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## CONSTITUTIONAL LAW – NEW CHALLENGES – RIGHT TO EDUCATION

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### 1. Introduction:

Education is stepping stone of every child's life. If the child gets education he or she have own thoughts. Own thoughts definitely helps for knowledge grooming. If the man gets education his survival was so easy. So, every person who are born in world he must have the education. Education is both the act of teaching knowledge to others and the act of receiving knowledge from someone else. Education helps for personal growth. The function of education is to think better. Education sharpens mind. In Tamilnadu state, we give more important to education for the children who are bellowed the age of 14. Because, once the child get the basic education or primary education they know the value of the education and importance. So automatically they started studying. But, the sources and field should be created for them. Education helps to change the society. This is the main motto of the education. If we have education it will helps to ours or the society. If it is change the society purpose of education is ended. Children are deprived of education for various reasons. Poverty remains one of the most harmful barrier. So, that every government take measures for uplifting education for children. This article paper talks about right to education. I critically analyse the education right.

### 2. Historical background:

In ancient period education was the sole privilege of the Brahmins. People from lower castes, and so called untouchables in particular were barred from receiving education. So, that education was clearly not accessible to all persons. In 1882 DadaBhai Naoroji and Jyotiba Phule from Bombay demanded state sponsored free education or at least four years. In 1911, Gopal Krishna Gokhale moved a bill for compulsory education in the Imperial legislative council, albeit unsuccessfully. In 1937, at the All India National Conference on education held at Wardha, Gandhiji advocated the idea of self supporting 'Basic education' for a period of 7 years through vocational and mental training.

In 1975, during the emergency, the central government put the responsibility of primary education on centre as well as state by putting

primary education under Concurrent List in an amendment (the 42<sup>nd</sup>) to the constitution.<sup>472</sup>

### 3. Review of literature:

Before undertaking the article work a review of literature was carried out. Following are some of the books and websites which have been perused and reviewed.

- Dr. Narender Kumar, *Constitutional law of India*, (Allahabad law agency, Feridabad, 2023). This book is updated in the light of the changing mores. Many new concepts have been propounded in view of diversities of the Nation, the controversies, which have erupted from time to time. Endeavour is to discuss all the decisions of the Superior Courts.
- J.N. Pandey, *Constitution of India*, (Central law agency, New Delhi, 2022). This book critically analysed the Article 21A with main case laws and deeply explain the interpretation

<sup>472</sup> S.K. Joshi, "Journey of Right to Education: A Historical Perspective", II/IX *Scholarly research journal for interdisciplinary studies* 756-762 (2013).

of Article 21. The author focus on the case laws that's very helpful to my references. If the general readers read the book they also get to know the idea about the right to education.

- M.P. Jain, *Indian Constitutional law*, (Smt. Rampyari Wadhwa for Wadhwa and Company, Agra, 2022). The edition follows the same format, organisation and methodology of treatment of the subject – matter as did the previous books. The author vastly discuss the right to education with relevant and also updated caselaws. But, the author's language is technical. So, that I early have more time to understand the wordings.

- C.K. Takwani, *Constitutional law of India*, (Whytes & Co., New Delhi, 2022). In this book has not give the background of the right to education. But, it gives the detailed study of right to education. The separate headings will easy to access the book and give clear view of the judgements. This book deals also the right to education under European, Canada, Irish and South America's Constitutions. Just give the over view not detailed study.

- V.N. Shukla, *Constitution of India*, (Eastern book company, New Delhi, 2022). It has to be the most authoritative and respected academic book on the Constitution of India. It gives the ideal study and reference companion. It consists of landmark Supreme Court decisions. It will be immensely valuable for law students and anyone interested in learning about the Indian Constitutional law.

#### Online sources:

- Right to education, available at: <https://www.right-to-education.org/page/understanding-education-right>, (last visited on Nov. 28, 2024). This website gives various dimensions of education right. It contains UDHR, ICESCR, CRC's Articles about the right to education. This page clearly discuss about the violations of the right to education. But, not focus on the constitutional view about the right to education.

