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Constitutional Law

**Explain “Right to Education” as a
Fundamental Right under provision of
Indian Constitution with relevant case
law.**

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Chapter I

INTRODUCTION

Education in India has a history stretching back to the ancient urban centres of learning at Taxila and Nalanda. Western education became ingrained into Indian society with the establishment of British Raj. Education in India falls under the control of both the Union Government and the States, with some responsibilities lying with the union and the states having autonomy for others.

Education is the most crucial investment in human development, and is an instrument for developing economically prosperous Society, for ensuring equity and social justice. Despite Indian Governmental efforts, half of the adult Indian population continues to be illiterate and two-thirds of women are illiterate. Illiteracy in India is characterized by wide gaps between the urban and rural population depends mainly on agriculture and the rate of illiteracy is high, while the urban population is more of the 'employee class' and also more educated. Even amongst the male and female population there is a wide disparity in literacy. The Social system in India promotes education for the male gender while the female population, especially in the deep interiors of the country is kept away from schools.

India is developing but at a very slow rate, this is not the fault of a corrupt government; it is due to this problem of literacy only. Literacy enables a person to think rationally to be

understanding to be responsible and to make his/her own decision. A literate person is aware of all fundamental rights and duties. Literacy is ultimate solution to fight problem like communalism.

The 86th Constitutional Amendment Act 2002 has provided for free and Compulsory Education on all children in the age group of six to fourteen years as a Fundamental Right under Article 21A of the constitution in such manner as the State may by law determines. This act also provides under Article 45 that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. And whereas the above act further provides under Article 51A-(k) that it shall be a Fundamental duty to every citizen of India who is a parent or guardian to provide opportunities for education to his child ward between the age of six and fourteen years. And whereas it is considered important and essential to create a human and equitable society that incorporates the secular values and the ethnic, religions, cultural diversities of India. A citizen who is aggrieved that the right to education has not been fulfilled should be able to get relief by filling writ petitions in the High Courts and the Supreme Court. Ultimately, after 8 years lapse the right of children to compulsory education act, 2009 was passed by the Parliament to give effect to the 86th Constitutional amendment act, 2002. The Act contain Right to Education a Fundamental Right under Art. 21A.

The Act of Parliament received assent of the President on 26th August, 2009 and was published on 27th August, 2009 by Ministry of Law and Justice in the Gazette of India, Extraordinary, Part-II, Section I. The Ministry of Human Resource Development, (Department of School Education and Literacy) has issued the Notification in Official

Gazette, vide S.O. 428 (E) dated 16th February 2010, to appoint the enforcement of the Act, by exercising the power confirmed by sub section (3) of Section 1 of the Right of Children to free and Compulsory Education Act, 2009 (35 of 2009), The Central Government hereby appoints the 1st day of April, 2010 as the date on which the provisions of the said Act shall come into force.

The constitution (86th Amendment) Act, 2002 has added a new Article 21A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides that **“the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine.”**

It is well known that education is a basic human right. For the success of democratic system of Government, education is of the basic elements. An educated citizen has to choose the representatives who form the Government.

Education gives a person human dignity who develops himself as well as contributes to the development of his country. The framers of the constitution realising the importance of education have imposed a duty on the State under Art.45 as one of the directive policy of state to provide free and compulsory education to all the children until they complete the age of 14 years within 10 years from the commencement of the constitution. The object was to abolish illiteracy from the country, It was expected that the elected government of the country would honestly implement this directive. But it is unfortunate that even after the lapse of 60 years from the commencement of the constitution they did not take any concrete steps to implement this directive and 40 % population of the country is still illiterate. The framers perhaps were of the view that in view of the financial condition of a new state it was

not feasible to make it a fundamental right under part III of the constitution, but included it in Chapter IV as one of the directive principles of state Policy. But the politicians of our country belied the hope of the framers of the Constitution.

Art. 21A

Present Act has its history in the drafting of the Indian Constitution at the time of Independence but is more specifically to the Constitutional Amendment that included the Article 21A in the Indian Constitution making Education a Fundamental Right. This amendment, however, specified the need for legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill.

Case Laws

Mohini Jain v/s State of Karnataka¹ the matter was raised by the petitioners that the right of education is a fundamental right under Art. 21 of the constitution which cannot be denied to a citizen by charging high fee known as a capitation fee. Importance of education was emphasised in the Neethi Shatamakan by Bharatiharitirsh secretary in the following orders –Transaction.–

- **“ Education is the special ministration of man.**
- **Education is the treasure which can be preserved without the fear of loss,**
- **Education secures material pleasure, happiness and fame.**
- **Education is God in carnate,**
- **Education secured honour of the hands of the state, not money.**

¹ AIR 1992 SC1858

- **“A man without education is equal to animal” Education means knowledge and “knowledge itself is power”.**

The right to life under Article 21 and the dignity of the individual cannot be realised unless it is accompanied by the right of education. The Petitioner was Mohini who was denied admission because of high capitation fee of Rs. 4 and half lakhs per annum in private medical college in Karnataka. The court held that right to education at all level is a fundamental right under Article 21 of the constitution and charging capitation fee for admission is illegal and amounted to denial of citizens’ right to education.

The education in India has never been a commodity. However, the court did not say up to what age a citizen has right to education guaranteed by the Constitution.

