

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

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 2 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

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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 8 Articles in various reputed Law Journals. Conducted 1 Moot 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 FUNDAMENTAL RIGHT & A FREEDOM TO CARRY OCCUPATION

AUTHORED BY - MS. SANJANA DWIVEDI & DR. VIVEK KUMAR

Law College, ICFAI University, Dehradun

Abstract

The right to education and the ability to select one's occupation are essential rights guaranteed by many international human rights treaties and many national constitutions.

The right to education is recognised as a fundamental human right in both Article 26 of the Universal Declaration of Human Rights (UDHR) and Article 13 of the International Covenant on Economic, Social, and Cultural Rights. It emphasises that education should be available to all on an equal basis, without discrimination, and should be designed to help individuals reach their greatest potential.

Many countries have also enshrined the right to education in their national constitutions or legislation, ensuring free and compulsory primary education and frequently expanding it to secondary and higher education as well. Furthermore, the freedom to select one's employment is frequently linked to the right to work, which is generally seen as a fundamental human right.

This freedom indicates that individuals have the right to pursue their preferred occupation or profession, subject to certain restrictions such as public interest, public order, and the rights of others. Both of these rights are essential for an individual's full growth and realization of potential, as well as societal advancement and well-being. They are linked because schooling frequently acts as a gateway to acquiring the skills and knowledge required for one's chosen occupation or job.

Keywords- Education, Occupation, Fundamental right, Constitution, Portals.

Introduction

The Preamble to our Constitution aims to achieve justice in social, economic as well as political aspects, and equality of status and opportunity within the ambit our Constitution.

Education does not itself find its presence in the Preamble, but a state of being educated is undoubtedly achieved when the 'State' thrives to achieve the virtue of equality and justice in the country. Therefore, education is a means to achieve the idealistic state of equality and justice in our country.

This goal of achieving justice and equality among all the citizens of India is facilitated by the cordial co-existence and functioning of Part- III and Part- IV of our Constitution. This is further supplemented by the amending powers of the Parliament and the right to enforce these rights in the Constitutional Courts established throughout the country.

Education is a cardinal necessity for any society to progress and to protect itself from any kind of unwanted subversive external forces. Education was limited to Article 45 of our Original Constitution, and therefore was not a guaranteed right under Part III of the Constitution. This right became justifiable in the year 2002, when it was incorporated by inserting Article 21A of the Constitution.

Education in India- A Constitutional Perspective

After due deliberations and discussions in the Constituent Assembly, that was constituted to give ourselves a constitution. The Assembly agreed on a provision of education, but in Part IV of the Constitution, which indicated that this shall not be an enforceable right but shall guide the State in making provisions for education in the near democratic future.

Article 45 stated that "*The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years*"¹.

The object of inserting this as a socio- economic principle in our Constitution was to achieve the goal of education for all in the near future, especially when the State thinks it fit to be given a status as that of a right.

¹ Constitution of India 1950, art. 45

As soon as the Constitution got enforced on January 26 1950, several litigations started coming up before our Constitutional Courts. Especially with respect to the right to education of deprived sections of the society. Most of these claims were made with respect to the powers of Parliament to make special provisions for socially and educationally backward classes of citizens (SEBC) or Scheduled Castes (SC) and Scheduled Tribes (ST)².

The Parliament came up with several constitutional amendments to protect the rights of these deprived sections of population, by enforcing reservations in educational institutions including the private educational institutions.

If for some time, we keep aside the existing notion of right to education that prevails in our country. We would observe that this was the very first interpretation of right to education that was granted to SEBCs, SCs and STs by our Parliament. This right was restricted to grant reservations in admission to educational institutions, whether public or private. One more restriction that prevailed over this right was that granting reservation was the prerogative of the State, and the State till now cannot be compelled to enforce reservation³.

The judgment of the Honourable Supreme Court in the case of *Indira Sawhney v. Union of India*⁴, further imposed a limit on this right by declaring that reservation for SEBCs and SCs as well as STs shall not exceed 50% of the total number of sanctioned strength of a particular institution, thereby defining its scope and extent.

Right to Education: Evolving as a Fundamental Right

Through article 15, several key initiatives were made to bring the deprived sections of the population at par with the forward class of citizens, but this was not an absolute right of education because it was derived from the right to equality and was just ensuring equality among all citizens in relation to the resources that State possessed. In addition to this, it was not available to all citizens and was neglecting those people who were not part of the population recognised under article 15.

Further, in a country where poverty played its own role in determining the proper enforcement of

² Constitution of India 1950, art. 15(4)

³ Janhit Abhiyan v. Union of India, 2022 SCC OnLine SC 1540

⁴ India Sawhney v. Union of India, AIR 1993 SC 477

any justifiable right. The provisions were not sufficient to ensure education to poor.