- Drishtiias.com, available at: [https://www.drishtiias.com/to-the-points/Paper2/preamble-to-the-indian-](https://www.drishtiias.com/to-the-points/Paper2/preamble-to-the-indian-constitution/print-manually)

[constitution/print-manually](https://www.drishtiias.com/to-the-points/Paper2/preamble-to-the-indian-constitution/print-manually), (last visited on Nov. 28, 2024). This website used for me to know the clear vision of preamble. Mainly, this webpage contains the meaning of every single word used in preamble.

#### 4. Education – is guaranteed or not:

##### 1. Universal Declaration on Human Rights 1948:

Proclaims in Article 26, everyone has the right to education.

##### 2. International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966:

(i) Proclaims in Article 13, The States Parties to the present Covenant recognize the right of everyone to education.

(ii) Article 14 says, Those States where compulsory. Free primary education is not available to all should work out a plan to provide such education.

##### 3. Convention on the Rights of the Child, 1989:

(i) Article 28 states that, children and young people have the right to education no matter who they are; regardless of race, gender or disability; if they're in detention, or if they're a refugee.

(ii) Article 29 states Aims of education: Children's education should help them fully develop their personalities, talents and abilities. It should teach them to understand their own rights and to respect other people's rights, cultures and differences.

##### 4. UNESCO Convention against Discrimination in Education, 1960.

Recognizing that, consequently, the United Nations Educational, Scientific and Cultural Organization, while respecting the diversity of national educational systems, has the duty not only to proscribe any form of discrimination in education but also to promote equality of opportunity and treatment for all in education.

##### 5. Indian Constitution 1950.

(i) Article 21A says free and compulsory education for children between the ages of 6 to 14.

(ii) Article 45 says, State should provide free and compulsory education for all children up to the



age of 14 within 10 years of the Constitution's commencement.

(III) Article 51A(K) This article states that parents and guardians are responsible for ensuring the education of their children between the ages of 6 to 14.

The right to education has also been reaffirmed in other treaties covering specific groups such as women and girls, persons with disabilities, migrants, refugees, indigenous peoples, etc.<sup>473</sup>

So, based on the above wordings right to education is absolutely guaranteed.

## 5. Right to education under Indian Constitution:

### 1. Under preamble:

Preamble presents the intention of the constitution framers, history behind its creation, and the core objectives of the nation.

The factors which help in achieving this objective are;

- **Justice:** It is necessary to maintain order in society that is promised through various provisions of fundamental rights and directive principles of state policy.

- **Social justice:** means society without any discrimination. If this happens only the dead end people also get the education.

- **Economic justice:** means no discrimination on the basis of their wealth, income and economic status. Education gives income and economic status, this automatically gives wealth.

- **Political justice:** means all the citizens have an equal, free and fair right without any discrimination to participate in political opportunities. Election results some times based on the voters who are educated and who are not educated. Because, the educated people clearly analyse the politics and know about the candidates with the help of their vast knowledge.

- **Equality:** The term 'equality' also applied in education. No section of the people

has any special privileges and all the people have basic education without any discrimination.<sup>474</sup>

### 2. Under Part – III:

Fundamental rights including the freedom of speech and expression and other rights guaranteed under Article 19, cannot be fully appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity. The Constitution 83<sup>rd</sup> Amendment Bill, 1997 was introduced in Parliament to insert a new article, namely, article 21A conferring on all children in the age group of 6 to 14 years the right to free and compulsory education. The said Bill was scrutinised by the Parliamentary Standing Committee on Human Resource Development and the subject was also dealt with in its 165<sup>th</sup> Report by the Law Commission of India.

The main question before the Bench was whether it would be permissible for private but government recognised educational institutions to charge capitation fee for the admission of the students. The Bench characterised capitation fee as "nothing but a price for selling education" and amounts to commercialization of education adversely affecting educational standards. The Court characterised institutions charging capitation fee as "teaching shops". "The concept of teaching shops is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage". The bench declared that charging capitation fee amounts to discrimination on a class basis and is thus denial of Article 14 because a poor meritorious student is denied admission to these institutions because he has no money whereas the rich can purchase education. Such a treatment is patently unreasonable, unfair and unjust.<sup>475</sup>

Restricting admission to non-meritorious candidates belonging to the richer section of society and denying the same to poor meritorious is wholly arbitrary against the

<sup>473</sup> Right to education, available at: <https://www.right-to-education.org/page/understanding-education-right>, (last visited on Nov. 28, 2024).

