

# Human Right to Education: Challenges and Response

Dr. M.P. Tiwari<sup>1</sup>

## I. Prologue:

The child is the father of man. He is the flower of human society. Therefore, he receives required special care and treatment. Family is the fundamental group of society. For the full and harmonious development of child's personality should grow up in a family environment, in an atmosphere of happiness, love and understanding. He should be given proper education. Without education he could not assert his or her human rights. Human right to education is necessary for the fullest development of human personality and sense of dignity. A State cannot realize the human right to development without recognizing the right to education. The education makes all persons capable to promote understanding, friendship and tolerance among different communities of the world. The education of the child must be directed to the development of child's personality, talents and mental and physical abilities to their fullest potential. The education is necessary to acquire the real aims and objectives of human rights. A number of statutory provisions have been made to recognize the human right to education and to develop quality culture in education.

## II. Provision in International Law:

The right to education has been recognized as a basic human right and fundamental freedom in various international instruments and conventions. The Universal Declaration of Human Rights, 1948 and the International Covenant on Economic Social and Cultural Rights, 1966 make elaborate provisions regarding human right to education.

Article 26 of the Universal Declaration of Human Rights, 1948 has declared the right to education as a human right. It states that everyone has the right to education. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights. The provisions of the Article are as follows:

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional

---

<sup>1</sup> Associate Professor, A.D. College, A Constituent College of University of Allahabad, Allahabad, U.P. Mobile No: - 9453417523

education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 13 of the International Covenant on Economic Social and Cultural Rights, 1966 declares right to education as a human right. It makes provisions regarding primary education, secondary education and higher education. The provisions of the Article run as follows:

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view of achieving the full realization of this right:
  - (a) Primary education shall be compulsory and available free to all;
  - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
  - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means and in particular by the progressive introduction of free education;
  - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
  - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be

established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
4. No part of this Article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this Article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

### **III. Constitutional Provisions:**

The Constitution of India makes elaborate provisions regarding the right to education. The members of the Constituent Assembly of India were attentive towards education in India because at that time majority of the people were illiterate and uneducated. They were poor and exploited. Education may improve the prosperity of the people and the nation. Therefore, they made elaborate provisions for education under Articles 41, 45 and 46 of the Constitution.

Article 41 makes provisions regarding right to work, to education and to public assistance in certain cases. It states as follows:

*The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work and to education and to public assistance in certain cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.*

Article 45 makes provision for free and compulsory education for children. It provides as follows:

*The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years.*

Under Article 46, the State is directed to promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled Castes and Scheduled Tribes. The

provisions of the Article states as follows:

*The State shall provide with special care the educational and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.*

#### **IV. Prescription for Entrance Test:**

In the case of *State of A.P. v. L. Narendra Nath*,<sup>2</sup> an attempt was made to include the right to education in the right of personal liberty. The central question before the Court was, whether the entrance test prescribed under notification of the Government dated July 23, 1970 for selection of candidates in the four Medical Collages run by the State in the Andhra Pradesh was justified in law.

On behalf of the respondents it was argued that such test affected the personal liberty of the candidates secured under Article 21 of the Constitution.

Delivering the decision of the Court Mitter, J. held that the right to education meant the liberty to apply for education. This liberty was validly curtailed “according to procedure established by law” by the admission test. The learned Judge held that refusal of an application for admission to Medical Collage could not be said to affect one’s personal liberty guaranteed under Article 21. Everybody, subject to the eligibility prescribed by the University was at liberty to apply for admission.

Thus, the learned Judge took very restrictive interpretation of Art 21. The life and liberty of a person has no meaning unless he has right to education. The learned Judge should have, therefore, declared the right to education as a fundamental right under Article 21 of the Constitution.