The Parliament by inserting Article 21A by way of Constitution (Eighty Second) Amendment Act of 2002 made education free and compulsory for children between six to fourteen years of age. This amendment was made in light of the prevailing high capitation fees charged by schools. Due to which poor were deprived of admission in educational institutions. Prior to this amendment, the Supreme Court in the case of *Mohini Jain v. State of Karnataka*⁵ expressly declared right to education to be a fundamental right and called the charging of high exorbitant capitation fees as totally illegal.

For proper implementation, enforcement of right to education and to give it a procedural framework the Supreme Court in the case of *Ashok Kumar Thakur v. Union of India*⁶ laid down comprehensive guidelines. This was later incorporated by the Parliament when it came up with the Right to Education (RTE) Act of 2010.

The Right to Education Act of 2009

Under the act, a child between the age of six to fourteen years of age is made entitled to elementary education in a school (whether aided or unaided), in his neighbourhood. Further, a responsibility has been endowed upon the Central as well as State Government or Local Authority to establish schools in the neighbourhood, where a school does not exist.

Further it is to be noted that such education is free and no child belonging to disadvantaged or weaker section of the society, is charged for the education that he/ she is provided by the school. Such schools are bound to admit at least 25% of such students out of the total strength of that particular class, and for imparting education under the act are reimbursed of the expenses from the State⁷.

As per the Act, it is also the responsibility of parents and guardians to ensure that their wards are admitted for elementary education, in a neighbourhood school⁸. A provision is also made for early childhood care and allows the appropriate Government to provide for early childhood care

⁵ Mohini Jain v. State of Karnataka, AIR 1992 SC 1858

⁶ Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1138

⁷ Right of Children to Free and Compulsory Education Act 2009, s. 12

⁸ Right of Children to Free and Compulsory Education Act 2009, s. 10

and education for child above three years of age till they attain the age of six years.

To ensure safety and security of a school going child, physical punishment and mental harassment to the child has been prohibited under Section 17. Further, a school teacher is prohibited to engage in private tuition or private teaching activity, thereby securing the interests of all school going children by ensuring that the teacher does not engage in any activity of *quid pro quo* and resort to partial treatment to some students over others⁹.

In this manner, the act of 2009 tries to achieve the fundamental right which has been laid under Article 21A of the Constitution. The Act has seen a journey of more than a decade and has made several noteworthy changes in our elementary school education system so that the virtue of 'justice' and 'equality', which finds its presence in our preamble, is achieved.

Imparting Education- An occupation in India

While on the one hand, getting educated is a fundamental right in India. On the other hand, imparting education apart from being one of the primary obligations of the State is also considered an occupation, trade or profession.

Being the second largest populous country of the world and having the largest population of youth in the world. It becomes significant for the country to produce enough teachers every year, who are competent to fulfil the constitutional objectives. As teacher to a student, is same as life to a human being.

Our Constitution, considers freedom to establish educational institution and engage in teaching activities as a fundamental right under Article 19(1) (g) of the Constitution. This was explicitly stated by the Supreme Court in the case of *Unni Krishnan v. State of Andhra Pradesh*¹⁰. A Constitution that recognizes both the right to receive education and the right to impart education as fundamental rights, clash between these two rights is imperative and it is also presumed that in some time one shall prevail over the other.

In our educational set-up, where we have both public as well private educational institutions it

⁹ Right of Children to Free and Compulsory Education Act 2009, s. 28

¹⁰ Unni Krishnan v. State of Andhra Pradesh, AIR 1993 SC 2178

becomes very important that we keep a fine balance between the quality of educational and other ancillary activities that are provided to school going children of respective institutions, otherwise the education shall suffer as per the economic capacity of the guardians.

Though, RTE 2009 has tried to bring a child of disadvantaged or weaker section of the society at par with the well-off children, but the problem of this age is now- heavy reliance towards private coaching centres. These clusters of private coaching centres in every city are no more than service providers. They are governed by their own profit and loss business models and their primary objective is to earn capital by advertising excellence of some students.

The transition of education from traditionally being the source of knowledge and to develop a conscience is now considered as a tool to secure seats in educational institutions and to get jobs. Further, it is to be noted that the more we objectify education as a service- the more it will lead to becoming what it was never meant to be and in this exercise our students will only suffer.

In an era where education has become an instrument towards capitalisation and marketing it becomes necessary that the Government comes up with appropriate mechanism to safeguard education sector from intense materialism that we are seeing in the last decade or so. It is the responsibility of the State that it strives to secure a social order in the society which reflects in our Constitution. Education should be regulated and maintained in such a manner that it shows a fine balance between the capitalistic thinking as well as socialistic attitude.

Article 21A: Re-defined

To eliminate the socio- economic inequality that still prevails in our country, the State needs to extend the ambit of Article 21A of our constitution¹¹. By extending the ambit, the author here means that the existing provision should be amended in such a manner that it incorporates education of the eligible children under RTE in private coaching centres (in neighbourhood) as well.