Unni Krishan v/s State of A.P² where the court specifically held that the right to education for the children of the age of 6 to 14 is a fundamental right. The court did not agree with the decision of the Mohini Jain’s judgment that children of all ages have the right to education but held that the right to free education is available only to the children of upto the age of 14 years and overruled the Mohini Jain case on the point. The court has said that after the 14 years age the obligation of the state depended on the economic capacity and development. Art. 21 A makes it obligatory for the government to enact a central legislation to give effect to the constitutional amendment. The legislation will create mechanism by his seven chapters spread over 38 sections. It provides the responsibility of the central and state government, teachers, parents and community members in ensuring that all children of the age of 6 and 14 years receive free and compulsory elementary education.

² (1993) 1 SCC 645

Through the Supreme Court in Unni Krishnan case held that the right to education for the children of the age of 6 to 14 is a fundamental right but even after this , there was no improvement the situation. A demand was been raised from all corners to make educations a fundamental right. Consequently, the government enacted Constitution (86th Amendment) act, 2002 which would make education a fundamental right.

The question arises as to how this gigantic project would be implemented. The population of the country has considerably increased and number of children of the age 6 to 14 are in crores . The government does not have money, at present, to run its own educational institutions. IN the area of education it is emphasizing on privatisation. Majority of higher secondary schools are run by the private persons where there is no provisions for free education. They charge high fee. Only rich person can afford to send their children to these schools. When the education will become a fundamental right a citizen would go to the court for enforcement of his right and the court would be obliged to give an order for its enforcement. But if there are no schools how would the government implement it? Making education compulsory would not solve the problem. The only alternative is to encourage non-governmental organisations to come forward and participate to it to fulfil the mandate of the constitution. Of course, the government must help them and see that teachers and employees working in these private educational constitutions get minimum salary to survive and make the scheme successful.

In the absence of these initiatives, it is doubtful that the Constitutional mandate to provide free education to all children in order to become able citizens of the country would be successful private public schools have become centres for exploitations.

In **Ng. Komon v. State of Manipur**³ the petitioner /appellant , is chairman of village Komlathabi which was separated from village of Liwachangning village . A Government school was situated at Komlathabi which is the part of Liwachangning village . The school building is blown away by heavy storm. The a Petitioner has approached the concerned authority of the state for constructing the building of the school .But the authority had decided to shift the school from Komlathabi to Liwachangning . The petitioner therefore, filed a writ petition the High Court for quashing the said order of the Chief Executive officer. The respondents agreed that there are other private school in the Komlathabi and the. The appellant said that the village have no government school and in case it is shifted to Liwachangning their children will be denied the right of education. The single Judge passed an order that it was upto the Executive authority to decide where the school is to be located in the interest of the school going children. The Supreme Court held that shifting of school is to be located in the interest of the school going children. The Supreme Court held that shifting of school to another village would deprive school going children of the Komlathabi village of age of 6 to 14 years of their fundamental rights to have free and compulsory education in government school and is violation of the right to education under Article 21-A of the constitution and quashed the order of the Executive Authority. The court directed the applicant to approach the appropriate authority of the Government of Manipur by filinf a representation for providing a free and compulsory education to the Children of Komlathabi village of age 6 to 14 years by establishing a Government Primary school within four weeks from that day and the authorities concerned on the receipt of the representation shall decide the same in view of the observation made by the High Court order and also the fundamental

³ AIR 2010 Gau 102

rights of the children under Article 21, 21-A and also the right under Articles 39, 41, 42 and 51 A(k) of the constitution within 4 (four) months from the receipt of the representation by passing reasoned order. Right to Education act provide for free and compulsory education to all children of the age of six to fourteen years.

This act may be called the Right of Children to free and compulsory Education Act 2009.

In relation to a school other than the school referred to in sub clause (1) established within the territory of (A) a State, the state Government a Union territory having legislature the Government of that union territory Capitation fee means any kind of Donation or contribution or payments other than the fee notified by the school. Child means a male or female child of the age of six to fourteen years. Child belonging to disadvantage group means the child belonging to the Schedule cast, schedule tribe to socially or educationally backward class or such other group having disadvantages owing to the social cultural economical, geographical, linguistic gender or such other factor may be specified by the appropriate government, by notification.

School means any recognized school imparting elementary education and it includes A school established, owned or controlled by the appropriate Government or a local authority. An aided school receiving aid or grants to meet or whole part of its expenses from the appropriate government or the local authority A school belonging to specified category; and unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate govt. Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.

For the purpose of sub-section (1) no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

The Children of the scheduled Castes and Scheduled Tribes get free education. In addition , all educational institutions generally allow a certain percentage of free studentship. Compulsory Primary Education Act has been passes by almost all the states. Now right to free and compulsory education rights become a fundamental right of every child between the age 6-14 years. The Right of Children to free and Compulsory Education Act, 2009 has been passed and came into force with effect from 1st April 2010. Therefore every state is duty to bound to provide free and compulsory education from classes I to VIII and thereafter it depends upon the economic capacity of the State, to provide free education to above classes.

Conclusion

Right to Education is a Fundamental Right under Article 21A. It provides that “the State shall provide free and compulsory Education to all the children of the age of 6 to 14 years”.

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