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# **ROLE OF JUDICIARY IN THE DEVELOPMENT OF RIGHT TO EDUCATION**

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## **ABSTRACT**

Education is the spine of human civilized society. It nourishes the intellect, wisdom and understanding of an individual which helps to develop the dignity of an individual. It plays a significant part in the holistic development of the nation.

With the intention of implementing the concept of social justice envisioned under the Constitution with the same spirit, Article 21A was inserted to the Constitution by 86<sup>th</sup> Constitutional Amendment Act, 2002, followed by the Right to Education Act, 2009 which made free and compulsory education a fundamental right for all the children of 6-14 years of age, to ensure the development of children and eventually the nation.

It is pertinent and worth mentioning here that in the entire journey of education, from acknowledging it as a right to passing a law for the same, the role of the judiciary has been laudable. The Courts in their plethora of decisions established that the Right to Education is a fundamental right envisaged under Article 21 of the Constitution and thus, paved the way for enactment of legislation on the same.

The article discusses the gradual development of the right to education in India in the light of the landmark decisions pronounced by the Courts. For the convenience of reading, the article has been divided into three parts: the first is the introduction which is a brief introduction of the topic, the second part is all about the evolution of the said right in the light of various judgments of Courts, and the final part is the conclusion in which the crux of the analysis has been given in concise.

## **INTRODUCTION:**

Education is the most cardinal part of an individual's life. It is the facade of accomplishment and excellence in man<sup>1</sup>. It imparts the values which add to the magnificence of an individual<sup>2</sup>

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<sup>1</sup>Mr. Ravindra Kumar & Dr. Preeti Mishra , *Right to Education: A critical evaluation of the right of children to free and compulsory education Act 2009 in the light of 4A's framework*, BHARATI LAW REVIEW, (July 03, 2020, 1:25 AM), <http://docs.manupatra.in/newslines/articles/Upload/538B0C53-24D2-4979-BBE8-B58D52050E5D.pdf>.

<sup>2</sup>Uma, *Right to Education (RTE): A Critical Appraisal*, IOSR (JHSS), Jan. - Feb. 2013, at 55.

that eventually plays a decisive part in transforming a society into a civilized nation, thereby, accelerating the advancement of the country in every circle of national activity<sup>3</sup>.

Right to Education is indeed an essential human right<sup>4</sup>. The Constitution framers were very well known to this fact and that is why **Article 41, 45, etc. were incorporated in the Constitution under the Directive Principles of State Policy to make sure that the educational needs are all around catered by the State**<sup>5</sup>. Later, Article 21A was embedded in the Constitution by the 86<sup>th</sup> Constitutional Amendment Act, 2002 which guarantees free and compulsory education to all the children of 6-14 age group. The Right to Education serves as a building block to ensure that every child has his or her right to get a quality elementary education<sup>6</sup>.

The Constitution of India in its preamble entails the expression “social justice”. This connotes that the Constitution is devoted towards establishing social justice to all its citizens and this can be realized only with the help of education. This is the only instrument with the help of which this objective can be accomplished. Understanding this, the judiciary of India adopted an active approach to ensure that education gains more significance in the society and thus, acquires its justifiable respectable position under the Constitution, thereby guaranteeing that education is accessible to all the citizens. The role assumed by the judiciary in this entire journey is praise-worthy.

### **DEVELOPMENT OF THE STATUS OF ‘EDUCATION’ IN INDIA:**

The judiciary had assumed a crucial role in this intact course of acknowledgment of the right to education to the passing of a law on the same. As early as in 1992, a substantially massive legal breakthrough was accomplished when the Supreme Court expanded the ambit of Article 21 of the Constitution in the case of **Mohini Jain v. State of Karnataka**<sup>7</sup> and held that the ‘right to education’ is coincident to the fundamental rights bestowed under Part III of the Constitution and that the right spilled out of the right to life and personal liberty secured by

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<sup>3</sup>Udaya Kumar S, Chapter-I Introduction, *A study on Right to Education in India with reference to the right of children to free and compulsory education Act 2009: An Analysis*, SHODHGANGA: A RESERVOIR OF INDIAN THESES, (July 03, 2020, 1:15 AM),

<https://shodhganga.inflibnet.ac.in/bitstream/10603/183067/4/chapter%201.pdf>.

<sup>4</sup>Dipak Kumar Mukherjee v. Kolkata Municipal Corporation, A.I.R. 2013 S.C. 927. (India)

<sup>5</sup>Mayank Sharma, *Right to Education in India*, ACADEMIKE, (July 03, 2020, 1:37 AM),

<https://www.lawctopus.com/academike/right-education-india/>.

