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RIGHT TO EDUCATION AS A FUNDAMENTAL RIGHT UNDER ARTICLE 21A OF THE INDIAN CONSTITUTION AND ITS CONFLICT WITH MINORITY RIGHTS UNDER ARTICLE 30(1)

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ABSTRACT

Education is the most influential part of every human being for social restructuring. It is the key element towards fulfillment of any other right as its absence would hinder the realization of basic constitutional rights. Right to education has undergone several stages for being recognised as a fundamental right. Indian Judicial system through Unni Krishnan case had recognised Education as a fundamental right under Article 21 providing elementary education. As a result of the judicial pronouncement legislative recognition was given to educational rights through eighty sixth Constitutional amendment. Minority right was also incorporated within educational right, allowing minorities to set up educational institutions. This has given rise to a conflict where the focus has shifted from providing elementary education to imparting religious teachings. As a result of this the main goal of this provision had drifted from its core function leading to confusion in its implementation and diversion from its intended purpose.

Key Words

Elementary education, Judicial Pronouncement, Minority rights

INTRODUCTION

Education is the vital part that helps to foster awareness among the individuals. It enlightens the concept of equality and freedom among citizens leading to development of humanity. The nature of education system within a country is a major part for the overall development of that country. The drafting committee for the constitution understood the necessity and significance of the right to education, but because of the numerous other demands of the moment, education was not properly taken into account hence was considered as a constitutional right stating "*The State shall*

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*endeavor to provide free and compulsory education for all children until they complete the age of fourteen years."*²This meant that education was a goal rather than a fundamental right.

Right to education being the constitutional right was declared a fundamental right through the pronouncement of Supreme Court wherein the Court **agreed** that 'education is **essential for the right to life and dignity** under **Article 21**'³. The **Constitutional Amendment Act of 2002** was a landmark reform that made **Right to Education a Fundamental Right**. It inserted **Article 21A**, ensuring **free and compulsory education** for children aged **6 to 14 years**. This amendment was a response to the **Unni Krishnan case (1993)**, which recognized education as an essential part of **Right to Life (Article 21)**⁴

Education is protected by the Indian Constitution as a means for cultural preservation as well as a fundamental right. Every child between the ages of six and fourteen is guaranteed the fundamental right to free and compulsory education under Article 21A. Article 30(1), on the other hand, protects minorities' cultural and religious sovereignty by allowing them to create and run the educational institutions of their choosing. Supreme Court has got several occasions to discuss the nature of rights provided by article 30 (1), such as in *Re Kerala Education Bill*⁵, *Saint Xavier College v. State of Gujarat*⁶, *Saint Stephen's College v. University of Delhi*,⁷ *T.M.A. Pai Foundation v. State of Karnataka*,⁸ *Islamic Academy of Education v. State of Karnataka*.⁹ By examining the degree to which the state's duty to guarantee universal education intersects and occasionally clashes with minority communities' right to educational self-governance, this article aims to critically examine the inherent contradictions between these constitutional provisions.

HISTORICAL BACKGROUND

In India, the Right to Education (RTE) has evolved from long-standing customs to constitutional changes made after independence. Lower castes and marginalized groups were excluded from education in pre-colonial India, which was primarily restricted to the upper castes, particularly the Brahmins. Although subsequent institutions like Nalanda and Takshashila, which were Buddhist and Jain, provided wider access, education was still mostly out of reach for the average person.

² India Const. art. 45.

³ *Unnikrishnan Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645 (India).

⁴ Constitution (Eighty-sixth Amendment) Act, 2002, India Const.

⁵ AIR 1958 SC 956.

⁶ AIR 1974 SC 1389.

⁷ AIR 1992 SC 1630.

⁸ AIR 1994 SC 2772.

⁹ AIR 2003 SC 697.

The British brought modern education throughout the colonial era, but mostly to meet their administrative requirements. Reformers who supported inclusive and free education, like as Dadabhai Naoroji and Jyotiba Phule, had an impact on commissions like the Hunter Commission (1882). Early in the 20th century, mandatory education regulations were introduced by Indian governments such as Baroda. While the Sargent Plan (1944) called for free and mandatory education for children aged 6 to 14, Mahatma Gandhi's Wardha Scheme (1937) encouraged vocational, self-sustaining education.