In case of *Francis Coralie Mullin v. Administrator Union Territory of Delhi*<sup>3</sup> Bhagwati, J. of the Supreme Court interpreted Art. 21 to include the right to live with human dignity and all that goes along with it. Elaborating the right to life and personal liberty guaranteed under Art. 21 the learned Judge observed:

The right to life includes the right to live with it, namely the

---

<sup>2</sup> *A.P. v. L. Narendra Nath*, AIR 1973 SC 2560. The case was heard by a four Judges Bench of the Supreme Court consisting of S.M. Sikari, C.J., C.K. Mitter, K.S. Hedge and P. Jagnmohan Reddy, JJ. However, the decision of the Court was delivered by Mitter J.

<sup>3</sup> *Francis Coralie Mullin v. Administrator Union Territory of Delhi*, AIR 1981 SC 746.

bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse form, freely moving about and mixing and commingling with fellow human beings This right include the right to basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum, expression of the human self.<sup>4</sup>

Thus the learned Judge expanded the ambit and scope of Art. 21 and held that right to life and personal liberty may include right to live with human dignity which includes minimum requirements of life such as adequate nutrition, reading and writing etc. He kept reading and writing with right to live with human dignity but it was not a satisfactory interpretation. The Court did not declare the right to education as a fundamental right under Art. 21.

In *Bandhua Mukti Morcha case*,<sup>5</sup> Bhagwati, J. of the Supreme Court extended the right to live with human dignity, to include the educational facilities as well. The learned Judge slightly tried to expand the scope of the right to education and held that the right to education is implicit in and flows from the 'right to life'. He used the expression educational facilities for right to live with dignity but did not expressly recognize the right to education as a fundamental right under Article 21 of the Constitution of India<sup>6</sup>.

#### **V. Right to Education as a Fundamental Right under Article 21 of the Constitution:**

In *Mohini Jain v. State of Karnataka*<sup>7</sup>, the question of fundamental right to education, its scope and limitation came for consideration before the Supreme Court. In this case the petitioner was asked by the management of Medical College to deposit Rs. 60,000/- as the tuition fee for the first year and furnishes a bank guarantee respect of the fee for the remaining years of the M.B.B.S. course, for her admission.

The petitioner's father informed the management that it was beyond his means to pay the exorbitant annual fee of Rs. 60,000/- and as a consequence she was denied admission.

In the writ petition under Article 32 the petitioner challenged the

---

<sup>4</sup> *Ibid.*, at p.753.

<sup>5</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

<sup>6</sup> *Ibid* at p. 811-812.

<sup>7</sup> *Mohini Jain v. State of Karnataka.*, AIR 1992 SC 1858. The case was heard by a Division Bench of the Supreme Court consisting of Kuldip Singh and R. M. Sahai JJ. However, the decision of the Court was delivered by Kuldip Singh J.

notification of the Karnataka Government permitting the private medical colleges to charge such exorbitant rate.

A strong issue for consideration before the Court was: Is there a 'right to education' guaranteed to the people of India under the Constitution? If so, does the concept of 'Capitation fee' infract the same?

Speaking on behalf of the Court Kuldip Singh J. held that the right to education is a fundamental right under Art. 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 Art. 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education

In support of the judgment, he referred Preamble, Arts. 21, 38, 39(a) and (f) 41 and 45 of the Constitution. Highlighting the importance of education the learned Judge observed:

*The dignity of the man is inviolable. It is the duty of the State to respect and promote the same. It is primarily the education which brings forth the dignity to man. The framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Arts. 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human rights, 1948 emphasizes "Education shall be directed to the full development of the human personality". Art 41 in chapter IV of the Constitution recognizes an individual's right to education.<sup>8</sup>*

The learned Judge emphasized the importance of education for the development of personality of the individual. The dreams of the makers of the Constitution towards people of India can be realized only by educating people of the country. He took help from Art. 26 of the Universal Declaration of Human Rights, 1948 which recognizes right to education as a human right for the development of personality of a person. Declaring the right to education as a fundamental right under Art. 21 he observed:

*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*

---

<sup>8</sup> *Ibid.*, at p. 1863.

