

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIALTEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*



## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# RIGHT TO EDUCATION IN INDIA: A CONSTITUTIONAL ANALYSIS

AUTHORED BY - MR. ABDUL JABBAR HAQUE,

Assistant Professor in Law,

Haldia Law College, ICARE Complex, P.O.: Hatiberia, Haldia, DIST: Purba Medinipur,

West Bengal, PIN: 721657

CO-AUTHOR - MD. SABIKUR RAHAMAN,

Assistant Professor in Law,

A.R. Law College, P.O.: Sirakole. D.H. Road, Dist.: South 24 Parganas, West Bengal, PIN:

743513

## **ABSTRACT**

*Education is the basis for development and empowerment of every nation. Education is the most powerful weapon which can be used to change the world. Education is a fundamental human right. Education is keystone for self-sustaining and livelihoods and the education is life insurance for all children. The right to education is a very important part of the developments and the right to education is a basic human right. The importance of education to individual, community and national development is reflected in its recognition as a human right. The Constitution (86<sup>th</sup> Amendment) Act, 2002 had added a new Article 21A which provides that “the state shall provide free and compulsory education to all children of the age of 6 to 14 years”. The free education means that a child shall not be liable to pay any kind of fee or charge or expenses which prevents him from pursuing and completion of the elementary education. Education helps children to develop creatively and emotionally and to acquire the skills, knowledge, values and attitudes necessary for responsible, active and productive citizenship. The Hon’ble judiciary took an extensive role in universalizing elementary education in India. After much debate and struggle, the Parliament of India enacted the Right of Children to Free and Compulsory Education Act, 2009 which came into force on April 1, 2010.*

**Keywords:** Education, right to education, fundamental right, judiciary, India.

## INTRODUCTION

*‘Education is the manifestation of the perfection already in man’.*

---- *Swami Vivekananda*

Education is the most perfect mechanism for the development of human beings. Education has a huge impact on human civilized world. Education trains the human brain to think and choose the right way. The major role of education is to create an educated society. So we can say that the function of education is day by day becoming more important in the present world.

The Latin word *‘Education’* means to train. *‘E’* means from inside and *‘Duco’* means as to draw out, to lead out or to bring up. By combining the two, education comes to mean to draw from within. Education is a process, which draws from within. Each child is born with some innate tendencies, capacities and inherent powers. Education draws these powers out and develop them to the full.<sup>1</sup> Latin words *‘Educare’*, *‘Educere’* mean to bring up, to lead out and to develop, etc. In this way, the word education means to develop the inborn qualities of a child to the full.<sup>2</sup> Thus, education is process of development.

Education is perhaps the most vital requirement for inclusive growth, empowering individual and society, opening up opportunities and promoting true public participation in the development process. It is an important factor that fuels both social change and economic growth.

The Right of Children to Free and Compulsory Education Act which was passed by the Parliament of India on August 4, 2009, made India one of 135 countries to make education a fundamental right of every child. The Constitution (86<sup>th</sup> Amendment) Act was first introduced in Parliament in 2002 and took more than 7 years to be passed and finally received Presidential assent in 2009 to be notified as an Act on April 1, 2010 which describes the modalities of the importance of free and compulsory education for children between 6 and 14 years in India under Article 21A of the Constitution of India.

### **RIGHT TO EDUCATION: INTERNATIONAL PERSPECTIVES**

Education is essential for every person to live with basic human dignity, education liberates

<sup>1</sup> Right to Education, *available at:* [http://right\\_to\\_education\\_12102010.pdf](http://right_to_education_12102010.pdf) (Last visited on March 13, 2025).

<sup>2</sup> Ibid.

man from ignorance, exploitation and oppression. It promotes freedom, progress and equal opportunities for all citizens. Therefore, education has been looked upon as the most precious and meaningful investment for human development. The stage under the constitutional obligation to secure right to education to all citizens, and for its equitable distribution in terms of opportunities.