Following independence, equitable educational access, minority rights, and assistance for underprivileged people were highlighted in constitutional provisions such Articles 29(2), 30(1), 41, 45, and 46. However, resource limitations caused implementation to lag. The framework for national education reform was established by the Kothari Commission (1964–1966), which recommended a Common School System, the 10+2+3 system, and 6% of GDP be set aside for education.

Education was added to the Concurrent List by the 42nd Constitutional Amendment (1976), which allowed both the federal government and the states to enact laws pertaining to education. This was a watershed moment that improved national coordination while also exposing administrative and financial difficulties. A long-standing desire for comprehensive and egalitarian education in India was realized with the passage of the 86th Constitutional Amendment (2002), which established the right to education as a fundamental right under Article 21A.

The 'Right of Children to Free and Compulsory Education Act 2009' (RTE Act) came into 1st of April, 2010, with much fanfare and an address by Prime Minister Manmohan Singh. And now, under Article 21-A of the Constitution, every child between the ages of 6-14 has a fundamental right to education, which the state shall provide 'in such manner as the state may, by law, determine'¹⁰.

The question of whether education should be a directive principle or a fundamental right was hotly debated during the Indian Constitution's construction. While some emphasized state control because of linguistic diversity, Maulana Azad, who was backed by Nehru, argued for central authority to guarantee uniform standards. In order to facilitate shared responsibility, the agreement kept education on the State List while granting the Center the authority to enact laws pertaining to technical and higher education through entries in the Union and Concurrent Lists.¹¹

¹⁰ S K Joshi Journey of Right to Education: A Historical perspective II/IX ISSN 2278 (2013)

¹¹ Constituent Assembly Debates, Vol. VII, 8 Dec. 1948, at 865 (India).

JUDICIAL RECOGNITION OF RIGHT TO EDUCATION AS A FUNDAMENTAL RIGHT

An important and vital milestone in the development of Indian constitutional law was the judiciary's participation in transforming education from merely a constitutional objective to a basic right. The judiciary elevated the right to education from a Directive Principle of State Policy to an enforceable fundamental right through a series of judicial pronouncements, interpreting it as latent in Article 21—the right to life. The 86th Constitutional Amendment and the adoption of Article 21A were made possible by this judicial activism, which also guaranteed accountability in its application. Judiciary interpreted the provision widely and included many changes for the proper implementation of this provision. It had also helped to expand and strengthen the scope of RTE Act and to provide proper education to children.

The journey towards education began at the High Court level, where **education was first recognized as a fundamental right in *Anand Vardhan Chandel v. University of Delhi***,¹² the Delhi High Court held that participating in university activities, including student union elections, forms part of the broader right to education, which is protected under **Article 21**. This was one of the earliest recognitions of education as a facet of the right to life and liberty. In ***Bapuji Educational Association v. State***¹³, the Karnataka High Court reinforced that the right to both receive and impart education is sacred and falls within the scope of Article 21. However, these rulings, while significant, were not binding nationwide.

Later on in 1992 the Supreme Court had given Nation wide recognition to right to education mainly through two cases, wherein the Supreme Court in the case of ***Mohini Jain v. State of Karnataka (1992)***¹⁴ ruled in this case that even though the Right to Education as such has not been protected by the Constitution as a fundamental right, it is obvious from the Preamble and the Directive Principles of the Constitution that the state was intended to provide education for its citizens. Additionally, they ruled that private educational institutions' collection of capitation fees violated the Right to Education that is implied by the Rights to life, human dignity, and equal protection under the law.

¹² AIR 1978 Del 308 (314)

¹³ AIR1986KANT119

¹⁴ 1992 AIR 1858

Later through the case of *Unni Krishnan v. State of Andhra Pradesh (1993)*¹⁵, the **five-judge bench** of the Supreme Court partially modified the ruling in **Mohini Jain's case** and made the following key observations wherein right to Education was made a fundamental right with Limitations, the Court **agreed** that education is **essential for the right to life and dignity** under **Article 21**. However, it ruled that the **fundamental right to education applies only up to the age of 14 years. Beyond 14 years**, the right to education is **subject to the State's economic and financial capacity**. Court also held Article 45 is enforceable right until the age of 14.