*of conduct which the individual is free to pursue. 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. The State Government is under an obligation to make endeavour to provide education facilities at all level to its citizens*<sup>9</sup>

The learned Judge obviously stated that the right to education flows directly from right to life under Art. 21 and declared that right to education is a fundamental right. The learned Judge Kuldip Singh may be called as a champion in the field of right to education because earlier no Judge could take such a bold step in the recognition of the right to education as a fundamental right although many judges indirectly recognized the importance of education. He took assistance from the ancient Indian civilization, which recognizes education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale.

#### **VI. Every Child/Citizen has a Right to Free Education up to Age of Fourteen Years:**

The case of *Unni Krishnan v. State of A. P.*<sup>10</sup> decided by five Judges Bench of the Supreme Court is milestone in the recognition of the right to education as a fundamental right.

In this case the important issue, whether the Constitution guarantees a fundamental right of education to its citizens, came for consideration before the Supreme Court. The petitioner's, running medical, engineering colleges in the State of Andhra Pradesh, Karnataka, Maharashtra and Tamilnadu, argued that if the decision of *Mohini Jain*<sup>11</sup> is correct and is followed, and is implemented by the respective State Governments as indeed they are bound, to they will have to close down their colleges as no other option is left to them.

The Court by majority of 3:2 held that right to education is a fundamental right under Art. 21 of the Constitution as it directly flow from right to life. Taking assistance from Arts. 41 and 45 the Court held that every child/ citizen of this country has a right to free education until be completes the age of fourteen years. Thereafter, his right to education is subject to the limits of economic capacity and development of the State.

---

<sup>9</sup> *Ibid.*, at p. 1864.

<sup>10</sup> *Unni Krishnan v. State of A. P.*, AIR 1993 SC 2178.

<sup>11</sup> *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.

The Court did not agree with the decision of the *Mohini Jain's case*<sup>12</sup> in so far as it declared, "the right to education flows directly from right to life". The Court questioned what the content of this right is. How much and what level of education is necessary to make the life meaningful? Does it mean that every citizen of this country can call upon the State to provide education of his choice? In other words, whether the citizens of this country can demand that the State provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs?

To this extent the Court overruled *Mohini Jain's case*<sup>13</sup> and did not agree with such a broad proposition.

The Court stated that the right to education, which is implicit in the right to life and personal liberty, guaranteed in Art. 21 must be construed in the light of Directive Principles contained in Part IV of the Constitution. The Court referred to a number of authorities in support of the judgment. Regarding the scope and ambit of the right to education the Court observed:

*A true democracy is one where education is universal, where people understand what is good for them and the nation and know how to govern themselves. The three articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of the right to education have to be determined. Right to education understood in the context of Articles 45 and 41, means (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development*<sup>14</sup>

Thus, the Court in this case tried to restrict the wide proposition of the right to education. In *Miss Mohini Jain case*<sup>15</sup> the Court declared the right to education as a fundamental right taking assistance from Articles 21, 41, 45 and 46 and did not impose any limitation on the economic capacity and development of the State. In *Unni Krishnan's case*<sup>16</sup> the Court declared the right to education as a Fundamental Right by interpreting Arts. 21, 41, 45, and 46 of the Constitution and imposed limitation that every child/citizen has a right to free education up to the age of fourteen years and after a

---

<sup>12</sup> *Mohini Jain v. State of Karnataka Karnataka*, AIR 1992 SC 1858.

<sup>13</sup> *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.

<sup>14</sup> *Unni Krishnan v. State of A.P.*, AIR 1993 SC 2178 at p. 2232.

<sup>15</sup> *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.

<sup>16</sup> *Unni Krshnan v. State of A.P.*, AIR 1993 SC 2178.

child/ citizen completes 14 years; his right to education will depend upon economic capacity and development of State. The decision of the Court seems to be in consonance with the provisions of Article 26 of the Universal Declaration of Human Rights, 1948 and Article 13 of the International Covenant on Economic Social Rights.