“Education is a fundamental human right, set forth in the Universal Declaration of Human Rights and the International Human Rights Covenants, which have force of international law. To pursue the aim of education for all is therefore an obligation for States”.<sup>3</sup>

“Education for all is important for three reasons. *First*, education is a right. *Secondly*, education enhances individual freedom. *Thirdly*, education yields important development benefits”.<sup>4</sup>

Education is a basic human right and is the foundation of a free and fulfilled life. Its need and importance has long been emphasized and in the recent past since when the countries have found a common platform in United Nations numerous Covenants and Treaties have powerfully and unambiguously expressed the relevance of education and have set a goal for them viz. Education for all ‘Education as an economic, social, cultural and political facets of education is facilitate by the indivisibility and interrelations of human rights.

#### **(i) The Universal Declaration of Human Rights, 1948 (UDHR)**

The Universal Declaration of Human Rights, 1948 was adopted by the United Nations General Assembly on December 10, 1948. Though this Declaration mainly aims to promote human rights of the individual, at the same time it also shows concern for child care and their right to education. **Article 26** of the UDHR<sup>5</sup> said in this regard that “*Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*” It also states that “*Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.*”

<sup>3</sup> Koichiro Matsuura, Former Director General, UNESCO (1999–2009).

<sup>4</sup> John Deniel, Former Assistant Director-General for Education, UNESCO (2001-2004).

<sup>5</sup> Dr. S.K. Kapoor, *Human Rights under International Law & Indian Law*, pp. 463-464 (Central Law Agency, Allahabad, 2014).

**(ii) Declaration of the Rights of the Child, 1959 (DRC)**

In the year 1959, 'the Rights of the Child' was declared by the United Nations. **Principle 7** of Declaration of the Rights of the Child<sup>6</sup>, 1959 provides that *"The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which shall promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society."* It also declares that *"the best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents."* And it also declares that *"the child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right."*

**(iii) International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR)**

Child's right to education has also been recognised by the International Covenant on Economic, Social and Cultural Rights, 1966 which provides that free and compulsory education should start from primary level and higher education shall be made equally accessible to all. It has also been mentioned that education should conform to the minimum standards fixed by the State. **Articles 13 & 14** of the ICESCR<sup>7</sup> provides that right to education includes free and compulsory primary education for all. In addition to these, right to education also encompasses the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality.

**(iv) Convention on the Rights of the Child, 1989 (CRC)**

The Convention on the Rights of the Child, 1989 also makes the provision for free and compulsory primary education and intends that the State shall take all necessary and appropriate steps for the promotion of education so as to develop the child's personality, talents as well as mental and physical abilities to their full potential. **Article 28** of the Convention on the Rights of the Child<sup>8</sup> recognizes the right of the child to education on the basis of equal opportunity and in achieving in so it will particularly make primary education compulsory, free and available to all; encourage the development of secondary education and make it within the

<sup>6</sup> Dr. U. Chandra, *Human Rights*, p. 266 (Allahabad Law Agency Publications, Allahabad, 2007).

<sup>7</sup> Dr. Paramjit S. Jaswal and Dr. Nishtha Jaswal, *Human Rights and the Law*, pp. 293-294 (APH Publishing Corporation, New Delhi, 2010).

<sup>8</sup> Supra Note 6, at p. 273.

reach of every child; ensure regular attendance at schools and reduction of drop-out rates; make higher education accessible to all; make vocational education; information and assistance available to all children and side by side places an obligation on the state parties to support and encourage international co-operation in matters relating to education with a view to contribute to the elimination of illiteracy from the world with the help of technical knowledge and modern methods. Even **Article 29** of the CRC<sup>9</sup> states that such education shall be directed towards the development of the child's personality, talents and physical abilities to their fullest potential the development of respect for human right fundamental freedoms, his cultural identity, etc.

After more than half a century of independence, one of the socio-economic rights which could find place as fundamental rights in Indian Constitution with much effort, is the 'Right to Education'.

It also traces the evolution of the fundamental right to education in India by referring to international human rights framework as well as Indian Constitutional framework. The Hon'ble Supreme Court's role in developing fundamental right to education through constitutional jurisprudence is also under examination.

### **RIGHT TO EDUCATION: CONSTITUTIONAL PERSPECTIVE**

The Constitution of India has recognised the significance of education for social transformation. The Constitution of India initially defined education as State subject until an amendment was added in 1976 vide the Constitution (42<sup>nd</sup> Amendment) Act, 1976 and presently education has come under Concurrent list, subject to the control and supervision of both the Central and State government. However, attempts to make provisions for free and compulsory education in India began a little more than a century. After Independence, the Constitution of India came into force on January 26, 1950. The various provisions promoting education can be found in the whole Constitution.

