



**EXPANDING HORIZONS OF HUMAN RIGHT TO  
EDUCATION: PERSPECTIVE ON INDIAN  
AND INTERNATIONAL VISION**

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**I Introduction**

IT IS stated that “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must assume education, gain knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned. The founding fathers of the Constitution were wise enough to realize that India of their vision would not be a reality if the children of the nation are not developed, nurtured and educated. For this, their exploitation by different profit makers for their personal gain had to be first indicted. This found manifestation in article 24, which is one of the two provisions in part III of the Constitution on the fundamental right against exploitation. The makers of the Constitution were aware that this prohibition alone would not suffice. Therefore, article 45 was added casting a duty on the state to endeavour to provide free and compulsory education to children. It is important to note that this provision in part IV of the Constitution, after the judgment by a constitution bench of the Supreme Court in *Unni Krishnan*,<sup>1</sup> has acquired the status of a fundamental right. The Constitution provides some other provisions also desiring that a child must be granted opportunity and facility to develop in a healthy manner.<sup>2</sup>

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1 *Unni Krishnan v. State of A.P.*, AIR 1993 SC 2178.

2 Per B.L. Hansaria J in *M.C. Mehta v. State of Tamil Nadu*, AIR 1993 SC 2178.



Family is the fundamental group of society. For the full and harmonious development of child's personality it is imperative that he grows up in a family environment, in an atmosphere of happiness, love and understanding. He should be given proper education. Without education he would not be in a position to 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.<sup>3</sup> 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. 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 Provisions in international instruments and conventions**

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; the International Covenant on Economic Social and Cultural Rights, 1966 and the Convention on the Rights of the Child, 1989 make elaborate provisions regarding human right to education.

### **Article 26 of the Universal Declaration of Human Rights, 1948**

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 education shall be made generally available

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3 *Ibid.*



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**

Article 13 of the International Covenant on Economic Social and Cultural Rights, 1966 declares right to education as a human right. It makes provision 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.

**Articles 28 and 29 of the Convention on the Rights of the Child, 1989**

Articles 28 and 29 of the Convention on the Rights of the Child, 1989 make vast provisions for the education of the child. It casts duty upon the States Parties to recognize the right of the child to education. The provisions of the articles read as follows:

**Article 28**

1. 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:



- (a) make primary education compulsory and available free to all;
  - (b) encourage the development of different forms of secondary education, including general and, vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
  - (c) make higher education accessible to all on the basis of capacity by every appropriate means;
  - (d) make educational and vocational information and guidance available and accessible to all children;
  - (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
  3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 29**

1. States Parties agree that the education of the child shall be directed to:
  - (a) the development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;



- (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) the development of respect for the natural environment.
2. No part of the present Article or Article 28 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 the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State

Thus, in various conventions and resolutions, the United Nations has declared the right to education as a human right and fundamental freedom.

### **III Provisions under the Constitution of India**

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 promote 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.

It is important to note that all the provisions relating to education have been made in part IV of the Constitution. The provisions of part IV dealing with directive principles of state policy are not enforceable by any court. The duty is cast upon the state to fulfill the objectives laid down in this part by making laws.<sup>4</sup> In spite of the constitutional provisions, the state could not be able to provide educational facilities to the millions of children of the country. The Supreme Court in its various decisions tried to include the right to education in the chapter of fundamental rights so that it can be enforceable in a court of law.

#### **IV Prescription of entrance test for admission**

In the case of *State of A.P. v. L. Narendranath*,<sup>5</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 colleges run by the State of 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

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4 Constitution of India, Art. 37.

5 (1971) 1 SCC 607. The case was heard by a four judge bench of the Supreme Court consisting of S.M. Sikri CJI, G.K. Mitter, K.S. Hedge and P. Jagnmohan Reddy, JJ. The decision of the court was delivered by Mitter J.



curtailed “according to procedure established by law” by the admission test. It was held that refusal of an application for admission to medical college 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 judge took very restrictive interpretation of article 21. The life and liberty of a person has no meaning unless he has right to education. The judge should have, therefore, declared the right to education as a fundamental right under article 21 of the Constitution.

