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## **Right of child for free and compulsory Education - An overview**

\* Shilpa Seth

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*Abstract- There is a need to make people aware about rights of children and as to the importance of their growing as responsible and productive citizens. In this regard media, non-governmental organizations can play a vital role. Methods and Mechanics are to be designed to inform children and parents through the educational system and other media to sensitize Public functionaries and opinion makers. Voluntary organization could be powerful means of social communication. And most importantly a true political will be required, without this all efforts are meaningless.*

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**Key Words- Child, Education, Nature, Development.**

**“Education is the most powerful weapon which you can use to change the world” -Nelson Mandela**

Life has been treated as a Precious gift of nature. Education is fundamentally the enlightenment of life. It helps to transfigure the human personality into a pattern of perfection through a synthetic process of development of the body and upliftment of the mind. It supplements the emotions and illumines the spirit.

As Kofi Annan the former secretary general of the United Nations once rightly said, “Education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development.”

Education now part of the human rights dialogue. Now most of the nations of the world have also accepted their obligation to provide at least free elementary educations to their citizens.

Article 26 of the Universal Declaration of Human Rights defines the right to education as a right inclusive of many dimensions. Education is essential not for the wholesome development of a human being but also plays an important role in maintaining peace and harmony between people across the world. Therefore the right to education can, in fact, be seen as a crucial component of the larger right to development, in a human rights based framework.

**The International Scenario for the Right to Education:** The right to education has been recognized in a great many international human rights

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treaties. The relevant provision in the UN Convention on the Rights of the Child is binding on the states. The key provision of the Convention is Article 28 (1) which provides that States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular. Make primary education compulsory and available free to all. The right to education is also recognized as a human right in the Universal Declaration of Human Rights (UDHR), Article 26, states that "everybody" has the right to education, hence the right accure to all individuals, although children are understood as the main beneficiaries." The International Convention on Economic, Social and Cultural Rights (hereinafter referred to as "the ICESCR), . The right to education has been reaffirmed in the 1960 UNESCO Convention against Discrimination in Education and the 1981 Convention on the Elimination of All Forms of Discrimination against Women. With regards to realising the right to education the World Declaration on Education for All, adopted at the 1990 World Conference on Education for All stats that "partnerships between government and non-governmental organizations, the private sector, local communities, religious groups, and families" are necessary. These relevant provisions are significant in the context of a state of India and bringing in the amendment to the Indian Constitution by incorporating Article 21 (A).

Right to Education under the Indian Constitution and Judicial Trends:

In a landmark judgment *Mohani Jain v. State of Karnataka*,<sup>1</sup> 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 capitation fee. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. In this case the petitioner had challenged the validity of a Notification issued by the government under the Karnataka Education Institutions (Prohibition of Capitation Fee) Act, 1984 passed to regulate tuition fee to be charged by the private Medical Colleges in the State Under the notification the tuition fee to be charged from students was as follows; candidates admitted against Government seats Ps. 2000 per yr. the Karnataka students Rs. 25000 per annum and students from outside Karnataka Rs. 60000 per annum. The petitioner was denied admission on the ground that she was unable to pay the exorbitant tuition fee of Rs. 60000 per annum. The two judge Division Bench held that the right to education at all level is a fundamental to citizen under Article 21 of the Constitution and charging capitation fee for admission to education institutions is illegal and amounted to denial of citizen's right to education and also vocative of Article 14 being arbitrary, unfair and unjust. Capitation fee makes the availability of education beyond the reach of poor. The right to education is concomitant to the fundamental rights enshrined under Part III of the Constitution. The

fundamental right to speech and expression cannot be fully enjoyed unless a citizen is educated and conscious of his individualistic dignity. The education in India has never been a commodity for sale.

In *Unni Krishna v. State of A.P.*<sup>2</sup> the Supreme Court was asked to examine the correctness of the decision given by the Court in *Mohini Jain's* case. The petitioners running Medical and Engineering Colleges in the state of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu contended that if *Mohini Jain* decision is correct and followed by the respective State Government they will have to close down their colleges. 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 14 years, but after that the obligation of the state to provide education is subject to the limits of its economic capacity and development. The obligations 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 provide institution. Private education institutions are necessity in the present day context. *Mohini Jain's* case was not right in holding that charging of any amount must be described as capitation fee. Saying so amounts to imposing an impossible condition. It is not possible for the private educational institutions to survive if they charge fee prescribed by government institutions. The private sector should be involved and encouraged in the field of education. But they must be allowed to do so under strict regulatory controls in order to prevent private educational institutions from commercialising educations. The charging of the permitted fees by the private educational institutions which is bound to be higher than charged by in similar government institutions cannot itself be characterised as capitation fee.

Article 21 of the Constitutions of India, has been interpreted that every child under age of 14 years has a right of basic education. In *Bandhuwa Mukti Morcha v. Union of India and others*<sup>3</sup>, 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 *Gaurav Jain v. Union of India*,<sup>4</sup> the Apex Court has held that state have to provide education to the children born to prostitutes. The court further issued various directions for save the children from exploitation and brings them into the main stream of life by educating them.

