



# Right to Education from a Judicial Stand Point

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“Education is the most powerful weapon which you can use to change the world”.

This statement by Nelson Mandela is true in all senses. The power of education is tremendous. It can change the lives forever. Once you get education you become powerful to fight against all odds. Education gives you additional arms in the struggle against injustice. With the above vision the researcher has tried to throw light on various dimensions of education. In Indian context this becomes very important to know the growth and development of Right to Education, because of the social and historical background of India. The education was never in the public domain and was not accessible to the large portion of the population. With the inception of the Constitution of India, the provisions regarding the right to education were discussed in different tones.

Judiciary had been very vigilant as far as the right regime in India is concerned. The apex court of the country has been active in protecting various rights and also promoting the welfare of the society. In case of right to education the Supreme Court has taken very positive stand throughout the post independence era. The transformation of Right to Education from a mere direction given in Directive Principles of State Policy to the Fundamental Right can be termed as the brain child of judicial outreach. It was the Supreme Court who interpreted in the case of Mohini Jain, that right to education is the fundamental right.

The most dynamic era was started with the passage of Right to Education Act and the machinery was set in motion. The Right to Education Act which was passed by the Indian Parliament proves to be the instrumental in providing the vast portion of population the most basic and necessary fundamental right that is right to education. The journey of RTE from a bill to act is worth taking into consideration. The political discourse behind this is worth noting. The provision though was present in

the constitution since beginning governments were reluctant in giving it a definite shape. The demand was there since independence to make the education as part of the fundamental right. In August 2009, Parliament passed the historic Right of Children to Free and Compulsory Education (RTE) Act, 2009. The new law is to be seen from the perspective of children. It provides a justiciable legal framework that entitles all children between the ages of 6-14 years to an education of reasonable quality, based on principles of equity and non-discrimination. It provides for children's right to free and compulsory admission, attendance and completion of elementary education. More importantly, it provides for the child's right to education that is free from fear, stress and anxiety. There are several provisions in the Act, including for example, provisions prohibiting corporal punishment, detention and expulsion which need to be fore-fronted to ensure that we move towards a system that, as the National Policy on Education states, provides 'a warm, welcoming and encouraging approach for children to learn' (NPE, 1986/92). The most important aspect, however, is to ensure that the teaching-learning process is free from stress and anxiety (Sec. 29), with obvious implications for curricular reform.

## **The Right of Children to Free and Compulsory Education Act, 2009**

The RTE Act provides for

- The right of children to free and compulsory education till completion of elementary education in a neighborhood school.
- It clarifies that 'compulsory education' means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. 'Free' means that 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 elementary education.

- It makes provisions for a non-admitted child to be admitted to an age appropriate class.
- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- It lays down the norms and standards relating to, *inter alia*, Pupil Teacher Ratios (PTRs), buildings and infrastructure, school working days, teacher working hours.
- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is practically no urban-rural imbalance in teacher postings. It also prohibits deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite training and academic qualifications.
- For children in 6-14 age group it prohibits
  - (i) physical punishment and mental harassment,
  - (ii) screening procedures for admission,
  - (iii) capitation fees,
  - (iv) private tuition by teachers,
  - (v) running of schools without recognition,
- It provides for the following penalties:
  - For charging capitation fee: fine upto 10 times the capitation fee charged;
  - For resorting to screening during admission: Rs 25,000 for first contravention; Rs 50,000 for each subsequent contravention; and
  - For running a school without recognition: fine upto Rs one lakh, and in case of continuing contravention Rs 10,000 for

each day during which the contravention continues.

- It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child's knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centered learning.
- It provides for protection and monitoring of the child's right to free and compulsory education and redressal of grievances by the National and State Commissions for Protection of Child Rights, which shall have the powers of a civil court.

### **The Judicial Interpretation o Right to Education**

The role of judiciary is very instrumental in the process of legislation

#### ***Mohini Jain Vs. State of Karnataka and others<sup>2</sup>***

The era of right to education can be said to be started with this landmark case. The judiciary took some steps to recognise the right to education as a fundamental right. In this case, a resident of Uttar Pradesh state challenged a notification issued by the Karnataka government that permitted private medical colleges to charge higher fees to students who were not allocated 'government seats'. The Supreme Court of India held that the charging of a 'capitation fee' by the private educational institutions violated the right to education, as implied from the right to life and human dignity, and the right to equal protection of the law. In the absence of an express constitutional right, the Court interpreted a right to education as a necessary condition for fulfillment of the right to life under Article 21 of the Indian Constitution. In addition, the Court held that private institutions, acting as agents of the State, have a duty to ensure equal access to, and non-discrimination the delivery of, higher education.

Miss Mohini Jain, a resident in Uttar Pradesh, applied to enrol in a course at Sri Siddhartha Medical College, a private medical college in Karnataka. The college requested a



deposit of Rs. 60,000 for tuition fees for the first year and a bank guarantee to cover the fees for the remaining years. Jain and her family did not have the means to pay the requested sum, and the private medical college denied her admission to the course. Jain filed a petition with the Supreme Court of India against the Karnataka government, challenging the notification permitting the private medical college to charge a higher tuition fee to students not admitted to government seats than those admitted to government seats. The Karnataka Medical Colleges Association and the Sri Siddhartha Medical College were also added as respondents.