The Constitution (Eighty Sixth Amendment) Act, 2001 may be called as a milestone Amendment in the direction of children's right to education. By this Amendment Parliament has added Article 21-A, 51- A (k) and substituted Article 45 of the Constitution. Article 21-A deals with right to education. It provides that, "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law determine". Article 45 has been substituted by new Article which deals with provision for early childhood care and education to children below the age of six years. It states that, "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years". In Article 51- A of the Constitution, after clause (j) a new clause (k) has been added which provides that, "A parent or guardian is to provide opportunities to his child or, as the case may be, ward between the age of six and fourteen years".

#### **VII. The State is Bound to Afford Grant in Aid to Recognized Private Law Colleges:**

*State of Maharastra v. Manubhai Pragji Vashi*<sup>17</sup> is a case decided by Supreme Court relating to grants-in-aid to educational institutions. In this writ petition two prayers were made. The first prayer was to direct the Government of Maharastra to extend the grants-in-aid scheme to the non-Government Law Colleges. The second prayer was that the benefit of pension-cum-gratuity scheme introduced by the Government for all teaching and non teaching staff in colleges with faculties in Arts, Science, Commerce, Engineering and Medicines should be made applicable to the staff of the non-Government Law Colleges also.

The Court held that not extending the grant-in-aid by the State to non Government Law Colleges and at the same time extending such benefit to non Government Colleges with faculties viz. Arts, Science, Commerce, Engineering and Medicine (other professional non –Government Colleges) was patently discriminatory and violative of Art. 14 of the Constitution. The Court, therefore, directed the State of Maharashtra to afford the grant-in-aid to recognized private law colleges on the same criteria as such grants are given to other faculties. Paucity of funds cannot be the ground for such hostile discrimination, as it has no relation with the object sought to be

---

<sup>17</sup> *State of Maharastra v. Manubhai Pragji Vashi*, AIR 1996 SC 1.

achieved.

The Court included the right to legal education in Article 21 in view of Art. 39- A of the Constitution and stated that this aspect never arose for consideration in any previous occasion nor was it considered in *Unni Krishna's case*<sup>18</sup>. In the light of Article 39- A the Court indicated that in order to enable the State to afford free legal aid and guarantee speedy trial a vast number of persons trained in law are essential. The Court observed:

*Legal aid is required in many forms and at various stages, for obtaining guidance, for resolving disputes in courts, tribunals or other authorities... The need for continuing and well-organized education is absolutely essential reckoning the new trends in the world order, to meet the ever-growing challenges. The legal education should be able to meet the ever growing demands of the society and should be thoroughly equipped to cater to the complexities of the different situations. Specialization in different branches of the law is necessary. The requirement is of such a great dimension, that sizeable or vast number of dedicated persons should be properly trained in different branches of law, every year by providing or rendering competent and proper legal education. This is possible only if adequate number of Law Colleges with proper infrastructure including expertise law teachers and staff are established to deal with the situation in an appropriate manner.*<sup>19</sup>

Thus, the Court extended the right to education to the level of higher education. The importance of legal aid and legal education is included in right to life and personal liberty by interpreting Article 21 read, with Article 39-A. The Government was directed not to make discrimination to afford grant-in-aid to Private Law Colleges in comparison with other professional private colleges like Arts, Science, Commerce, Medicine and Engineering. The Court recognized the importance of legal education, so that emerging demands in various branches of law may be realized. The Court directed to appoint expert law teachers and to provide other sufficient facilities, which may be required to the colleges and other staff of the college. The decision of the Court is in consonance with Art. 13 (2) (b) (c) and (d) of International Covenant on Economic, Social and Cultural Rights, 1966 which makes provision for the secondary education, higher education, material conditions of teaching staff and other facilities of the schools.

---

<sup>18</sup> *Unni Krshnan v. State of A.P.*, AIR 1993 SC 2178.