**Article 21** of the Constitution of India<sup>10</sup> deals with protection of life and personal liberty. The right to education flows directly from right to life. The right to life and the dignity of an individual under Article 21 cannot be assured unless it is accompanied by the right to education.

---

<sup>9</sup> Ibid.

<sup>10</sup> Durga Das Basu, *Workbook on Constitution of India*, p. 1.115 (LexisNexis, Haryana, 2014).

In the case of *Bapuji Education Associations vs. State of Karnataka*<sup>11</sup>, the Hon'ble Karnataka High Court found that the right to education to be an essential attribute of personal liberty. The Hon'ble Court observed that “*right of an individual to have and or to impart education is one of the most valuable and sacred rights*”. The Hon'ble Court further observed that “*among various types of personal liberties which can be regarded and included in the expression ‘Personal liberty’ of Article 21, education is certainly the foremost.*”

Education is made a fundamental right for children in the age group of 6-14 years by the Parliament through the Constitution (86<sup>th</sup> Amendment) Act, 2002 and inserted **Article 21A** which provides<sup>12</sup> that “*The State shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may, by law, determine*”.

**Article 45** of the Constitution of India<sup>13</sup> also added a new Directive Principles of State Policy through the Constitution (86<sup>th</sup> Amendment) Act, 2002 and provides for free and compulsory education to children below the age of 6 years.

**Article 51A(k)** of the Constitution of India<sup>14</sup> also added a fundamental duties through the Constitution (86<sup>th</sup> Amendment) Act, 2002 and provides that “*to provide opportunities for education to his child or ward as the case may be, between the age of 6-14 years*”. So, now a fundamental duty of every citizen to give the education to the children or wards.

## **POSITION OF EDUCATION BEFORE THE CONSTITUTION (86<sup>TH</sup> AMENDMENT) ACT, 2002**

Constitution of India devoted many Articles to the right to education but it was not in the form of a fundamental right. Constitution makers place right to education in Part IV of the Constitution on the form of Directive Principles of State Policy. **Article 41** of the provides<sup>15</sup> right to work, to education, and **Article 46** provides<sup>16</sup> the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. Original Article 45 was made the provision for free and compulsory education for children. This Article said that the State shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until

---

<sup>11</sup> *Bapuji Education Associations vs. State of Karnataka*, AIR 1986 Kant. 119

<sup>12</sup> *Supra* Note 10, at p. 1.118

<sup>13</sup> *Ibid.*, at p. 1.159

<sup>14</sup> *Ibid.*, at pp. 1.146-1.147

<sup>15</sup> P.M. Bakshi, *The Constitution of India*, p. 88 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2010).

<sup>16</sup> *Ibid.*, at p. 90.

they complete the age of fourteen years. After the Constitution (86<sup>th</sup> Amendment), **Article 45** provides that<sup>17</sup> the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years. Through Part IV of the Constitution directs the State to act within a time frame but does not give any enforceable right to citizens.

In the case of *Mohini Jain vs. State of Karnataka*<sup>18</sup>, the Hon'ble Supreme Court held that the right to education is a fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the capitation fee. The right to education flows from right to life.

The landmark judgement given by the Hon'ble Supreme Court in the case of *Unni Krishnan vs. State of Andhra Pradesh*<sup>19</sup>, the right of education upto the age of 14 years is a fundamental right within the meaning of Article 21 of the Constitution of India but the obligation of the state to provide education is subject to the limits of its economic capacity. The right to education flows directly from right to education flows directly from right to life.

Thus, it may be said that Constitution of India makers intended that every child should have an opportunity for education until the child completes a particular age and thereafter his education would be circumscribed by the limits of the economic capacity of the states.