### **V Right to education as an essential attribute of personal liberty**

In case of *Francis Coralie Mullin v. Administrator Union Territory of Delhi*<sup>6</sup> Bhagwati J of the Supreme Court interpreted article 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 article 21 the judge observed:<sup>7</sup>

The right to life includes the right to live with human dignity and all that goes along with it, namely the 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 ... it must, in any view of the matter 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.

Thus, the judge expanded the ambit and scope of article 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. The court did not declare the right to education as a fundamental right under article 21.

In *Bandhua Mukti Morcha* case,<sup>8</sup> Bhagwati J of the Supreme Court extended the right to live with human dignity, to include the educational

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6 AIR 1981 SC 746.

7 *Id.* at 753.

8 *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.





facilities as well. The 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>9</sup>

Nearly two years later in *Bapuji Education Association* case,<sup>10</sup> Rama Jois J of the Karnataka High Court held that the right to education is an essential attribute of personal liberty. He pointed out that among various types of personal liberties which are included in the expression 'personal liberty' in article 21, education is certainly the foremost.<sup>11</sup>

## VI Right to education and capitation fee

In *Mohini Jain v. State of Karnataka*,<sup>12</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 furnish a bank guarantee in 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 a writ petition under article 32 the petitioner challenged the notification of the Karnataka Government permitting private medical colleges to charge such exorbitant fee.

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 article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the

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9 *Id.* at 811-12.

10 *Bapuji Education Association v. State*, AIR 1986 Kant 119.

11 *Ibid.*

12 AIR 1992 SC 1858. The case was heard by a division bench consisting of Kuldip Singh and R. M. Sahai JJ. The decision was delivered by Kuldip Singh J.



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 support of the judgment, he referred to the preamble, articles 21, 38, 39(a) and (f) 41 and 45 of the Constitution. Highlighting the importance of education the judge observed:<sup>13</sup>

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.

The 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 article 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 article 21 he observed:<sup>14</sup>

Right to life is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life.

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13 *Id.* at 1863.

14 *Id.* at 1864.



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.

The judge obviously stated that the right to education flows directly from right to life under article 21 and declared that right to education is a fundamental right. Kuldip Singh J 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.

### **VII Right to free education up to the age of fourteen years**

The case of *Unni Krishnan*<sup>15</sup> decided by five judge bench of the Supreme Court is a 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 petitioners who were running medical, engineering colleges in the State of Andhra Pradesh, Karnataka, Maharashtra and Tamil Nadu, argued that if the decision of *Mobini Jain*<sup>16</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 article 21 of the Constitution as it directly flows from right to life. Taking assistance from articles 41 and 45 the court held

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15 *Supra* note 1.

16 *Supra* note 12.



that every child/ citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter, his right to education is subject to the limits of economic capacity and development of the state.

The court did not agree with the decision in *Mobini Jain's* case<sup>17</sup> in so far as it declared “the right to education flows directly from right to life”. The court examined the content of this right and issues such as 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 *Mobini Jain's* case<sup>18</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 article 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 and observed thus:<sup>19</sup>

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.

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17 *Ibid.*

18 *Ibid.*

19 *Supra* note 1 at 2232.



Thus, the court in this case tried to restrict the wide proposition of the right to education. In *Mobini Jain* case<sup>20</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*<sup>21</sup> the court declared the right to education as a fundamental right by interpreting articles 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 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. Although the judiciary has made right to education a fundamental right yet it is for the state to secure it to all the people. Without education, human rights cannot be secured to people and the basic objective laid down in the preamble to the Constitution would fail.<sup>22</sup>

#### VIII Grant in aid to recognized private law colleges

*State of Maharashtra v. Manubhai Pragji Vashi*<sup>23</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 Maharashtra 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,

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20 *Supra* note 12.

21 *Supra* note 1.

22 Manoj Kumar Sinha, "Right to Education: National and International Perspective" 48 *IJIL* 203-04 (2008).

23 AIR 1996 SC 1. See also *K. Krishnamacharylu v. Sri Venkateswara Hindu Collage of Engineering*, AIR 1998 SC 295.



engineering and medicine (other professional non -government colleges) was patently discriminatory and violative of article 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 achieved.

