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Legal Protection of Right to Education in India

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ABSTRACT

Education as a tool is the most powerful means of human development. Education liberates people and leads to freedom from ignorance. Education is now regarded as a human right and a tool for social change. The 1948 Universal Declaration of Human Rights in the manner of Article 26 (1) states that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Therefore, the UN recommendations have confirmed the provision of compulsory child rights (RTE) 2009, which came into effect on 1 April 2010. In fact, this action places the government's burden on education. In this paper the authors seek to highlight the constitution and the law of the right to free and compulsory education under Article 21-A. This paper aims to examine the state of the Indian system in terms of compulsory education and to identify errors in the existing RTE Act. India is a country famous for its various products such as Art, Architecture, culture, traditions etc. India, however, is also famous for its constitution, which is regarded as the mother text of India and the law of the land and the constitution of India. as the most important aspect considered as part III of the Indian constitution, as the right to equality, the right to liberty. The right to fight oppression, the right to freedom of religion, the right to culture and the right to education and the right to constitutional and fundamental rights, Article 21 which gives the right to life and personal freedom guarantees all citizens and aliens the full enjoyment of these rights. , so that the country can move forward towards the goal of social order as considered by the founding fathers while implementing the Indian constitution in its introduction where this right also provides for various rights such as the right to life, human dignity, the right to protection, the right to liberty, the right to privacy. , labor rights, the right to fight poverty, etc., and the main purpose of this study is to deprive you of the basic right enshrined in Article 21 which is the right to education.

Keywords: *Education, Human Rights, Fundamental Freedom, International Conventions.*

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I. INTRODUCTION

“The child is a white soul itself, kind and strong. Who should be helped to find them, to grow to maturity, to be physically fit and most importantly to have the breadth, depth and height of their emotional, intellectual and spiritual condition: otherwise there will be no healthy national growth “Giving birth to a unique and healthy person. The baby should be thoroughly cleansed at an early age in its life. He must get an education. Gain personal knowledge and materials and succeed in the area where he grew up, found to be a responsible man, a very important man in the community concerned. „Children are the cheapest thing in any human society“. Learning the law about children is important because the next person will be the same today. When we talk about the rights of the child, we are talking about the rights of a person who you may think is young and does not understand miracles. It is therefore up to the people to look after, establish and fight for those rights. Especially with his education. “The future of any nation depends on its children. They will be well paid and well-dressed and should be given a place of birth and permission to grow up to be good citizens. Their skills must be allowed to flourish and prosper in the old world”.²

Education shall be free, at least in the elementary and fundamental stages. Education is the most powerful weapon that can be used to change the world. In fact, education has its application in almost every field of life. Its meaning has never been underestimated. Education can create an educated society that prepares the present generation for a brighter future and gives one the power to rejuvenate the power of unity.¹ According to ancient Indian philosophers, Vidya or knowledge or learning or education is the 'third eye' of man, giving him understanding of all matters and teaching him how to do it; it leads to our salvation; at the world level it leads us to all progress and prosperity.² Emile Durkheim described education as, “an act performed by older generations in those who are not yet ready for life and society. Its purpose is to awaken and nurture in the child the physical, mental and moral qualities that are required of all and in its specially designated areas.³ Currently, education is a fundamental human right⁴ essential to the exercise of all other human rights. It promotes individual freedom and empowerment and brings out the essentials development benefits. The right to education has been recognized internationally since the Universal Declaration of Human Rights, in 1948 and has since been incorporated into various international norms, national organizations and development programs. The Children's Rights on Freedom and Compulsory Education Act, 2009 is a milestone in the field of educating millions of children, who are unable to access

² Ghosh, Jayanta. “Right to Education Act 2009: Issues & Challenges.” SSRN Electronic Journal, 2013, doi:10.2139/ssrn.2231197.