### **POSITION OF EDUCATION AFTER THE CONSTITUTION (86<sup>TH</sup> AMENDMENT) ACT, 2002**

After the case of *Mohini Jain* and *Unni Krishnan*, the process of realising right to education got accelerated. In this regard, mention may be made of the two important committees on education. The first was of **Education Commission**, which is commonly known as **Kothari Commission**, which submitted their Report in 1966 and the second was **Saikia Committee**, which submitted their Report in 1997. Both the Committees recommended that schooling should be made compulsory for all children. In furtherance of the recommendations of these Committees, a Constitutional Amendment Bill was introduced in the Parliament in 1997. From 1997 to 2001 the Bill remain dormant. The Bill acquired the status of an Act as Constitution (86<sup>th</sup> Amendment) Act only 2002 subsequent to considerable internal and external pressure.

---

<sup>17</sup> Dr. J.N. Pandey, *Constitutional Law of India*, p. 410 (Central Law Agency, Allahabad, 2010).

<sup>18</sup> *Mohini Jain vs. State of Karnataka*, (1992) 3 SCC 666.

<sup>19</sup> *Unni Krishnan vs. State of Andhra Pradesh*, (1993) 1 SCC 645.

The Act makes education as a fundamental right for those between the ages of 6-14 years.<sup>20</sup>

The Act provided for the following three insertions/changes in the Constitution.

- (i) The insertion of Article 21-A, which provides that the State shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may by law determine.
- (ii) An amendment to Article 45, that is provision for early childhood care and education to children below the age of 6 years; the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.
- (iii) In Article 51-A, after clause (j) the following clause (k) has been inserted: *“a parent or guardian shall provide opportunities for education to his children or ward between the ages of 6-14 years”*.

Thus, finally Article 45 of the Constitution has been given a new life. However, Article 21-A is without the spirit of Article 45 of the Constitution because the earlier it (Article 45) envisaged the right to education *“for all children until they complete the age of fourteen years”* whereas Article 21-A has provided the right to education only to all children of the age group 3-6 is very crucial from the point of view of mental and physical growth of the child.

The Act failed to recognise that the period from 3-6 years of children is very crucial. It is the important age of mental as well as physical growth.

The provision of Article 21-A is directory in nature. It is difficult to understand that upto six years of age right to education has not been given the status of fundamental right rather it is in shape of Directive Principles of State Policy and would acquire the status of a fundamental right only after the child attains the age of six years; whereas the fact is that the fundamental rights, if they are really fundamental, are acquired by birth, and not subsequently.

After analysis of the Constitutional provisions pertaining to right to education it is necessary to analyse who is liable to provide (right to) education to children. This is because there exists the famous jural postulate, *“rights and duties are correlative”*.

In India, the Constitution makers realized the importance of universal elementary education

---

<sup>20</sup> Implementation of Right to Education, available at: <http://mla.prsindia.org/policy-guide/implementation-right-education> (Last visited on March 13, 2025).

and directed the Government to ensure free and compulsory education within ten years from the commencement of the Constitution. Initially, 'education' was put in the State List of the Eighth Schedule at Entry 11 which implied that it is primarily a concern of the States and, in turn, it were the State Governments, which were under an obligation to impart education. But in 1976, through the Constitution (42<sup>nd</sup> Amendment), Concurrent List and presently it finds its place at Entry 25 of the Concurrent list. This makes the Government of India equally responsible for providing education, framing educational policies and enacting laws for implementing the same.

Child's right to education is not the responsibility of one particular person or institution; it is shared responsibility. **Firstly**, it is the responsibility of the State to protect the best interests of the child and hence to ensure that education is universally available and accessible. **Secondly**, State has to provide necessary facilities, outline and accountable. **Thirdly**, simultaneously, parents also have a responsibility to send their children to school, teachers are responsible not to employ children in ways that conflict with their education.<sup>21</sup> Thus, the overall responsibility of guaranteeing the right to education is shared between the society and the Government.

### **RIGHT TO FREE AND COMPULSORY EDUCATION IN INDIA: JUDICIAL CONTRIBUTION**

The Hon'ble Supreme Court of India seems to have felt compelled to provide redress to citizen disappointed with the efforts of the successive governments in securing constitutional goals. The failures of the executive and legislative branches of the Indian Government have opened the way of Court's intervention, known to be Public Interest Litigation (PIL) Movement. That is why many of the Socio-economic rights given under the Part IV of the Constitution of India are being shifted to Part III under the Chapter of Fundamental Rights and the Right to Education (Class I-VIII) is one of them.