<sup>19</sup> *State of Maharastra v. Manubhai Pragji Vashi*, AIR 1996 SC 1 at pp. 9-10.

### **VIII. The Constitution (Eighty Sixth Amendments) Act, 2001:**

The Constitution (Eighty-sixth Amendment) Act, 2001 may be called as a milestone in the direction of children's right to education. By this Amendment Parliament has added Article 21-A, 51- A (k) and substituted Article 45 of the Constitution. A new Article 21-A, after Article 21 of the Constitution has been inserted which has made the right to education a fundamental right. It provides as follows:

The State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.

Further, Article 45 has been substituted by new Article which deals with provision for early childhood care and education to children below the age of six years. It states that, "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years". In Article 51- A, after clause (j) a new clause (k) has been added which provides that, "who is a parent or guardian is to provide opportunities to his child or, as the, case may be, ward between the age of six and fourteen years".

### **IX. The Right of Children to Free and Compulsory Education (Rte) Act, 2009:**

Nine years after the Constitution was amended to make education a Fundamental Right, the Central Government has implemented the Right of Children to Free and Compulsory Education (RAE) Act, 2009, on April 1, 2010. The Act makes it obligatory for State Governments and Local Bodies to provide free and compulsory education to every child from six to fourteen years. In short, the government can be sued for not providing free education.

The Right of Children to Free and Compulsory Education (RTE) act, 2009 has 38 sections and 1 Schedule. It is divided into VII Chapters.<sup>20</sup>

The main aims and objectives of the Act is to provide free and compulsory education to all the children of the six to fourteen years. It shall extend to the whole of India except the State of Jammu and Kashmir. Section 2(c) of the Act defines the expression "child". According to it "child" means a male or female of the age of six to fourteen years.

Section 2(f) defines the expression "elementary Education". According to it "elementary education" means the education from six to eighths class.

---

<sup>20</sup> The Act received the assent of the President on the 26<sup>th</sup> August, 2009. It was published in the Gazette of India on August 27, 2009. It came into force on April 1, 2010.

Section 2(n) defines “school”. According to it “school” means any recognized school imparting elementary education and includes –

- (i) a school established, owned or controlled by the appropriate Government or a local authority;
- (ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
- (iii) a school belonging to specified category; and
- (iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.

Chapter II deals with right to free and compulsory education. Section 3 states that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.<sup>21</sup> No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.<sup>22</sup>

Chapter III deals with duties of appropriate Government, Local authority and parents. It states that the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.<sup>23</sup> The Central Government and the State Government shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.<sup>24</sup> The Central Government shall-

- (a) develop a framework of national curriculum with the help of academic authority specified under Section 29;
- (b) develop and enforce standards for training of teachers
- (c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.<sup>25</sup>

No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.<sup>26</sup> No child shall be subjected to physical punishment or

---

<sup>21</sup> Section 3(1).

<sup>22</sup> Section 3 (2).

<sup>23</sup> Section 6

<sup>24</sup> Section 7(1).

<sup>25</sup> Section 7(6).

<sup>26</sup> Section 13(1).

mental harassment.<sup>27</sup> Whoever contravenes these provisions shall be liable to disciplinary action.<sup>28</sup>

In brief, the provisions of the Act offers a framework for ensuring quality education, for creating infrastructure, for making available a sufficient number of trained teachers, and for extending government funding to teachers and for extending.

## **X. Epilogue:**

From the above discussion, it is clear that various international conventions and declarations have made legal provisions to recognize the human right to education and to develop educational innovations and initiatives. Article 26 of the Universal Declaration of Human Rights, 1948 and Article 13 of the International Covenant on Economic Social and Cultural Rights, 1966 have made provisions to recognize the human right to education and to improve quality culture in education.

The Hon'ble Supreme Court and High Courts have played significant role in developing educational standard in the country and to recognize the human right to education. The Supreme Court has declared the right to education as a fundamental right under Part III of the Constitution. In the Constitution, the right to education was provided in Part IV dealing with Directive Principles of State Policy and directed the State to promote education to the people of the country.