The case presented three main questions before the Supreme Court:

1. Whether a right to education is guaranteed under the Indian Constitution.
2. If so, whether allowing private schools to charge capitation fees violates this right.
3. Whether charging capitation fee in educational institutions violates Article 14 of the Indian Constitution, which guarantees equal protection of the laws.

Turning to the issue of the fees, the Court struck down the payment of capitation fees as a condition for entry into any educational institution, whether public or private. According to the decision, access to education must be realised for all people regardless of income. If the State decides to discharge its obligations under the Constitution through private institutions, these institutions must abide by the same constitutional requirements as the State. Therefore, because capitation fees make access to education based on income rather than merit, they were deemed to be contrary to the right to education, and arbitrary and in violation of the right to equal protection of the laws under Article 14 of the Constitution. Finally, the Court held that the fees charged by the Sri Siddhartha Medical College under the government notification were capitation fees, and not tuition fees. Therefore, the charging of the fee was also in violation of the Karnataka Educational Institutions (Prohibition of Capitation Fee) Act.

Prior to the passing of the Constitution (Eighty-sixth Amendment) Act of 2002, the

right to education was not expressly recognised as a fundamental right in the Constitution. The 2002 amendment added Article 21A, which protects the right to education. However, this case was decided prior to the passing of the amendment and is significant for holding that the right to education be an implied fundamental right, as an integral part of the right to life. This decision has been relied on by the Indian Courts in subsequent decisions to guarantee other socio-economic rights, including the right to health, water and food. The significance of this case is also in the court's holding that private educational institutions act as agents of the State in carrying out the latter's duty to fulfil the right to education. Private schools therefore have duties alongside the government in delivering educational services in accordance with constitutional rights. As a result, because the State has an obligation to ensure equal access to higher education, private institutions have the same obligation. This does not necessarily mean that private institutions must provide free higher education, but that they must ensure that higher education is equally accessible and that there is no unfair discrimination.

The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making "right to education" under Art. 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate. "Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Art. 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to





make under Art. 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

The “right to education”, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.

The Court holds that every citizen has a ‘right to education’ under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognized educational institutions.

When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational institutions whether State owned or State-recognized in recognition of their ‘right to education’ under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen’s right to education under the Constitution.

### ***Unnikrishnan, JP and others Vs. State of Andhra Pradesh and others*<sup>3</sup>**

Another significant development was the case of Unnikrishnan. In this case, the Supreme Court confirmed the decision in *Mohini Jain v Karnataka*<sup>4</sup> – namely, that the right to education flows from the right to life and obliges the State to provide basic education to all citizens up to the age of 14. However, the decision limited the right to higher levels of education, which is subject to the economic capacity and development of the State. The Court states: “We cannot believe that any state would say it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic

capacity are, ordinarily speaking, matters within the subjective satisfaction of the state... The right to education further means that a citizen has the right to call upon the state to provide educational facilities to him within the limits of its economic capacity and development. By saying so we are not transferring Article 41 from Part IV to Part III we are merely relying upon Article 41 to illustrate the content of the right of the right to education flowing from Article 21.” Years later, in 2009, the Indian government amended the constitution by inserting Article 21 -A, which more explicitly protects the right to free and compulsory education for children between the ages of six and fourteen.

The Court observes right to education a fundamental right or not... In order to treat a right as a fundamental right it is not necessary that it should be expressly stated as one in Part III of the Constitution. The provisions of Part III and IV are supplementary and complementary to each other.

Fundamental rights are but a means to achieve the goal indicated in Part IV and must be constructed in the light of the directive principles. Though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21 having regard to the broad and expansive interpretation given by the Court. The right to education has been treated as one of transcendental importance. It has fundamental significance to the life of an individual and the nation. Without education being provided to the citizens of this country, the objectives set for the Preamble to the Constitution cannot be achieved. The Constitution would fail. The fact that right to education occurs in as many as three Articles in Part IV viz., Articles 41, 45 and 46 shows the importance attached to it by the founding fathers. Even some of the Articles in Part III viz., Articles 29 and 30 speak of education. That right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law.

The right to education which is implicit in the right to life and personal liberty guaranteed by



Article 21 must be constructed in the light of the directive principles in Part IV of the Constitution.

### **Conclusion**

The judicial role in promoting and protecting the right to education is pivotal and most instrumental as far as the legal scenario in India is concerned. The active role played by the judiciary has accelerated the law making process in this regard. The Act which came to life known as Right of Children to Free and

Compulsory Education (RTE) Act, 2009 is outcome of judicial labour.

### **(End Notes)**

1. Read more at: [https://www.brainyquote.com/quotes/quotes/n/nelsonmand157855.html?src=t\\_education](https://www.brainyquote.com/quotes/quotes/n/nelsonmand157855.html?src=t_education)
2. AIR1992 SC1858; JT1992(4)SC292; 1992(2) SCALE90; (1992)3SCC666; [1992]3SCR658; 1992(2)LC331(SC); (1992)2UPLBEC1198
3. 1993 AIR 2178, 1993 SCR (1) 594
4. Supra Note 2