Judicial interpretations have also brought alive many an Article of the Constitution, which if read literally may seem to be a colourless Article of relevance to the Right to Education, for instance, is the wide interpretation given to the words, 'personal; liberty'.

In the case of *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi*<sup>22</sup>, the

<sup>21</sup> Nalia Kabeer, Geetha B. Namibssan, Ramiya Subramanian, *Child Labour and the Right to Education in South Asia-Needs versus Right*, p. 55 (Sage Publications India Pvt. Ltd., New Delhi, 2003).

<sup>22</sup> Francis Coralie Mullin vs. Administrator, Union Territory of Delhi, AIR 1981 SC 745.

Hon'ble Supreme Court observed that “*The Fundamental Right to life which is the most precious human right and which forms the arc of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. We think that the right to life includes right to live, with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about, mixing and co-mingling with fellow human beings.*”

The judiciary showed keen interest in providing free and compulsory education to all the children below the age of 14 years. In the year the Hon'ble Supreme Court of India decided two Public Interest Litigation cases, *i.e.*, ***Mohini Jain*** and ***Unni Krishnan*** case in which the court enforced right to education. In reality, both cases concerned the impact of certain state laws on private educational institutions of higher learning, the court took the opportunity to develop a precedent that also governed the public provision of elementary education.

In the case of ***Mohini Jain vs. State of Karnataka***<sup>23</sup>, the Hon'ble Supreme Court held that the right to education is a fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the capitation fee. The right to education flows from right to life. In the instant case the petitioner had challenged the validity of a notification issued by the government under the Karnataka Education Institution (Prohibition of Captivation Fee) Act, 1984 passed to regulate tuition fee to be charged by the private medical colleges in the state. The division bench of two judges held that the right to education at all level is a fundamental to citizen under Article 21 of the constitution and charging captivation fee for admission to education institutions is illegal and amount to denial to citizen's right to education and also violative of Article 14 being arbitrary, unfair and unjust.

Subsequently, in the case of ***Unni Krishna vs. State of Andhra Pradesh***<sup>24</sup>, the five judge bench by 3:2 majority partly agreed with the ***Mohini Jain*** decision and held that right to education is a fundamental right under Article 21 of the Constitution as ‘it directly flows’ from right to life. But as regards its content the court partly overruled the ***Mohini Jain's case***, and held that the right to free education is available only to children until they complete the age of 14 years, but after the obligation of the state to provide education is subject to the limits of its economic

<sup>23</sup> Mohini Jain vs. State of Karnataka, (1992) 3 SCC 666, popularly known as the ‘capitation fee case’.

<sup>24</sup> Unni Krishna vs. State of Andhra Pradesh, (1993) 1 SCC 6.

capacity and development. The obligation created by Article 41, 45 and 46 can be discharged by State either establishing its own institutions or by aiding, recognizing or granting affiliation to private institutions. Thus, the Supreme Court by rightly and harmoniously construing the provision of Part III and Part IV of the Constitution has made right to education a basic fundamental right.

In the case of *Bandhuwa Mukti Morcha vs. Union of India and others*<sup>25</sup>, it has been held that it is the solemn duty of the state to provide basic education to children also working in different industries or factories and the court directed the government to take such steps and evolve scheme assuring education to all children either by the industry itself or in co-ordination with it.

In the case of *TMA Pai Foundation vs. State of Karnataka*<sup>26</sup>, the scheme formulated by the court in the case of *Unni Krishnan* was held to be an unreasonable restriction within the meaning of Article 19(6) of the Constitution as it resulted in revenue shortfalls making it difficult for the educational institutions. Consequently, all order and directions issued by the state in furtherance of the directions in *Unni Krishnan's case* was held to be unconstitutional. The court observed that right to establish and administer an institution includes the right to admit students; rights to set up a reasonable fee structure; right to constitute a governing body; right to appoint staff and right to take disciplinary action.

In the case of *Islamic Academy of Education vs. State of Karnataka*<sup>27</sup>, another issue arose for the determination of fees structure in private unaided professional educational institutions. It was submitted that management has been given complete autonomy not only as regard to admission of students but also as regards to fee structure which could include a reasonable revenue surplus for the purpose of development of education and expansion of education.