<sup>474</sup> Drishtias.com, available at: [https://www.drishtias.com/to-the-points/Paper2/preamble-to-the-indian-constitution/print\\_manually](https://www.drishtias.com/to-the-points/Paper2/preamble-to-the-indian-constitution/print_manually) (last visited on Nov. 28, 2024).

<sup>475</sup> *Mobini Jain v. State of Karnataka*, AIR 1992 SC 1858

constitutional scheme and as such cannot be legally permitted. Capitation fee in any form cannot be sustained in the eye of law. After taking into consideration the report of the Law Commission of India and the recommendations of the Standing Committee of Parliament, the amendments in Part III, Part IV and Part IV A of the Constitution are being made.

Article 21: The Supreme Court has implied the right to education as a fundamental right from Article 21. The word 'life' has been held to include 'education' because education promotes good and dignified life. The question arose for the first time before a two judge bench of the Supreme Court in *Mohini Jain v. State of Karnataka*.<sup>476</sup> The court accepted that the Constitution does not expressly guarantee the right to education, as such, as a fundamental right. But reading cumulatively Article 21 along with the DPSP contained in Articles 38, 39(a), 41 and 45 the court opined that "it becomes clear that the framers of the constitution made it obligatory for the State to provide education for its citizens".

Article 28 – In our Constitution Article 28 provides freedom to attend any religious instruction or religious worship in educational institutions.

Article 29 – This article gives equality of opportunity in educational institutions.

Article 30 – This article acknowledge the right of minorities to establish and administer educational institutions.

### 3. Under Part- IV:

Article 39(e) – that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39(f) – that children are given opportunities and facilities to developing a healthy manner and in conditions of freedom and dignity and that childhood and dignity and that childhood and youth are protected against

exploitation and against moral and material abandonment.

The content and parameters of education right were in the light of Articles 41, 45 and 46. Therefore, the right to education in the context of these DPSP means; (a) every child has a right to free education up to the age of 14 years; (b) thereafter, right to education is circumscribed by the limits of the economic capacity of the state and its development.

The Court had emphasized that "a child (citizen) has a fundamental right to free education up to the age of 6 to 14 years".<sup>477</sup> This obligation can be discharged by the state either through governmental schools or private schools run by non-governmental bodies, aided and recognised by the state.

The Court ruled that a citizen has a right to call upon the state to provide educational facilities within the limits of its economic capacity and development. This does not mean that the Supreme Court was seeking to transform a DPSP (Article 41) into a fundamental right. What the Court was doing was "merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21".<sup>478</sup>

The Court has however cautioned that just because it has relied upon some of the DPSP to locate the parameters of the right to education implicit in Article 21, "it does not follow automatically that each and every obligation referred to (in the DPSP) gets automatically included within the purview of Article 21. We have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, we have referred to Articles 41, 45 and 46 merely to determine the parameters of the said right".<sup>479</sup>

Article 45 was also construed as supplementary to Article 24 which bars employment of a child below the age of 14 years, for if the child is not to be employed below the age of 14, he must be kept occupied

<sup>476</sup> *Ibid*, 1282.

<sup>477</sup> *Unni Krishnan JP v. State of Andhra Pradesh*, AIR 1993 SC 2178

<sup>478</sup> *State of UP v. Pawan Kumar Divedi*, (2014) 9 SCC 692

<sup>479</sup> *Ibid*, 1281.

in some educational institution. Article 45 also supplemented Articles 39(e) and (f).<sup>480</sup>

#### 4. Under part- IV A:

Compulsoriness is sought to be ensured in the amendment of Article 51A in the chapter on Fundamental Duties by adding clause (K) and making it incumbent on a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of 6 and 14 years.<sup>481</sup> The 86<sup>th</sup> Amendment Act of 2002 added Article 51A(K) to the Constitution.

