to comprehensive development, and defend national interests in a rapidly changing world.

3.2 Conditions for the Realization of Educational Freedom

The realization of educational freedom within the context of the modern state necessitates the adoption of a set of practical measures, foremost among them the following:

3.2.1 Liberating Education from Social Constraints

Culture constitutes the material and immaterial amalgam of customs, traditions, ideas, and arts that surround the individual within society. These components may exert a positive influence by contributing to social development and cohesion; conversely, they may have a negative impact that impedes progress, prompting modern legislation to seek their refinement or removal.

In the domain of freedom of education, certain negative cultural conceptions represent a genuine obstacle to its exercise. Prominent among these are the deprivation of females from education, the restriction of their educational attainment to a specific level, the prohibition of teaching certain disciplines, or the privileging of particular fields of knowledge over others. Such practices are often justified by claims of a religious nature, whereas their reality stands in complete contradiction to such assertions.

Divine religions, foremost among them Islamic law, have enshrined the human right to learning without discrimination, as reflected in verses (1–5) of Sūrat al-ʿAlaq, which address humanity in general terms without specification (Emara, 1998, pp. 133–140). Moreover, Lady ʿĀʾisha (may God be pleased with her) ranks among the most prolific transmitters of prophetic traditions, attesting to the scholarly status of women in Islam. The Prophet ﷺ also encouraged the education of women, as established in the authentic ḥadīth narrated by al-Bukhārī and Muslim on the authority of Abū Saʿīd al-Khudrī.

As for the restrictions prescribed by Islamic law, such as the prohibition of intermixing in certain forms of education, they are, in their essence, aimed at reinforcing women's freedom to learn and enabling them to ask questions and seek clarification across various fields without embarrassment or constraint.

Furthermore, Islamic law has demonstrated openness toward diverse branches of the human and experimental sciences, including those that originated in other civilizations, as confirmed by several accounts, among them the report transmitted by al-Tirmidhī on the authority of Zayd ibn Thābit (may God be pleased with him). The sciences proscribed by Islamic law, by contrast, are in reality deviations from the original sciences, such as astrology, which constitutes a deviation from astronomy, sorcery from physics, and charlatanism from chemistry.

At the legal level, modern legislation has incorporated explicit provisions aimed at liberating education from cultural constraints. In Algeria, Law No. 08-04 of 23 January 2008, which establishes the framework law on national education, stipulates in Article 10 the guarantee of the right to education for every Algerian,

male and female, without discrimination based on gender or social or geographical status. Article 12 of the same law further affirms the compulsory nature of education for girls and boys from the age of six (6) to sixteen (16) years, and provides for financial penalties against parents or legal guardians who violate these provisions.

Article 4 of the same law also provides that the educational process encompasses the various fields of knowledge, while educational curricula are determined by a specialized and neutral scientific body, namely the National Center for Programs, in accordance with Article 30.

3.2.2 Liberating Education from Economic Constraints

Historically, the educational process was long regarded as costly, as parents bore substantial financial burdens in securing their children's education, owing to the scarcity of educational institutions and the necessity for students to travel long distances. In some cases, students were even compelled to work in order to cover the costs of their studies (Duverger, 1975, pp. 112–118).

For this reason, early human rights instruments, such as the American Declaration of Independence of 1776 and the French Declaration of the Rights of Man and of the Citizen of 1789, did not address the principle of free education. However, the emergence of socialist movements at the beginning of the nineteenth century revived the demand for free education as a social claim, which was first embodied in the Constitution of the Soviet Union of 1936.

This principle was subsequently enshrined in Article 26 of the Universal Declaration of Human Rights and adopted by several states, including Algeria, whose Constitution provides in Article 65 for free education at all levels. This principle was further reinforced by the issuance of Executive Decree No. 21-61 of 8 February 2021, relating to the special school grant, in addition to various forms of assistance concerning textbooks, nutrition, transportation, and school health services.

It should also be noted that free education in Algeria extends to the public vocational training sector as well.

3.2.3 Liberating Education from Ideological Constraints

Ideological conflict is not confined to political arenas; it may extend to educational institutions, given their central role in shaping the consciousness of successive generations. Although advocacy for a particular intellectual conviction constitutes a legitimate practice within the public sphere, certain domains—foremost among them educational institutions—require neutrality.

The function of the school does not lie in producing political militants or promoters of specific ideologies, but rather in nurturing individuals grounded in shared human values. For this reason, most legislative frameworks prohibit the use of educational institutions for political or ideological purposes, as exemplified by Article 65 of the Algerian Constitution and Article 2 of Law No. 08-04, which defines the objectives of the Algerian school without reference to any political orientation.

Furthermore, Decision No. 65 of 12 July 2018 entrusted the head of the educational institution with the responsibility of ensuring oversight to prevent the presence of practices of an ideological nature within the institution.

3.2.4 Liberating Education from the Constraints of Classical Pedagogy

Education, like other fields, is affected by the rapid transformations occurring worldwide, and it is no longer acceptable to confine it to the traditional model based on rote instruction. It has become necessary to adopt modern educational approaches, to open education to different age groups, and to encourage the participation of the private sector, thereby enabling individuals to freely choose the mode of education that best suits their circumstances.

Law No. 08-04 adopted several modern mechanisms, including:

- Authorizing the establishment of private educational institutions at higher levels of education.
- Adopting the system of home schooling.
- Organizing adult education for the eradication of illiteracy.
- Implementing distance education and blended learning, along with the establishment of the National Office for Distance Education and Training.

4. Conclusion

At first glance, some may assume—even among students of law—that the call for entrenching freedom of education amounts to little more than a form of legal luxury, and that it suffices to enshrine the right to education within legal systems and ensure its proper implementation, as this alone would ostensibly guarantee the desired individual and societal development. Such a perception, however, remains deficient when one examines more closely the role performed by education in the contemporary modern state.

Education is no longer confined to serving as a means of transmitting knowledge or eradicating illiteracy; rather, it has become a strategic factor exerting profound influence across various domains of the state, whether in times

of peace or in situations of crisis and conflict. This is due to its direct impact on shaping collective consciousness, building human capital, and guiding political, economic, and cultural choices. Consequently, limiting oneself to the mere recognition of the right to education, without expanding it to encompass freedom of education, remains insufficient to achieve the objectives sought therefrom.

In conclusion, we recommend the constitutional enshrinement of freedom of education alongside the right to education, as both constitute fundamental pillars for ensuring the quality and effectiveness of the educational system. We also emphasize the importance of involving all state actors in the formulation and implementation of educational policy, in a manner that achieves integration and coordination among the various institutions.

We further stress the necessity of empowering political, judicial, and administrative oversight bodies to exercise their role in monitoring respect for freedom of education and ensuring that it is not infringed upon. We likewise recommend the establishment of independent, specialized committees tasked with developing and updating educational curricula in a manner consistent with the requirements of contemporary life in its economic, cultural, social, and ethical dimensions.

In the same context, we call for opening the field to private investment in the education sector, under the supervision of the competent ministry, with the aim of improving the quality of educational services and expanding their scope, while emphasizing the prohibition and criminalization of all forms of ideological propaganda within educational institutions in order to preserve the neutrality of the school and its pedagogical mission.

Finally, we recommend the adoption of diverse modern modes of education—whether face-to-face, distance, blended, home-based, or correspondence education—including educational programs directed at older age groups, in order to ensure the inclusiveness, flexibility, and responsiveness of education to the requirements of contemporary society.

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