In the case of *Sandeep vs. State of Kerala*<sup>28</sup>, the Hon'ble Kerala High Court held that the order passed by the Hon'ble Supreme Court is applicable to all students of self-financing medical colleges securing admissions under government quota or management quota and even for students admitted for 2003-04 and continuing the course for academic year 2004-05.

---

<sup>25</sup> *Bandhuwa Mukti Morcha vs. Union of India and others*, (1991) 4 SCC 177.

<sup>26</sup> *TMA Pai Foundation vs. State of Karnataka*, AIR 2003 SC 355.

<sup>27</sup> *Islamic Academy of Education vs. State of Karnataka*, AIR 2003 SC 3724.

<sup>28</sup> *Sandeep vs. State of Kerala*. AIR 2005 Ker 148.

Allotment of NRI seats was the issue in another case, i.e., *P.A. Sen vs. Co-op Medical College, Kochi*<sup>29</sup>. The Hon'ble Kerala High Court clarified that the NRI quota of 15% has to be carved out and reckoned only out of the management quota that is 50% of the total sanctioned seats. Further the Apex Court held that right of education means that a citizen has a right to call upon the state to provide educational facilities within the limits of its economic capacity and development.

In connection to this, the Hon'ble Supreme Court in the case of *State of Bihar and others vs. Project Uchcha Vidhya, Sikshak Sangh and others vs. Union of India*<sup>30</sup>, also observed that establishment of High Schools may not be a constitutional function in the sense that citizens of India above 14 years might not have any fundamental right in relation thereto, but education as a part of human development indisputably is a human right.

Thus, compulsory education is one of the duties of the states for stability of democracy, social integration and to eliminate social evils. The Hon'ble Supreme Court by rightly and harmoniously construing the provision of Part III and IV of the Constitution has made right to education a basic fundamental right.

The Government of India by Constitution (86<sup>th</sup> Amendment) Act, 2002 had added a new Article 21-A which provides that, “*the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine.*”

It is submitted that on the basis of constitutional mandate provided in Articles 41, 45, 46, 21A as well as, as per the various judgments' of the Hon'ble Supreme Court, the Government of India has taken several steps to eradicate illiteracy, improvement the quality of education and make children back to school who left the schools for one or the other reasons.

Reservations to educational institutions continue to be a contentious issue. Reservation of admission of three categories was challenged in the case of *Md. Abdul Azeez Asad vs. State of A.P.*<sup>31</sup>. The question raised were- (i) whether the 33.33% reservation for women in admission to PG medical courses have the effect of transgressing the 50% limit of permissible reservation; (ii) whether the 3% reservation for persons with disabilities is horizontal in character; and (iii) whether application of 100 point roster with seat matrix by State Government is in excess of

<sup>29</sup> P.A. Sen vs. Co-op Medical College, Kochi, AIR 2005 Ker 245.

<sup>30</sup> State of Bihar and others vs. Project Uchcha Vidhya, Sikshak Sangh and others vs. Union of India, 2006 (2) SCC 545.

<sup>31</sup> Md. Abdul Azeez Asad vs. State of A.P., AIR 2005 A.P. 389.

reservation of seats in favour of local candidates and is violative of Articles 14 and 15 of the Constitution of India. The Hon'ble Court held that the 33.33% of reservation provided for women in admission to PG Medical courses does not fall out of the principle of ceiling in reservation. This was established by a catena of precedents and reiterated in *Indra Sawhney vs. Union of India*.<sup>32</sup>

In the case of *St. Stephen's College vs. University of Delhi*<sup>33</sup>, the Hon'ble Supreme Court held in the light of protective measures to minorities under Article 30(1) of the Constitution, the minority aided educational institutions are entitled to prefer their communities candidates to maintain the minority character of the candidates subject of course in conformity with the University standard. The minority institutions shall make available at least 50% State can lay down reasonable conditions for obtaining grant-in-aid and for its proper utilization. The State has no power to compel minority institutions to give up their rights under Article 30(1). However, the access to academic institutions maintained or aided by the State funds is the special concern or Article 29(2) of the Constitution of India. The collective minority right is required to be made functional and is not to be reduced to useless number. A meaningful right must be shaped, melded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is needed to strike a balance between the two competing rights. It is necessary to mediate between Articles 29(2) and 30(1) between traditions of the past and the convenience of the present between society's need for stability and its need for change.