AIIMS Student Union -vs- AIIMS, (AIR 2001 SC 3262)

In the case, there was a test of merit over reservation in the admission process for postgraduate medical courses of the All India Institute of Medical Sciences. 3 meritorious students went to Delhi High Court y filing a writ petition for the purpose of getting admission in the prestigious institute of medical science. Here there was a reservation of 33% of seats to those who have graduated from this institute itself. The issue raised was whether AIIMS has the right to give such a reservation to the students. Here the Supreme Court found it unreasonable to reserve a seat for the college student itself and quash such acts of the AIIMS as it was against the Constitution.<sup>482</sup>

#### 5. Article - 337:

This article regulates the special provision with respect to educational grants for the benefit of the Anglo - Indian community.

#### 6. The Right of Children to free and compulsory Education Act - 2009:

Right of Children to Free and Compulsory Education Bill was drafted in 2005. The Bill was became an Act in August 2009. The Right of Children to Free and Compulsory Education At 2009 came into force on 1<sup>st</sup> April, 2010.

#### Scope of the Act:

This Act is applicable to whole of India including Jammu & Kashmir.

- This Act is subordinate to the provisions of Articles 29 & 30 of the Constitution of India as per Section-1(4) of the said Act.

- The Act does not apply to educational institution such as religious education like Madrasas, as per Section-1(5) of the said Act.

#### Provisions of the Act:

- Sec 3: Right of child free and compulsory education.

- Sec 4: Special provisions for children not admitted to, or who have not completed, elementary education.

- Sec 6 to 11: Duties of Appropriate Government, Local Authority and Parents to establish school and provide pre-school education.

- Sec 12 to 28: Responsibilities of schools and teachers for free and compulsory education.

- Sec 31 to 34: Protection of Right to Children.<sup>483</sup>

#### Criticisms to the Act:

- Quality education is missing:  
Now a days, education is more over business. There is a doubt about the teacher's capacity.

- Punishments:  
Physical punishments and mental harassment is prohibited under Sec 17 of the Act. But, most of the time teachers didn't follow this law and students are also not aware of their rights.

- Schools infrastructure:  
Based on funds insufficiency, not all the schools have the best infrastructure.

- Age criteria:  
This Act must include all children between the age group of 3 to 18 years.

- Class 8 public exam:  
The 'no detention' policy till class 8, an amendment to the Act comes in 2019, introduced regular annual exams in classes V and VIII.

<sup>480</sup> *MC Mehta(Child labour Matter) v. State of TN*, (1996) 6 SCC 756

<sup>481</sup> *State of Maharashtra v. Sant Dnyaneshwar Shikshan Shashtra Mahavidyalaya*, (2001) 9SCC 1

<sup>482</sup> Blog:ipleaders.com, available at: <https://blog.ipleaders.in/rte-act-right-to-education-act-2009/> (last visited on Nov. 29, 2024).

<sup>483</sup> Ministry of Education, available at: <http://dsel.education.gov.in/rte> (last visited on Nov.30, 2024).



**Recent amendments of the Act:****- The Right of children to free and compulsory Education (Amendment) Bill, 2017.**

All teachers in position as on 31 March 2015, acquire the minimum qualifications prescribed by the academic authority, an appropriate amendment in the Right to Education Act, 2009 is required to extend the period for acquiring such qualification for four years up to 31 March 2019.

The present Bill seeks to insert a new proviso to sub-section (2) of section 23 of the said Act, so as to provide that every teacher appointed or in position as on 31 March 2015, who does not possess minimum qualifications as laid down under sub-section (1) of the said section, shall acquire such minimum qualifications within a period of four years on and from the date of commencement of the proposed legislation.<sup>484</sup>

**- The Right of children to free and compulsory Education (Second Amendment) Bill, 2017.**

The Right to Education Act, 2009 prohibits detention of children till they complete elementary education. The Bill amends this provision to state that a regular examination will be held in class 5 and class 8 at the end of every academic year. If a child fails the exam, he will be given additional instruction, and take a re-examination. If he fails in the re-examination, the relevant central or state government may decide to allow schools to detain the child.<sup>485</sup>

**- The Right of children to free and compulsory Education (Amendment) Notification, 2022.**

Number of Special Education Teachers for children with special needs;  
One Special Education Teacher for every 10 pupils with disabilities enrolled (for 1<sup>st</sup> class to 5<sup>th</sup> class).