Thus, through Unnikrishnan case the status of right to education become more clear and accurate by limiting this right up to 14 years of age and beyond which was dependent on social and economic condition of the corresponding state. This Judgement also linked Article 21 with Article 45 pronouncing education must be free and compulsory up to age of 14 and made it the responsibility of state. It also made proper limitations upon fees collected by private institutions by setting reasonable regulation; however, the practice of charging capitation fees was declared unlawful.

CONFLICTS IN ARTICLE 21A AND ARTICLE 30(1)

Article 21A deals with educational rights of every child under the age of 14 whereas Article 30(1) deals with cultural rights of minority which gives them the authority to set up educational institutions of their choice. As per prior article, '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'.¹⁶Whereas minority rights include 'All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice'.¹⁷Hence it is clear that both are related to educational right but with a difference where the former is connected to individual right and later is a community right.

As per Article 21A the words 'free and compulsory' education, 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. 'Compulsory education' casts an obligation on the appropriate Government and local authorities

¹⁵ 1993 AIR 2178

¹⁶ India Const. art. 21A.

¹⁷ India Const. art. 30(1).

to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group.

With this education in India has moved to another step along with implementation of Right to Education Act, which is an act of Parliament of India enacted on 4th August 2009.

Regardless of caste, religion, class, or background, every child in India has the positive right to obtain free primary education under Article 21A of the Indian Constitution. Since fundamental rights are exempt from the doctrine of waiver, this right cannot be compromised. Only basic education is covered by the clause in Article 21A; religious or specialized types of instruction are not allowed.

On the other hand, minority communities are permitted to create and run their own educational institutions under Article 30(1). The interests and preferences of the various minority groups can be matched with the kind of education provided by these establishments. Institutions created under Article 30(1) are not required under the constitution to offer elementary education, as required by Article 21A.

Another major conflict between these two articles is that the primary focus of **Article 21A** is to ensure **basic elementary education** to all children. This provision does not cover religious teachings or it does not include any form of specialized teachings or instruction. On the other hand, educational institutions established under **Article 30(1)** of the Constitution is under the autonomy to provide any kind of education, especially religious education that reflects the interests and needs of the minority community they represent. When viewed independently, there is no constitutional obligation requiring these minority institutions to offer elementary education as defined under Article 21A. The actual goal of guaranteeing that every child has access to high-quality primary education is thus hampered by this circumstance, which leads to a notable discrepancy in the efficient application of Article 21A and the Right to Education (RTE) Act.

CONFLICTS FOR RECOGNITION AS A MINORITY INSTITUTION

In *Re Kerala Education Bill*¹⁸ the Supreme Court has provided as under: What the article say and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities, will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out

¹⁸ 1959 ISCR995

in the world fully equipped with such intellectual attainments as will make them fit for entering the public services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the Article leaves it to their choice to establish such educational institutions as will serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children.

The next thing to note is that the Article, in terms, gives all minorities, whether based on religion or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice.

In 2014 in *Pramati Educational and Cultural Trust v. Union of India*,¹⁹ a constitutional bench case, Supreme Court held that 'Right to Education Act 2009, cannot force minority educational institutions to admit student from the other communities to enforce the state's aim of "free" and compulsory education to "all". But the court reiterated that regulatory measures can be applied by the state to all educational institutions including aided and unaided minority educational institutions.

Court has repeatedly held that the State has no power to interfere with the administration of minority institutions and can make only regulatory measures and has no power to force admission of students from amongst non-minority communities, particularly in minority schools, so as to affect the minority character of the institution.

Based on the Supreme Court's guidelines as well as other criteria, states have come up with vastly different definitions of what constitutes a minority school. Some states such as Andhra Pradesh,²⁰ Haryana,²¹ and Karnataka have criteria based on both management composition and student strength, though the minimum proportion of students from the minority community varies from 70% in Andhra Pradesh to 25% in Karnataka. In Karnataka, the percentage was actually reduced

¹⁹ AIR 2014 SUPREME COURT 2114

²⁰ Department of Minorities Welfare, Andhra Pradesh, 'Certain Guidelines for Issuing Minority Status Certificate for Making Admissions and Appointments etc. in Minority Educational Institutions' (GO 2004, 1) accessed 6 November 2015.