In the case of *State of Bihar & others vs. Project Higher Education Teachers Association*<sup>34</sup>, the Hon'ble Supreme Court held that the right to manage an institution is also a right to property. Article 300A of the Constitution provides that persons not to be deprived of property have by authority of law. No person shall be deprived of his property by authority of law under Article 19(1)(g), the establishment of educational institution and management of right is fundamental right. Under Articles 21 and 21-A, in respect of higher education is not any fundamental right. But is the basis of development of human rights. So this is human rights.

## CONCLUSIONS AND RECOMMENDATIONS

<sup>32</sup> *Indra Sawhney vs. Union of India*, AIR 1993 SC 477.

<sup>33</sup> *St. Stephen's College vs. University of Delhi*, AIR 1992 SC 1630.

<sup>34</sup> *State of Bihar & others vs. Project Higher Education Teachers Association*, (2006) 1 SCC 122.

Education is at the base of all types of human development and progress. Education is said to be the sharpest weapon and strongest shield against all human problems. Human life becomes meaningless in the absence of education. Through education, we acquire knowledge and skills which enable us to lead a fruitful life. India is a democratic country and justice, equality and liberty are the guiding principles of our Constitution.

We have seen that the Right to Education is now a Fundamental Right for all children in the age group of 6 to 14 years. In simple word, it means that the Government will be responsible for providing education to every child up to the eight standards, free of cost, irrespective of class and gender. Part III of the Constitution of India gives all force to every child to get free and compulsory education through Article 21, and insertion of Article 21-A by the Constitution (86th Amendment) Act, 2002 is also a landmark in this respect.

It well said that '*Padhega India tabhi to Badhega India*'. The significance of education in the individual's life and life of the Nation is the same. It is not only an individual gets benefited through education but also be society and the nation at large. It is hereby submitted that as the right to free and compulsory education has been shifted from Directive Principles to the Fundamental Rights, in the same way, the Articles 41, 45 and 46 must be shifted from Directive Principles of the State policy to the Fundamental Rights of the citizens. There are some recommendations for effectiveness of Right to Education in India:

1. The Right to Education Act should not be restricted to the age of 14 years. It should be raised up to the secondary level or vocational level courses.
2. Government schools should be run by private entities/entrepreneurs. It is very doubtful if the government can manage hiring qualified teachers and provide quality education to children.
3. There should be some amendments in the Right of Children to Free and Compulsory Education Act, 2009 as it is provisioned that "No child shall be held back, expelled, or required to pass a board examination until completion of elementary education" because without having proper ability and knowledge, no child will able to survive in next class.
4. In villages the Panchayat members can play important role in promoting education. The village education committee should not be an ad hoc project arrangement and should be permanent.

5. There should be a teacher and parent interaction because a frequent parent and teacher interaction will enhance student enrolment and attendance rate.
6. The incentives like books, uniforms etc. available to the students must be made at the beginning of session.
7. The quality of Mid-Day Meal needs to be improved, which will attract children of the weaker sections of the society.
8. Village monitoring committees must be formulated so that they will monitor the enrolment and student absenteeism.
9. The goal of 100% female education can be achieved by creating community awareness for girls education at all levels.
10. Improvement in the infrastructure like availability of water, sanitation and toilets in schools should be done on priority basis.
11. Provision for strict punishment regarding the violation of the RTE Act, 2009 should be made and the responsibilities of state government, central government, parents, teachers, and administrators, Owners of the school, children and society members should be fixed. It should be made mandatory for all the government employees; whether state or centre or person working under centre or state sponsored agency, to send their children in government or government aided institutes.

India is yet to achieve the goal of universalisation of elementary education or 100 percent enrolment and retention of children with schooling facilities in all habitations. Despite the government's attempt to achieve this goal through the Sarva Shiksha Abhiyan, which has a special focus on girl children, students belonging to disadvantaged families still do not attend classes regularly.

***'Education is the most powerful weapon which you can use to change the world.'***

***----- Mr. Nelson Mandela.***

-----