schools due to poverty and illiteracy.³

II. HUMAN RIGHTS AND INDIAN CONSTITUTION

Rights are important applications for the existence and development of individuals. So there will be a long list of rights. While all of this is recognized by the public, some of the most important rights are recognized by the State and enshrined in the Constitution. Such rights are called fundamental rights. These rights are important for two reasons. Firstly, this is the Constitution that guarantees them and secondly, this is legal, which means it is mandatory in the courts. Forgiveness means that if their law is broken, that person can go to court for protection. If the government makes a law that restricts any of these rights, the courts will say they are legal. Such rights are granted in the third part of the Indian Constitution. The Constitution guarantees six basic rights to the citizens of India as follows: (I) the right to equality (II) the right to freedom (III) the right to fight exploitation (IV) the right to freedom of religion (V) cultural and educational rights and (VI) the right to constitutional change. Initially, there were 7 fundamental rights in the Constitution. Apart from the six rights mentioned above, there was also the right to property. While the Bill created many problems in the pursuit of socialism and equitable distribution of wealth, it was removed from the Bill of Rights in 1978 with an amendment to the 44th constitution. However, its removal does not mean that we do not have the right to acquire, store and dispose of the property. Citizens are still free to enjoy this privilege. But now it is a legal right and not a fundamental right.

(A) Right to Equality

- Article 14: Equality before the law: The State cannot deprive any person of the right to equal legal rights before the law or equal protection of Indian law.
- Article 15: Prohibition of discrimination based on religion, race, nationality, sexual orientation or birthplace.
- Article 16: Equality of opportunity in matters of public employment.
- Article 17: Termination of Non-Disclosure: "Non-Touch" is terminated and its operation in any form is prohibited. Enforcement of any disability resulting from "Release" will be a legal offense. Article 18: Termination of articles.

(B) The Right to Freedom

- Article 19: Protection of certain rights in relation to freedom of speech, etc.
- Article 20: Protection from criminal offenses.

³ Gill, Aisha K. "Honor Killing." *The Wiley-Blackwell Encyclopedia of Social Theory*, 2017, pp. 1–3.

- Article 21: Protection of health and personal freedom.
- Article 21A: The right to education.
- Article 22: Protection from detention and detention in certain circumstances.
- (III) The Right to Fight Exploitation
- Article 23: (1) The abduction of a person by a beggar and other forms of forced labor is prohibited and any violation of this condition will be a legal offense. (2) Nothing in this article shall prevent the State from enforcing compulsory public service, and in enforcing such activity the State shall not discriminate on the basis of religion, race, nationality or class or any other class.
- Article 24: No child under the age of fourteen shall be employed in any factory or mine or in any other dangerous occupation. (IV) The right to freedom of religion
- Article 25. Freedom of conscience and freedom of religion, practice and distribution of religion
- Article 26. Freedom of religion
- Article 27. Freedom of income tax on any religion
- Article 28. Religious or religious freedom in certain educational institutions (V) Cultural and educational rights
- Article 29. Protection of the interests of minorities
- Article 30. The right of the minority to establish and manage educational institutions
- Article 31 [Removal]

(C) Preservation of Other Laws

- Section 31A. Preservation of Land Acquisition Laws, etc.
- Section 31B. Application of Certain Rules and Regulations
- Section 31C. Law enforcement opens up certain regulatory frameworks
- Section 31D. [Deleting]

III. EDUCATION AND INDIAN CONSTITUTIONAL PERSPECTIVES

To ensure international and international agreement on education, a sincere struggle was made and important amendments were made to the Indian constitution to protect the right to education for all citizens in accordance with international policy. The Constitution of India has provisions to ensure that the state provides education to all its citizens. The Indian constitution in its first amendment defined education as heads of state. In 1976, the 42nd Constitution was amended, and education became a unifying code that enabled the central government to

legislate in the same way. The Fundamental Rights and Directive Principles of State Policy (DPSP) and the Basic Functions of the Constitution of India provide a framework for educational rights.⁴

(A) The issue of India's performance of school education

And in this EFA Global Monitoring Report 2010 (UNESCO has published and India cites 105 countries out of 128 countries. And it continues to be found, in many African countries and in one or two Asian countries, such as Pakistan. and Bangladesh in 2007. He lives in many developing countries in Latin America, Africa and Asia.6% of Grade V students survive in India, which means that about 34% of my Grade V students are literate students. If any, it was a percentage. Private school children continue the process of completing the Learning Cycle and beyond. How well are our primary schools well equipped? Flash Statistics and Basic Education Reports in India (District Information System for Education, published by NUEPA 2009 - 10), where there are only three categories in each primary school in India, only three teachers per school.⁵