One Special Education Teacher for every 15 pupils with disabilities enrolled (for 6<sup>th</sup> class to 8<sup>th</sup> class).<sup>486</sup>

**8. Important case laws:****• Mohini Jain –vs– State of Karnataka and Ors. (1992 AIR 1858)**

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 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 fulfilment of the right to life under Article 21 of the Indian Constitution. 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.<sup>487</sup>

**• Unni Krishnan, J.P. & –vs– State of Andhra Pradesh & Ors. (AIR 1993 SC 2178)**

This case emerged highlighting the contentious issue of capitation fees charged by private professional educational institutions. Capitation fees are amounts collected by these institutions over and above the prescribed tuition fees, often as a prerequisite for admission. These fees became a significant barrier to equitable access to education, leading to widespread exploitation and commercialization of education.

Supreme Court undertook a comprehensive examination of constitutional provisions, previous judgements and international covenants to delineate the extent of the right to education and the state's role in regulating educational institutions. The court scrutinized the interplay between the Part III and

<sup>484</sup> Ministry of Education (Department of School Education and Literacy) Notification dated 21<sup>st</sup> Sep. 2022.

<sup>485</sup> PRSINDIA.org.com, available at: <https://prsindia.org/billtrack/the-right-of-children-to-free-and-compulsory-education-second-amendment-bill-2017> (last visited on Nov. 30, 2024).

<sup>486</sup> *Supra* Note 10.

<sup>487</sup> GreenNet.com, available at: <https://www.right-to-education.org/resource/mohini-jain-v-karnataka-supreme-court-india-1992> (last visited on Nov. 28, 2024).



Part IV. It considered the implications of regulating capitation fees on the right to establish and administer educational institutions under Article 19(1)(g) and the broader societal interest in ensuring access to education.<sup>488</sup>

• **Avinash Mehrotra –vs– Union of India & Ors. (WP(C) No. 483 of 2004)**

This case arose out of a fire that started in a middle-school in Madras. The school, a single thatched roof building with no windows and one entrance and exit was a private school that was said to have sprung up in response to drastic cuts in government spending on education. The fire started in a nearby makeshift kitchen where cooks were preparing a midday meal, and killed 93 children and injured many others. An instant writ petition was filed under PIL in order to protect school children against similar future tragedies and to improve the conditions of the schools in the country. The Supreme Court issued notices to the Union of India, State Governments and the Union Territories. 27 States and Union Territories filed affidavits admitting that many schools did not meet their self determined safety standards.

The Court decided that there is a fundamental right to receive education free from fear of security and safety and the right to education incorporates the provision of safe schools pursuant to Articles 21 and 21A of the Constitution. No matter where a family seeks to educate its children, the State must ensure that children suffer no harm in exercising their fundamental right to education.<sup>489</sup>

**9. Problems related to right to education:**

- Only 66% of the children enrolled in Class 1 to Class 5 in India. The remaining 34% of the children drop out before reaching Class 5. It creates all probability to no did not acquire any level of progress with respect to the basic literacy skills, child labour and to the mass of

the illiterate population. It is more important to ensure that the children enrolled in schools.

- The next is Primary schools standard levels. According to Flash Statistics and Analytical Reports on Elementary Education in India, an average there are only 3 classrooms per primary school in India and there are only 3 teachers per school. 14% of the schools have a only one classroom. And the school have only one teacher.

- Third concern is condition of the Schools. In some States like Bihar the ratio at the State level is 1:59, this means there are 92 students on average per classroom. Only 85% of the schools in the country have drinking water facilities, 37% do not have restrooms, only 44% schools have separate restroom facilities for girls. 1:4 have electricity connection and 5.7% have computer access. Half of the schools have only first aid or medical facilities. 32% of the primary schools require major or minor repairs on building. Those above matters also reason to dropout percentage.