<sup>6</sup> *Right to Education*, DRISHTI, (July 10, 2020, 7:13 PM), <https://www.drishtias.com/to-the-points/Paper2/right-to-education>.

<sup>7</sup>Mohini Jain v. State of Karnataka, (1992) 1 S.C.R. 658.



Article 21 of the Constitution as the existence of dignified gratification of life, or the comprehension of other rights, without sufficient education<sup>8</sup> is impracticable and unattainable<sup>9</sup>. The article is thus, one of the facets of right to personal liberty and is crucial for the appropriate blossoming of man, his mind and personality.

Afterward, in the case of **Jayshree Ravi v. University of Delhi**<sup>10</sup>, the Court conversed their conscious concurrence with the observation made by the Apex Court and held that every citizen is entitled to 'right to education' under the Constitution and the State must establish educational institutions to facilitate the citizens to be benefitted from the said right.

Subsequently, another considerable judgment by the Apex Court was **Unnikrishnan** judgment in 1993, which profoundly changed the status of Article 45. In this judgment<sup>11</sup>, the Court observed that Article 45 in Part IV must be construed in 'harmonious construction' with Article 21 in Part III of the Constitution, as Right to Life loses its worth without education. The Apex Court made an influential interpretation noting that "it is well settled by the preceding verdicts of this Court that the provisions of Part III and IV are ancillary and corresponding to one another and the fundamental right must be perused in the light of the directive principles....there is no discrepancy between the directive principles and the fundamental rights....there is no difficulty in putting a harmonious construction that progresses the intent of the Constitution." "...The right to education flows directly from right to life..." Hence, the Supreme Court affirmed that Article 45 has attained the status of a Fundamental Right.<sup>12</sup> After this, in 1995, in **State Himachal Pradesh v. State Recognized and Aided Schools Managing Committee**<sup>13</sup>, the Court pronounced that the Right to education being a fundamental right mandates the State government of Himachal Pradesh to afford free education to all the children studying in aided non-government middle schools till they complete the age of 14 years<sup>14</sup>. The

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<sup>8</sup>Chapter 4, *Landmark judgments on RTE : An Analysis*, SHODHGANGA: A RESERVOIR OF INDIAN THESES, (July 03, 2020, 2:09 AM), [https://shodhganga.inflibnet.ac.in/bitstream/10603/123918/8/08\\_chapter%204.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/123918/8/08_chapter%204.pdf).

<sup>9</sup>Bandhua Mukti Morcha v. Union of India & Ors., (1997) 10 S.C.C. 549.

<sup>10</sup>Jayshree Ravi v. University of Delhi, A.I.R. 1993 Del 117. (India)

<sup>11</sup>Unni Krishnan J.P. v. State of Andhra Pradesh, A.I.R. 1993 2178.

<sup>12</sup>Chapter 4, *Landmark judgments on RTE : An Analysis*, SHODHGANGA: A RESERVOIR OF INDIAN THESES, (July 03, 2020, 7:02 PM), [https://shodhganga.inflibnet.ac.in/bitstream/10603/123918/8/08\\_chapter%204.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/123918/8/08_chapter%204.pdf).

<sup>13</sup>State Himachal Pradesh v. State Recognized and Aided Schools Managing Committees, (1995) 4 S.C.C. 507. (India)

<sup>14</sup>Udaya Kumar S, Chapter-VI Judicial response on Right to Education, *A study on Right to Education in India with reference to the right of children to free and compulsory education Act 2009: An Analysis*, SHODHGANGA: A RESERVOIR OF INDIAN THESES, (July 03, 2020, 7:57 PM), <https://shodhganga.inflibnet.ac.in/bitstream/10603/183067/9/chapter%206.pdf>.

Kerala High Court followed this view in **P.Cherriyakaya v. Union of India**<sup>15</sup>, where the court held that right to education is inherent in the right to life and personal liberty envisaged in Article 21 of the Constitution and stated that the right is to be comprehended in the backdrop of Articles 41 and 45 of the Constitution. Later, the Apex Court in **M.C. Mehta v. State of Tamil Nadu &Ors.**<sup>16</sup>, observed that after the Unnikrishnan judgment, Article 45 has acquired the status of a fundamental right. For a right to be considered as fundamental right, it need not necessarily be cited under Part III of the Constitution, as the provisions of Part III and Part IV are supplementary and complementary to each other<sup>17</sup>.