To bring the coaching centres in line with the right under Article 21A, the coaching centres should be first registered as an educational institution under their respective State Governments and should be given recognition by including them under the existing RTE Act of 2009.

¹¹ Constitution of India 1950, art. 21A

Further, a limit should be set to induct these students in their respective centres. To initiate this process, several seminars and awareness campaigns should be organised by the schools in collaboration with these coaching centres so that interests and capability of every child is sought and the process becomes voluntary.

To encourage the coaching centres to take part in this good cause, respective State Governments in coordination with the Central Government should grant incentives to these institutions to induct more and more students in their specialised courses. These incentives can be in the form of tax rebate, education subsidies, financial support etc. Several Banking as well as Non- Banking Financial Corporation can also be allowed to voluntarily take part in funding and financing.

Initiatives by Government of India- “Education for All”

In today's digital age, access to education has transcended physical boundaries, thanks to the internet. Recognizing this transformative power, the Government of India has embarked on numerous initiatives to make education accessible to all, regardless of geographical location or socio-economic status. Through various schemes and policies, India is striving to bridge the gap and ensure equitable access to quality education for every citizen.

One of the flagship initiatives introduced by the Government of India is the **Digital India campaign**. Launched with the vision of transforming India into a digitally empowered society, Digital India aims to provide digital infrastructure and services to every citizen. Under this initiative, significant efforts have been made to expand internet connectivity to rural and remote areas through initiatives like **BharatNet**. By laying optical fiber cables to connect over 250,000 gram panchayats (village councils), the government is facilitating access to high-speed internet, thereby enabling online education even in the remotest corners of the country.

Furthermore, the **National Digital Literacy Mission (NDLM)** and **Digital Saksharta Abhiyan (DISHA)** have been launched to promote digital literacy among the masses. Through these programs, individuals are equipped with the necessary skills to harness the potential of the internet for learning purposes. By imparting digital literacy, the government aims to empower citizens to access educational resources available online, thus democratizing learning opportunities.

In addition to infrastructure and literacy programs, the government has initiated various online education platforms to cater to diverse learning needs. The **SWAYAM (Study Webs of Active Learning for Young Aspiring Minds)** platform offers free online courses from school level to higher education, covering a wide range of subjects. Similarly, initiatives like ePathshala, **National Repository of Open Educational Resources (NROER)**, and e-learning portals for various state boards provide access to digital learning materials, textbooks, and multimedia content.

Moreover, recognizing the importance of digital classrooms in enhancing the quality of education, the government has introduced initiatives like the SWAYAM Prabha DTH channels and DIKSHA (Digital Infrastructure for Knowledge Sharing). These platforms facilitate the delivery of educational content through digital mediums, enriching the teaching-learning process and fostering interactive and engaging learning experiences.

Furthermore, amidst the COVID-19 pandemic, when traditional modes of education were disrupted, the government accelerated its efforts to promote online learning. Various educational institutions and organizations collaborated to develop online learning platforms and resources. The SWAYAM MOOCs (Massive Open Online Courses) platform witnessed a surge in enrolments, indicating the growing acceptance and adoption of online education among learners. However, despite these commendable efforts, challenges persist in ensuring universal access to online education. Disparities in internet penetration, digital literacy levels, and availability of digital devices remain major hurdles, especially in rural and marginalized communities. Moreover, issues related to the quality of online content, pedagogical approaches, and assessment mechanisms need to be addressed to ensure the effectiveness and relevance of online education.

Conclusion

In the complex landscape of education in India, where rights intersect with obligations and where the aspirations of the individual meet the needs of the society, it becomes paramount to strike a delicate balance. The Right to Education Act of 2009 represents a significant milestone in this journey towards educational equity and justice. By ensuring free and compulsory education for children between the ages of six to fourteen, regardless of their socio-economic background, the Act lays down a foundation for a more inclusive society.

Moreover, the Act underscores the dual nature of education in India—as both a fundamental right and a profession. While individuals have the right to receive education, there is an equally important obligation for the state and educators to impart education effectively and ethically. However, challenges persist, particularly with the rise of private coaching centers and the commercialization of education.

To address these challenges and further strengthen the educational landscape, there is a need for continual reform and adaptation. Reimagining Article 21A to encompass education in private coaching centres under the RTE Act is a step in the right direction. By integrating these centres into the educational framework and incentivizing their participation in serving the needs of disadvantaged children, we can move closer to achieving the constitutional ideals of justice and equality.

Furthermore, it is imperative for the government to regulate and maintain the education sector in a manner that aligns with the principles of social justice and egalitarianism. Education should not be reduced to a commodity but should remain a transformative force for individual empowerment and societal progress.

In conclusion, the journey towards achieving universal access to quality education is ongoing. It requires collaboration, innovation, and a steadfast commitment to the constitutional values of justice, equality, and fraternity. Only through collective efforts can we build a society where every child has the opportunity to realize their full potential and contribute meaningfully to the nation's development.