In the *Modern School v. Union of India*,<sup>5</sup> the Supreme Court has held that right of educations further means that it is the duty upon the state to provide educational facilities within the limits of its economic capacity and

development. In the *Ms. Aruna Roy and other v. union of India*<sup>6</sup> the Supreme Court has held the NCFSE nowhere talks of imparting religious instructions as prohibited under Article 28. What is sought is to have value based education and for 'religion' it is stated that students be given the awareness that the essence of every religion is common. Only practices differ. There is a specific caution that all steps should be taken in advance to ensure that no personal prejudices or narrow minded perceptions are allowed to distort the real purpose. Dogmas and superstitions should not be propagated in the name of education about religions. What is sought to be imparted is incorporated in Article 51(A) (e), which provides "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women" And to see that universal values, such as truth, righteous conduct, peace, love and non-violence be the foundation of education. In the *P.A. Inamdar & Others v. State of Maharashtra and others*,<sup>7</sup> Supreme Court said -Capitation fee and profiteering cannot be permitted-It is permissible to regulate admissions and fee structure in order to ensure merit and transparency.

In the *State of Bihar and other v Project Uchcha Vidya, Sikshak Sangh & Others*,<sup>8</sup> Supreme Court said, imparting education is the primary duty of the State. Although establishment of High Schools may not be a constitutional function in the sense that citizens of India above 14 years might not have any fundamental right in relation thereto, but education as a part of human development indisputably is a human right. The framers while providing for equality clause under the constitutional scheme had in their mind that women and children require special treatment and only in that view of the matter protective discrimination and affirmative action were contemplated in terms of clause (3) of Article 15 of the Constitution of India.

In the *Ajay Goswami v Union of India & Others*,<sup>9</sup> Justice Dr. A.R. Lakshmanan says today, education is perhaps the most important function of State and a local government. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of education."

In the *Ashoka Kumar Thakur v. Union of India and others*,<sup>10</sup> Supreme Court says, India has suffered in the past because of severe under investment in higher education. This has been caused partly by the thinking that looks at primary and higher education in an either or manner. It is very clear however that large public investment is needed in both sectors. As former Prime Minister Dr. Manmohan Singh said, while launching the Knowledge Commission,

“At the bottom of the knowledge pyramid, the challenge is one of improving access to primary education. At the top of the pyramid there is need to make our institutions of higher education and research world class. The time has come for India to embark on a second wave of nation building. Denied this investment, the youth will become a social and economic liability.

### **Highlights of the Right to Free and Compulsory education Act, 2009**

- Every child in the age group of 6 to 14 years will have a right to free and compulsory education in a nearby school
- Private and unaided educational institutes will have to keep 25% of the seats for students belonging to the weaker sections
- No child would be failed or expelled and will not be required to pass any board examination till the age of 14
- All students who complete their elementary education will be awarded certificates
- Financial burdens will be shared between the center and the states
- Infrastructure of schools will be improved; Recognition will be subject to improvement
- Quality of education will be improved

### **Pitfalls in the Act –**

- The definition and meaning of the word education is not defined.
- There is only speaks about 25% seat reserved in private schools for poor students, but no provision about government schools admission.
- Only age group 6 to 14 years is determined. While there is not provision about up to 6 years children where go to school.
- Duty of parents and guardian is only ensure, but no liability and responsibility was given to government.
- There is no provision about mental disorder or disable student education.
- There is only provision about elementary or basic education but no provision about on secondary or higher or technical education to students.
- Free and compulsory education to determinate only to age group of 6 to 14 year student, but no provision about on infrastructure or appropriate classroom or any require facilities.
- The provision added that the State Government will bear all rendered expenses for providing free education, but practically we find that central and states Governments has no sufficient budget on elementary education.
- Nothing privileges are given to students and teacher like other Government servants.
- No excellent facilities are given to formation age students and disable children should be come in main stream.
- Right to livelihood is becoming more dangerous for earning in schools. Teachers are not getting equal remuneration as equaling to government schools teachers.

- Privatisation in education is becoming dangerous phenom.
- There are only limited eight people appointed as national level monitoring commit.
- There is not provision about adult and continuing education.

**Conclusion and suggestion-**To conclude, it may be pointed out that despite numerous laws enacted both at center and state level for children. In existing statutes most of the legal provisions are merely idealized postulates and far from reality due to peculiar socioeconomic structure of our country. Below 6 years children also need to provide opportunity for study and personality development. Sufficient Budget should be provided for education infrastructure and facility. Need to fill up vacant post of teachers. At Central and state government level Parents advisory council must be constituted. Mental disorder children also be provided basic facilities and necessary training. For mental disordered and physical handicapped children 3% seats to be reserve.

There is a need to make people aware about rights of children and as to the importance of their growing as responsible and productive citizens. In this regard media, non-governmental organizations can play a vital role. Methods and Mechanics are to be designed to inform children and parents through the educational system and other media to sensitize Public functionaries and opinion makers. Voluntary organization could be powerful means of social communication. And most importantly a true political will be required, without this all efforts are meaningless.

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2. (1993) 1 SCC 6
3. (1991) 4 SCC 177.
4. A.I.R. 1997 SC 3021.
5. AIR 2004 SC 2236: 2004 AIR SCW 26
6. AIR 2002 SC 3176
7. AIR 2005 SC 3226.
8. 2006(2) SCC, 545.
9. AIR 2007 SC 493.
10. 2010 (4) SCR 1.