Later, the Supreme Court ruled that right of education also means that a citizen has a right to call upon the state to provide educational facilities within the limits of its economic capacity and development<sup>18</sup>. In relation with the same, the Apex Court in the case of **State of Bihar and others v. Project Uchcha Vidhya, Sikshak Sangh and others v. Union of India**<sup>19</sup>, observed that institution of High Schools may not be a constitutional obligation, but education as an element of human growth unquestionably is a human right. Analogous observations were made in the case of **Election Commission of India v. Sant Merry's School & Others**<sup>20</sup>.<sup>21</sup>

The Apex Court through these judgments gave a liberal, unrestrained and purposive elucidation to Article 21 and positioned it on a high plinth. After the Unnikrishnan judgment, a series of PILs were filed and a lot of fuss was there until 2001 when the 86<sup>th</sup> Constitutional Amendment Bill, 2002 was presented before the Lok Sabha and amidst all the turmoil, in and out of Parliament, a consensus was arrived by all the political parties and the bill was passed and, thus, Article 21A was added to Part III of the Constitution that strives to make free and compulsory education a Fundamental Right for all children in the age group 6-14 years<sup>22</sup>. Following this, in October 2003, a bill was drafted but discarded. Later on, the Right of Children to Free and Compulsory Education Bill, 2008, passed in both Houses of Parliament

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<sup>15</sup> P.Cherriyakaya v. Union of India, A.I.R. 1994 Ker 27.

<sup>16</sup>M.C. Mehta v. State of Tamil Nadu &Ors., A.I.R. 1997 S.C. 699; (1996) 6 S.C.C. 756.

<sup>17</sup>Mayank Sharma, *Right to Education in India*, ACADEMIKE, (July 05, 2020, 2:04 AM), <https://www.lawctopus.com/academike/right-education-india/>.

<sup>18</sup> Modern School v. Union of India, A.I.R. 2004 S.C. 2236.

<sup>19</sup> State of Bihar and others v. Project Uchcha Vidhya, Sikshak Sangh and others v. Union of India, (2006) 2 S.C.C. 545.

<sup>20</sup> Election Commission of India v. Sant Merry's School & Others ,A.I.R. 2008 S.C. 655.

<sup>21</sup> Dr. Sanjay Sindhu, *Fundamental Right to Education in India: An Overview*, GIFRE (GLOBAL JOURNAL OF INTERDISCIPLINARY SOCIAL SCIENCES), Sep.-Oct. 2014, at 93.

<sup>22</sup>*The Constitution (Eighty-sixth) Amendment Act, 2002*, INDIA.GOV.IN NATIONAL PORTAL OF INDIA, (July 3, 2020, 6:55 PM), <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-sixth-amendment-act-2002>.

in 2009. The Act received President's assent on 26<sup>th</sup> August 2009 and came into effect on 1<sup>st</sup> April 2010.<sup>23</sup>The Act characterizes the consequential legislation conceived under Article 21-A, which provides that every child has a right to full-time elementary education of palatable, adequate and impartial quality in a conventional school which not merely meets but pleases certain fundamental norms and standards.<sup>24</sup>

## **CONCLUSION:**

Education is basically a tool, given in the hands of people, with the help of which they can make incredible and unanticipated changes in society. It helps in enhancing human dignity, wisdom and understanding. It is the key factor that empowers people and contributes to the realization of all the other rights and ensures the development of the nation.

It is quite apparent that the judiciary has triumphed in executing its responsibilities of the legislature also. The judiciary has very well performed its role of custodian of the Constitution. The judiciary has shown its commitment to social justice and accordingly recognized right to education as an essence to social transformation and its various judgments reflect the same. The journey of the right to education from being initially in the directive principles under Part IV to be pronounced as a fundamental right under part III of the Constitution is certainly the pinnacle of judicial activism and one of the finest contributions of the Supreme Court, which helped India in making better endeavors in uplifting the condition of children.

Although it has now been established that the Right to Education is co-existent and inherent under Article 21 of the Constitution, as embarked by the Courts in their judicial mandates, however, more needs to be done. Mere having an act is not enough; the focus needs to be budgeted on its implementation and enhancing accountability and transparency to make it a genuine and unadulterated accomplishment; because then we only can take India to other heights.

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<sup>23</sup>*Right of Children to Free and Compulsory Education Act, 2009 (Right to Education Act)*, VIKASPEDIA, (July 4, 2020, 1:36 AM), <https://vikaspedia.in/education/policies-and-schemes/right-to-education/right-to-education-act>.

<sup>24</sup>*Right to Education*, MHRD, (July 4, 2020, 1:39 AM), <https://mhrd.gov.in/rte>.