- Enforcement mechanism through NCPCR:

The RTE Act will be implemented through National Commission for Protection of Child Rights (NCPCR) and in the states through State Commission for protection of Child Rights(SCPCR). In 32 states of India there is no SCPCR for enforcing this Act. Even if this will be formed so this body does not have judicial powers of implementation or redressal of grievances.

Also the NCPCR/SCPCR falls under the ministry of Women and Child development whereas the RTE act 2009 and free and compulsory education is a subject matter of Ministry of Human Resource Development. We fail to understand how this body will be redressing the grievances of children and teachers without judicial powers.<sup>490</sup>

**10. Progressive measures:**

- After the launch in 2002 of the Sarva Shiksha Abhiyan (SSA) by the Government of

<sup>488</sup> Testbook.com, available at: <https://testbook.com/landmark-judgements/unnikrishnan-vs-state-of-andhra-pradesh> (last visited on Nov. 28, 2024).

<sup>489</sup> Case law summary.com, available at: <https://www.right-to-education.org/resource/avinash-mehrotra-v-union-india> (last visited on Nov. 29, 2024).

<sup>490</sup> Rama Kant Rai & Reni K Jacob, “The Right to Education”, *Joint Report on India-Submission by National Coalition for Education and World Vision India* (2012).

India, which is flagship programme of govt of India for elementary education under the World Bank-funded project of the District Primary Education Project for about a decade, it is often reported that impressive progress has been made in elementary education in India.

- Government of India its 11<sup>th</sup> five year plan document has intended to introduce voucher system in education. This is being intended on the basis of experiences of some countries whose socio economic conditions are not at par with Indian situation. We have serious doubts about introduction of vouchers system. If introduced it will deprive the poor children more from the mainstream education.

- Government of India is keen to open 6000 model schools with the partnership of private sector. Model schools were started with the majority of students from government schools in the district who are performing well. We didn't want them to be left behind in sports and extra-curricular activities. Many students feel the programme has helped them relax.

#### 11. Recommendations:

- To increase the quality of education, regular and trained teachers should be recruited.

- The existing laws for protection of child rights should be enforced and implemented strictly.

- Government must take effective steps to total eradication of child labour, child servitude and child trafficking, and all the children of age group 0-18 years are enrolled in schools.

- Educate communities about the importance of literacy through workshops, meetings and local events.

- Partnership with non-governmental organizations that specialize in education to leverage their expertise and resources. Engage with Corporate Sponsorships that may provide funding or resources for literacy programs.

- More than Central, State Governments Local bodies must assume the responsibility of ensuring right to education. Local Government bodies should strive to ensure participation and involvement of parents, local management

committees, communities, non-governmental organisations, etc. in this regard.

- There is a need for substantial hike in the financial allocation to education. The allocations need to be periodically reviewed and enhanced to meet the requirements. Expenditure on education should not be treated merely as expenditure but as an investment.

- Private unaided schools should also enrol the children of poorer sections.

- The news related to school students using social media in class time and uploading reels should create doubts to parents and also public. Where our discipline goes. First and format thing in education is to grow a student with discipline. It develops the students into strong individuals. When a child learns discipline in schools, he masters this traits for a lifetime. The student who know the importance of discipline, follow it in school and gradually become habitual to it.

#### 12. Conclusion:

The right to education is vast topic. I limited the topic with Constitutional perspective. So, I did not discuss the politics involved in education. In this era, education is also a corporate business. Those private schools only admit the students who are have the capability to give donation. For the students with poor background can't have the amount. Automatically their admission is denied. But, the Right to education Act 2009 and Article 21 and 21A gives the scope of all the economically and socially backward class children. Government take the all effective steps. At last I conclude that in this assignment I have get the much more knowledge about the right to education. And I clearly understand the need of education for children. Education is important to get the socialist secular country. Liberty of thought and equality also comes under the education qualifications.

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