The court included the right to legal education in article 21 in view of article 39- A of the Constitution and stated that this aspect never arose for consideration in any previous occasion nor was it considered in *Unni Krishnan*.<sup>24</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:<sup>25</sup>

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 expert law teachers and staff are established to deal with the situation in an appropriate manner.

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

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24 *Supra* note 1.

25 *Supra* note 23 at 9-10.



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 article 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 at 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 the right to education.

### **IX Infliction of corporal punishment and bodily pain on children**

In *Parents Forum for Meaningful Education*<sup>26</sup> the petitioners by way of public interest litigation challenged the validity of rule 37 (I)(a) (ii) and (4) of the Delhi School Education Rules (1973) permitting infliction of corporal punishment and bodily pain on children during education being violative of articles 14 and 21 of the Constitution.

Delivering the judgment on behalf of the court Anil Dev Singh J held that the rule was made absolute. He relied on *Maneka Gandhi's case*<sup>27</sup> where it was laid down that the procedure prescribed for depriving a person of his life and personal liberty must be just, fair and reasonable, otherwise, it would be hit by article 21 and would be *ultra vires* of the same.

Applying this principle, it was held that rule 37 (I)(a)(ii) and (4) of the Delhi Education Rules permitting infliction of bodily pain on the child is

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<sup>26</sup> *Parents Forum for Meaningful Education v. Union of India*, AIR 2001 Del 212.

<sup>27</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.



violative of articles 14 and 21 of the Constitution. Therefore, the court struck it down as being violative of articles 14 and 21 of the Constitution. The court directed the state to ensure that children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear.

The court referred to certain provisions of the Convention on the Rights of the Child and stated that the Government of India acceded to -the Convention on December 11, 1992. National Policy on Education was modified in 1992 before acceding to it. It is significant to note that the national policy is in tune with the convention inasmuch as it is against imposition of corporal punishment. The court referred to para 5.6 of the policy which envisions this approach. This para reads as follows:

#### Child-Centered Approach

5.6 A warm, welcoming and encouraging approach, in which all concerned share solicitude for the needs of the child, is the best motivation for the child to attend school and learn. A child-centered and activity -based process of learning should be adopted at the primary stage. First generation learners should be allowed to set their own pace and be given supplementary remedial instruction. As the child grows, the component of cognitive learning will be increased and skills organised through practice. The policy of non-detention at the primary stage will be retained, making evaluation as disaggregated as feasible. Corporal punishment will be firmly excluded from the educational system and school timings as well as vacations adjusted to the convenience of children.

The court stated that the policy makes it amply clear that corporal punishment is to be eradicated from the schools. It may be noted that provision for corporal punishment contained in rule 37 is not in keeping with the goals set out in the National Policy on Education and international convention. In case corporal punishment was conducive to education, the Convention of the Rights of the Child, adopted by the General Assembly of the United Nations and the National Policy on Education would have been laudatory of the same and would have permitted it. Since physical punishment has a baneful effect on the child and on his





education, the convention and the national policy have not endorsed the same.

It was held that the imposition of corporal punishment on the child is not in consonance with right to life guaranteed under article 21 of the Constitution. Right to life has been construed by the courts widely. On a larger canvas right to life includes all that which gives meaning to life and makes it wholesome and worth living. It means something more than survival or animal existence. Right to life enshrined in article 21 also embraces any aspect of life which makes it dignified.

The court stated that right to life enshrined in article 21 also embraces many aspect of life which makes it dignified. It widened the scope and ambit of article 21 and observed:<sup>28</sup>

Article 21 in its expanded horizon confers medley of rights on the person including the following rights:-

1. A life of dignity.
2. A life which ensures freedom from arbitrary and despotic control, torture and terror.
3. Life protected against cruelty, physical or mental violence, injury or abuse, exploitation including sexual abuse.

All these rights are available to the child and he cannot be deprived of the same just because he is small. Being small does not make him a less human being than a grown up.

The court held that corporal punishment is not keeping with child's dignity. Besides, it is cruel to subject the child to physical violence in school in the name of discipline or education. Even animals are protected against cruelty. Cruelty to animals is punishable under section 11 of the Prevention of Cruelty to Animals Act, 1960. Beating, kicking, over-riding, over-driving, overloading, torturing or otherwise treating any animal so as to subject it to unnecessary pain or suffering is a criminal offence. The children surely cannot be worse off than animals.