²¹ Director of Secondary Education, Haryana, 'Policy Guidelines for Grant of NOC to Minority Educational Institutions in Haryana' accessed 6 November 2015.

from 75% in 2012 to just 25% in 2014.⁴⁴ Other states such as Rajasthan do not have any requirement on student strength while the West Bengal criteria simply state that ‘as many seats as possible’ shall be filled by students from the eligible minority community.²²

According to the Supreme Court, minority educational institutions may be regulated by the state, and doing so does not always mean that their rights under Article 30 of the Constitution are being violated. The state can require that a specific proportion of seats at government-aided minority institutions be set aside for students from non-minority communities, according to landmark rulings like *T.M.A. Pai*. However, subsequent decisions in the *Society and Pramati* cases, which provided minority organizations with more extensive exemptions, seem to contradict this stance. Even though the majority of its students do not belong to the minority group they claim to represent, many schools have started to identify as minority colleges throughout time. For instance, the proportion of minority students to set up a minority institution in Karnataka was lowered from 75% to merely 25%.

In the past, getting government assistance or backing from related religious or cultural organizations was frequently required to be recognized as a minority institution. Additionally, it gave schools the ability to give admission preference to students from the relevant minority group. The term "minority school" in currently scenario is used to exempt such establishments from adhering to the Right to Education (RTE) Act, which is intended to protect every child's fundamental right to education, following the *Society and Pramati* rulings.

The RTE Act's ability to be effectively enforced has been significantly impacted by this wide exemption. There is increasing abuse of this designation in the absence of a specific and unambiguous definition of what constitutes a minority school. It is now more challenging to discern between organizations that were founded with the intention of serving a minority group and those who are merely attempting to obtain minority status in order to get around the RTE rules.

Therefore, in order to prevent abuse and guarantee that the constitutional promise of universal education is kept, there is an urgent need for clear, stringent standards that define what qualifies as a minority institution.

²² Higher Education Department, Karnataka, Order 2014 (GO 2014, 1216). ⁴⁵Minority Affairs and Madrasah Education Department, West Bengal, ‘Guidelines for Recognition of Educational Institution as Minority Educational Institution in West Bengal’ (GO 2008, 942-MD) accessed 6 November 2015.)

CONCLUSION

The most basic right that every person pursues for the advancement of the country is education. The judiciary upheld the significance of education and was instrumental in enforcing it as a fundamental right. Every child in the country would have equal access to high-quality education, regardless of background, according to the Indian Constitution. Article 30(1) aims to conserve India's rich diversity by enabling minority populations to maintain their culture and identity via education, while Article 21A embodies this objective by ensuring free and compulsory education for children aged 6 to 14.

The rights of minorities were enshrined in the original constitution before those of education. As a result, courts typically prioritize minority rights over the educational rights outlined in Article 21A. Allowing religious freedom of education without providing primary education can undermine the entire scope of the education provisions. The judiciary must properly interpret the roles of both articles. Both of these articles must be properly balanced, and abuse of Article 30(1) in the name of minority protection must be avoided to prevent the spread of terrorism or religious activities that incite animosity between people. In addition to being a legal loophole, the growing abuse of minority status by institutions to evade their obligations under the Right to Education Act is a betrayal of the principles of equity and inclusion. However to maintain the pluralism that is the foundation of our democracy, minority rights must be upheld and protected.

Therefore, a balanced approach must be maintained, and this protection should not be a haven for avoidance. Minority rights must be appropriately preserved without even undermining the fundamental nature of educational rights. Because many institutions utilize the motto of minority to avoid various responsibilities that are not fulfilled by this provision, this problem continues. Therefore, this calls for strong legal frameworks, clear and consistent criteria for granting minority status, and a resolute commitment from the State to provide all children's education—especially the most vulnerable—top priority. Thus, by combining the two rights that constitute the foundation of the Indian constitution, all children will receive a high-quality education.