About 14 percent of schools have one class per school, while private schools make up the same class. Although national policy is one teacher for every 40 students in primary schools, 30 percent of schools have a higher rate than this. In some countries such as Bihar the average level at Government level is 1:59, with an average of 92 students per class. Only 85 percent of schools in the country have access to drinking water; 37% do not have toilets; only 44 percent have separate girls' toilets. About one quarter has gas; only 5.7 percent have a computer. About half the school does not have first aid or medical facilities. About 32 percent of elementary schools need major or minor renovations to buildings and so on. Many of these figures are included in the national average. A divided image is actually regional and social and economic - it can be very disturbing.⁶

The picture is quite disturbing as great progress has been made in recent years. For example, after the launch of the Sarva Shiksha Abhiyan (SSA) in 2002 by the Government of India, the government of India's primary education system under the DPEP (District Primary Education Project) funding program for almost a decade, India's remarkable progress slowed. . These developments are enrollment, construction, teacher recruitment, number of grants / payments,

⁴ Goyal, Gaurav, and Ravinder Kumar. *The Right to Privacy in India: Concept and Evolution*. Partridge Publishing, 2016.

⁵ *Right to Education Under the Indian Constitution: A Socio-Legal Perspective*. 2015.

⁶ Jaisinghani, Sagarika. *The Right Act?: An Analysis of the Right to Education Act, 2009 and Its Effect on the Lives of the Street Children in India*. 2011.

and so on. In fact, global progress is at an all-time high.

(B) Background

The basic rights that the Constitution of India gives to citizens are known as fundamental rights. These rights apply to all citizens, regardless of race, nationality, religion, nationality, gender or place of birth. To enforce a person's basic human right or to see its serious violations, a citizen can go to the Supreme Court or the High Court. The purpose of fundamental rights is to protect the values of a democracy based on individual freedom and equality for all citizens of the country. Fundamental rights are universal and equal in nature. Citizens of a private country are entitled to basic rights and freedoms.

IV. RIGHT TO EDUCATION IN INDIAN CONSTITUTIONAL PERSPECTIVE

India's constitution is known as the text devoted to social justice. From an expert point of view, literacy is a foundation for making the provision of equal opportunities a reality. The Constitution of India has therefore recognized that education is the basis for social change, as reflected in certain educational texts.⁷

The judicial decision from which the right to education emanated as a fundamental right was from the one rendered by the Supreme Court in *Mohini Jain v. State of Karnataka*. In this case the Supreme Court through a division bench comprising of justice Kuldip Singh and R.M. Sahai, deciding on the constitutional of the practice of charging capitation he held that:

‘the right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.’⁸

The rationality of this judgment was further examined by a five-judge bench in *J.P. Unnikrishnan v. State of Andhra Pradesh* where the enforceability and the extent of the right to education was clarified in the following words:

“The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.”

The same has also been reiterated by the Hon’ble Supreme Court in *Bandhua Mukti Morcha, etc v. Union of India* specially referred to the earlier judgment made in this connection as under:

“In *Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi*, right to education at the secondary stage was held to be a fundamental right. In *J.P. Unnikrishnan v.*

⁷ Kurian, Oommen C., and Pooja Parvati. *Right to Education Act: Claiming Education for Every Child*. Oxfam India.

⁸ *Ibid.*

State of Andhra Pradesh, a constitution Bench had held education up to the age of 14 years to be a fundamental right.... It would be therefore incumbent upon the State to provide facilities and opportunity as enjoined under Article 39 (e) and (f) of the Constitution and to prevent exploitation of their childhood due to indigence and vagary.”

V. MAIN FEATURES OF RIGHT TO EDUCATION (RTE) ACT, 2009

- Free and compulsory education to all children of India in the 6 to 14 age group.
- No child shall be held back, expelled or required to pass a board examination until the completion of elementary education.
- If a child above 6 years of age has not been admitted in any school or could not complete his or her elementary education, then he or she shall be admitted in a class appropriate to his or her age. However, if a case may be where a child is directly admitted in the class appropriate to his or her age, then, in order to be at par with others, he or she shall have a right to receive special training within such time limits as may be prescribed. Provided further that a child so admitted to elementary education shall be entitled to free education till the completion of elementary education even after 14 years.⁹

(A) Major provisions of Right to education Act

Every child between the age of six to fourteen years, shall have the right to free and compulsory education in a neighbourhood school, till completion of elementary education.

For this purpose, 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. Where a child above six years of age has not been admitted to any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age.

For carrying out the provisions of this Act, the appropriate government and local authority shall establish a school, if it is not established, within the given area, within a period of three years, from the commencement of this Act.