It stated that the child has to be prepared for responsible life in a free society in the spirit of understanding, peace and tolerance. Use of

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28 *Supra* note 26 at 217.



corporal punishment is antithetic to these values. One cannot subject the child to torture and still expect him to act with understanding, peace and tolerance towards others and be a protagonist of peace and love. It was probably for this reason that Mahatma Gandhi said that “if we are to reach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with children. And if they will grow up in their natural innocence, we won’t have to struggle, we won’t have to pass fruitless idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which consciously or unconsciously, the whole world is hungering”. Child being a precious national resource is to be nurtured and attended with tenderness and care and not with cruelty. Subjecting the child to corporal punishment for reforming him cannot be part of education.

The court went on to elaborate that the United Nation’s Convention, to which India is a signatory, is a testimony of that change and the importance which is being attached to the child. Law cannot be static and should be in flux. The rights of the child cannot be ignored. National Policy on Education strives to eliminate corporal punishment from educational system. This is in consonance with the Convention on the Right of a Child and article 21 of the Constitution. Even in National Curriculum for Elementary and Secondary Education, it is stated that child’s individuality and dignity must be respected. His/her needs, interests, aptitude and abilities are to be adequately taken note of and awareness is to be created in him/her to human values, social justice and non-violence. The court observed:<sup>29</sup>

Fundamental rights of the child will have no meaning if they are not protected by the State..... Therefore, the State cannot derive any consolation from the fact that the violators are schools and not the State. The State must ensure that corporal punishment to students is excluded from schools. The State and the schools are bound to recognise the right of the children not to be exposed to violence of any kind connected with education. The National Policy in tune with the Convention has adopted child centered approach, where corporal punishment has

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29 *Id.* at 220.



no place in the system of education. Even otherwise, India being a signatory to the Convention is obliged to protect the child from physical or mental violence or injury while the child is in the care of any person, may be educational institution, parents or legal guardian.

The court directed the state to ensure that children are not subjected to corporal punishment in schools and they receive education in an environment of freedom and dignity, free from fear. The fundamental rights of the child will have no meaning if they are not protected by the states. The state is bound to protect law and the Constitution.

It is submitted that the judgment made marvelous observations in the direction of protection of human rights of children and to develop educational innovations and initiatives. The children are basis of the nation upon which the building of the nation has to be constructed. Provisions of corporal punishment and bodily pain in educational rules are arbitrary, unfair and unreasonable and violative of principles laid down by the apex court in various decisions. In place of corporal punishment and bodily pain the state should try to strengthen the psychological, mental, bodily and economic aspect of the children. The judgment relied on certain provisions of Convention on the Rights of the Child, 1989 and important decisions of the apex court. It is submitted that decision will afford a new approach to the teachers and state to protect the human rights of children during education and to take innovative steps to improve quality education in the country.

Furthermore the expression “development of education” is a broad term. There does not exist any reason as to why the said right should be limited, regulated, or curtailed in absence of any provisions contained in the Act or the Rules framed thereunder. When the law permits utilization of surplus fund of an institution for setting another institution the court should not come in its way from doing so.<sup>30</sup>

### **X The Constitution (Eighty-Sixth Amendment) Act, 2001**

The Constitution (Eighty-sixth Amendment) Act, 2001 may be called a milestone in the direction of children’s right to education. By this

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30 Per S.B. Sinha J in *Modern School v. Union of India* (2004) 5 SCC 583 at 617 para 65.



amendment Parliament has added articles 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”.

### **XI The Right of Children to Free and Compulsory Education 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 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.

Only a few countries in the world today legally ensure free and compulsory education- Chile and Bangladesh are among them. Few countries in the world have such a national provision to ensure both free and child- centered and child-friendly education to help all children develop their fullest potential. There are an estimated eight million children and young people between the age of six and 14 out of school. Without India, the world, cannot reach the Millennium Development Goal of having every child complete primary education by 2015.<sup>31</sup>

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31 Karin Hulshof, “Follow the learning curve” *The Times of India* (Allahabad) April 1, 2010 at 10. The author is UNICEF India representative.