*In Mohini Jain v. State of Karnataka*<sup>29</sup>, delivering the leading opinion Kuldip Singh J. held that the right to education is a fundamental right under Art. 21 of the Constitution which could not 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 Art. 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

In landmark judgment of *Unni Krishnan case*<sup>30</sup> the Supreme Court overruled the principles laid down in *Mohini Jain case*<sup>31</sup> and expressly held that every child/citizen has a Fundamental Right to free education up to age of fourteen years and thereafter his right to education is subject to the limits of economic capacity and development of State.

---

<sup>27</sup> Section 17(1).

<sup>28</sup> Section 17 (2).

<sup>29</sup> *Mohini Jain v. State of Karnataka.*, AIR 1992 SC 1858.

<sup>30</sup> *Unni Krishnan V. State of A.P.*, AIR 1993 SC 2178.

<sup>31</sup> *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858. .

In case of *State of Maharashtra v. Manubhai Pragji Vashi*<sup>32</sup> the Supreme Court extended the right to education to the level of higher education. The importance of legal aid and legal education is included in right to life and personal liberty by interpreting Article 21 read, with Article 39-A. The Government was directed not to make discrimination to afford grant-in-aid to Private Law Colleges in comparison with other professional private colleges like Arts, Science, Commerce, Medicine and Engineering.

The Apex Court recognized the importance of legal education so that emerging demands in various branches of law may be realized. The Court directed to appoint expert law teachers and to provide other sufficient facilities, which may be required to the colleges and other staff of the college. The decision of the Court is in consonance with Art. 13 (2) (b) (c) and (d) of International Covenant on Economic, Social and Cultural Rights, 1966 which makes provision for the secondary education, higher education, material conditions of teaching staff and other facilities of the schools. It is submitted that teachers and other staff of the private educational institutions are entitled to equal pay so as to be par with Government employees under Article 39 (d) of the Constitution. It is the duty of the State to provide facilities and opportunities to the people to avail of the right to education.

The Constitution 86<sup>th</sup> Amendment Act, 2002 has inserted a new article 21-A after 21 of the Constitution. It has made the right to education a fundamental right.

After nine years, the Central Government has implemented the Right of Children to Free and Compulsory Education (RTE) Act, 2009, on April 1, 2010. The provisions of the Act impose an obligation on the State Government and Local Bodies to provide free and compulsory education to every child from six to fourteen years. In brief, an action can be filed in the court of law against the government for not providing free education.

The importance of the fundamental to education may be concluded in the marvelous words of Justice Kuldeep Singh of the Supreme Court:

*The preamble promises to secure justice "social, economic and political" for the citizen. A peculiar feature of the Indian Constitution is that it combines social and economic rights along with political and justiciable legal rights. The preamble embodies the goal which the State has to achieve in order to establish social justice and to make the masses free in the positive sense. The securing of social justice has been specifically enjoined an object of the State under Article 38 of the Constitution. Can the objective which has*

---

<sup>32</sup> *State of Maharashtra v. Manubhai Pragji Vashi*, AIR 1996 SC 1.

*been so prominently pronounced in the preamble and Article 38 of the Constitution be achieved without providing education to the large majority of citizens who are illiterate. The objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three pronged justice promised by the preamble is only an illusion to the teeming-million who are illiterate. It is only is the education which equips a citizen to participate in achieving the objectives enshrined in the preamble. The preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The directive principles in Part IV of the Constitution are also with the same objective. The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings-forth the dignity of a man. The framers of the Constitution were aware that more than seventy per cent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Articles 41 and 45 were brought in Chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasises "Education shall be directed to the full development of the human personality..." Article 41 in Chapter IV of the Constitution recognises an individual's right "to education". It says that "the State shall, within the limits of its economic capacity and development, make effective provision for securing the right.....to education". Although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations.<sup>33</sup>*

---

<sup>33</sup> *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858.