The Central and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

This Act is an essential step towards improving each child's accessibility to secondary and higher education. The Act also contains specific provisions for disadvantaged groups, such as

⁹ Lasson, Nelson Bernard. *The History and Development of the Fourth Amendment to the United States Constitution*. 2014.

child labourers, migrant children, children with special needs, or those who have a disadvantage owing to social, cultural, economical, geographical, linguistic, gender or any such factor. With the implementation of this Act, it is also expected that issues of school drop out, out-of-school children, quality of education and availability of trained teachers would be addressed in the short to medium term plans.¹⁰

The enforcement of the Right to Education Act (External website that opens in a new window) brings the country closer to achieving the objectives and mission of the Millennium Development Goals (MDGs) and Education for All (EFA) and hence is a historic step taken by the Government of India.

VI. ENACTMENT OF THE RIGHT TO FREE AND COMPULSORY EDUCATION ACT, 2009: SOME OBSERVATIONS

Presently, as a fundamental right, the provision of free and compulsory education to children was added by the Constitution (Eighty Sixth Amendment) Act, 2002 and Article 21-A is inserted. The Right of Children to free and Compulsory Education Act or Right to Education Act (RTE) passed by the Indian Parliamentary on 4th August 2009. In reality, this Act is a milestone which provides for institutional instructions so that education as a fundamental right spreads to all children between the age group of 6-14 years.

The Act intends to provide full time elementary education to every child in a formal school, which satisfies certain essential norms and standards. Private education institutions have to reserve 25% of their seats starting from Class I. Strict criteria for the qualification of teachers is also one of the important provisions. There is a requirement of a teacher student ratio of 1:30 at each of these schools that ought to be met within a given time frame. The school needs to have certain minimum facilities like adequate teachers, playground and infrastructure etc. The Government will evolve some mechanism to help marginalized schools comply with the provisions of the Act. Moreover, the concept of neighborhood schools that has been devised. This would imply that the state government and local authorities will establish primary schools within walking distance of one kilometer of the neighborhood. In case of children for class VI to VIII, the school should be within a walking distance of three kilometers of the neighborhood. Moreover, unaided and private schools shall ensure that children from weaker sections and disadvantaged groups shall not be segregated from the other children in the classrooms nor shall their classes be held at places and timings different. While highlighting the main aspects

¹⁰ Mansergh, Nicholas. "Fundamental Rights in India." *International Affairs*, vol. 32, no. 2, 1956, pp. 253–253.

of the Right to Education Act 2009, there are certain limitations like, children below the age group of six are not covered; Act failed to promote a common school system; lack of provisions for children with disabilities; criteria for reservations of seats; financial assistance; provision regarding reimbursement to the private school; lack of clear cut provision for competent authority; assuring quality standards; action against government authorities in case of negligence in services etc.

VII. JUDICIAL CONTRIBUTION TOWARDS RIGHT TO FREE AND COMPULSORY EDUCATION

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 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 Mohan Jain vs. State of Karnataka, 20 popularly known as the ‘capitation fee case’, the Supreme Court has 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 captivation 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.¹¹

Subsequently, in Unni Krishna vs. State of Andhra Pradesh, 21 the Apex court was asked to examine the correctness of the decision given by the court in Mohini Jain case. 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

¹¹ Miller, Robert J. “American Indian Constitutions and Their Influence on the United States Constitution.” SSRN Electronic Journal, 2016, doi:10.2139/ssrn.2739936

14 years, but after the obligation of the state to provide education is subject to the limits of its economic 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*, 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 coordination with it.

In the case of *TMA Pai Foundation vs. State of Karnataka* 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.

Frankly speaking, *TMA Pai foundation's* case for the first time brought into existence the concept of education as in 'occupation', a term used in Article 19(1)(g) of the Constitution. The majority held that Article 19(1)(g) and Article 26 confer rights on all citizens and religious denominations respectively to establish and maintain educational institutions. Additionally, Article 30(1) gives the right to religious and linguistic minorities to establish and administer educational institution of their choice.

Islamic Academy of Education vs. State of Karnataka, another problem arose with the funding of private companies. It was directed that administrators be given complete freedom not only through the admission of students but also in respect of the payment system which may include additional funds for the purpose of improving education and further education.