The Right of Children to Free and Compulsory Education Act, 2009 has 38 sections and 1 schedule. It is divided into VII chapters.<sup>32</sup> This law makes it mandatory for schools to have one trained teacher for minimum of thirty students, a provision aimed at improving quality of school education.

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” as 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 first to eighth class.

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>33</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>34</sup>

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32 The Act received the assent of the President on August 26, 2009. It was published in the Gazette of India on August 27, 2009. It came into force on April 1, 2010.

33 *Id.*, s. 3 (1).

34 *Id.*, s. 3 (2).



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>35</sup> The central government and the state government shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.<sup>36</sup> The central government shall:<sup>37</sup>

- (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.

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>39</sup> No child shall be subjected to physical punishment or mental harassment.<sup>39</sup> Whoever contravenes these provisions shall be liable to disciplinary action.<sup>40</sup>

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

The Prime Minister Manmohan Singh on April 1, 2010 declared bringing the Act into force citing his own story to emphasize its significance, “I am what I am today because of education,” he said in a televised address to the nation. Education was his ticket out of a very modest life in a village part of Punjab that is now in Pakistan. “I had to walk a long distance to go to my school”, the Prime Minister stated, adding, and “I read under the dim light of a kerosene lamp.” No child will

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35 *Id.*, s. 6

36 *Id.*, s. 7(1).

37 *Id.*, s. 7(6).

38 *Id.*, s. 13(1).

39 *Id.*, s. 17(1).

40 *Id.*, s. 17 (2).



have to do that now, if the law is implemented properly. But it is not going to be easy, and it will not happen overnight. Challenges abound. Money, for one. The whole effort is going to cost Rs 1,71,000 crore over the next five years. The centre will provide 55 per cent of it and the states will have to come up with the rest.<sup>41</sup>

Now that India's children have a right to receive at least eight years of education, the question is whether it will remain on paper or become a reality. One hardly needs a reminder that this right is different from the others enshrined in the Constitution, in that the beneficiary — a six year old child- cannot demand it nor can she or he fight a legal battle when the right is denied or violated.<sup>42</sup>

The state with the help of families and communities has a legal obligation to fulfil the duty. Commenting on the provisions of the Act, Kapil Sibal HRD Minister writes:<sup>43</sup>

Today, we have reached a historic milestone in our country's struggle for children's right to education. The Constitution (86<sup>th</sup> Amendment) Act, 2002 making elementary education a fundamental right, and its consequential legislation, the Right of Children to Free and Compulsory Education (RTE) Act, 2009, comes into force today. The enforcement of this right represents a momentous step forward in our 100-year struggle for universalising elementary education.

He further writes:

Above all, people's groups, civil society organizations and voluntary agencies will play a crucial role in the implementation of RTE. This will help build a new perspective on inclusiveness, encompassing gender and social inclusion, and ensure that these become integral and cross-cutting concerns informing different aspects like

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41 *Hindustan Times* (Lucknow/Allahabad Metro edition), April 02, 2010 at 1&10.

42 Krishna Kumar, "India's children have a precarious right" *The Hindu*, Delhi, April 3, 2010 at 8.

43 Kapil Sibal, Minister of Human Resource Development, Government of India, "Joining hands in the interest of child" *The Hindu* (Delhi Edition) April 1, 2010.



training, curriculum and classroom transaction. A vibrant civil society movement can ensure that the rights of the child are not violated; it can amplify the voice of the disadvantaged and weaker sections of society. It can also improve programme outcomes by contributing local knowledge and technical expertise, and bringing innovative ideas and solutions to the challenges ahead.

The 86<sup>th</sup> Constitution amendment and the RTE Act have provided us the tools to provide quality education to all our children. It is now imperative that we, the people of India, join hands to ensure the implementation of this law in its true spirit. The government is committed to this task though real change will happen only through collective action.

## **XII Conclusion**

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; article 13 of the International Covenant on Economic Social and Cultural Rights, 1966 and articles 28 and 29 of the Convention on the Rights of the Child, 1989 have made provisions to recognize the human right to education and to improve quality culture in education.

The 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.

The importance of the fundamental right to education may be concluded in the marvelous words of Kuldeep Singh J of the Supreme Court:<sup>44</sup>

44 *Supra* note 12 at 1863.





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 as an object of the State under Article 38 of the Constitution. Can the objective which has 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 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.