(A) The Right to Education and Fundamental Human Rights (Part III)

Article 21A: Children's Right to Free and Compulsory Education (RTE, Right to Education): Children's Right to Compulsory and Compulsory Education 'or' Right to Learn Law 'also known as RTE', by an Act of Parliament of India enacted on 4 August 2009, states the

importance of free and compulsory education for children between 6 and 14 in India under Article 21A (Article 21 is a fundamental right to life under the right to liberty) of the Constitution of India. India became one of 135 countries to make education a fundamental right for all children when the initiative came into effect on 1 April 2010. "The State will provide free and compulsory education to all children aged 6 to 14 in such a way that the State can, by law, determine".

(B) Right to Education and the Directive Principles of State Policy (Part IV)

Article 41: The right to work, education and social assistance in certain circumstances. The State, within its borders and economic development, will effectively provide employment, education and social assistance in the event of unemployment, old age, illness and disability, and other inequalities. Article 45: The Right to Early Childhood Care (ECCE) for all children under the age of six. This document is regarded as the guiding principle of national policy. It states: "The State will strive to provide, within ten years of the enactment of this Constitution, free and compulsory education for all children under the age of fourteen." The Government of India has established ECCE as a constitutional provision under Article 45 (as amended December 86, 2002 and adopted by Parliament in July 2009) stating that "the State shall strive to provide early childhood care and education. every six years". Article 46: Promoting the economic and educational interests of the Organization, Organized Nations and other segregated sectors: The State shall give due consideration to the educational and economic interests of vulnerable groups, and, in particular, Customized Castes and organized nations, and protect them from social and economic injustice. It is enshrined in Article 46 as the guiding principle of State policy that the State must carefully promote the educational and economic interests of vulnerable groups and protect them from social injustice. Any special provision that the State can make to improve the educational, economic or social well-being of any poor person is irrevocable. Special efforts are being made to teach repetitive classes. Curriculum education, hostel facilities, ashram boarding schools, free admission process, chairs are efforts to achieve universal education where there are retreating classes.

(C) The Right to Education and Basic Services (Part IVA)

In terms of the Constitution (eighty-six amendments), 2002, (wef 1.4.2010) add a new subsection (k) under Article 51A (basic functions), making a parent or guardian responsible for providing education for his or her children for between six and six years. fourteen years.

VIII. IMPORTANT JUDGEMENTS

There are other important decisions of the Supreme Court that highlight the importance of

education such as; *Mohini Jain v. The State of Karnataka*²⁰ popularly known as the "Photography Case" The Supreme Court has held that the right to education is a fundamental right under Article 21 of the Constitution which cannot be denied by a citizen by charging a higher fee known as photography fee. The right to education flows directly from food to health. The right to life under Article 21 and the dignity of the person may not be guaranteed unless it is accompanied by the right to education. Applicant Mohini Jain was denied admission on the grounds that he could not afford to pay the Rs 60000 tuition fee. The court held that the right to education at all levels is a fundamental right under Article 21 of the Constitution and that photographic charging is illegal. *Uni krishan v. State of A, P.* 21 in this case the magistrate was asked to check the veracity of the decision rendered by the court in the case of Mohini Jain. The five-judge panel of the 3-2 majority agreed with the previous case and held that the right to education is a fundamental right under Article 21 of the constitution as it flows directly from food to life. However, the court ruled in favor of Mohini Jain's case and ruled that the right to free education was only available to children under the age of 14, after which it became a public service.¹²

Avinash Mahrotra vs Union of India, in this case the Supreme Court has honored the right to education to the right to a safe place at school, and is forcing schools to follow certain fire safety measures outlined in the judgment.

IX. CONCLUSION

In line with these lines, in the concluding remarks it is common for that female horse passing the show to be inadequate. You need an hour to maintain a proper view of the show. Unshakable political will and resilience are the real need for action. According to UNESCO's Education for All Global Monitoring Report 2010 “, about 135 countries have a constitution that provides free and compulsory education for all. The Right to Education (RTE) Act passed by the Indian Parliament should play a very important role in achieving India's basic education. The victory and destruction of RTE can depend to a large extent on reliable political care. The allocation of budget assets should be satisfactory in this regard. Indian youth should approach and spread the use of education to unsuspecting caregivers who may see the importance of education in preventing social problems. Comparing the public to the impressive business model of any circle should not be allowed at any cost. Free education up to a certain age should be available to all.

¹² Pandya, Rameshwari, et al. *The Right to Learning: The Development of Steps Act.* 2017.

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