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CPJ LAW JOURNAL

Volume XIII, Issue No. 1

Jan.-2023

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MESSAGE FROM CHAIRMAN'S DESK

We, at CPJ College, continuously strive to enhance our programs to stay at the forefront of higher educational trends. Our accreditations ensure that high academic standards are maintained. We inculcate amongst students a spirit to strive and achieve the desired goals and one of the way is providing a Law journal for legal fraternity.

At CPJ School of Law, we have provided a platform wherein they can flourish their caliber and potential to the maximum. This encouragement is provided to them by highly skilled and experienced faculty who play the role of a mentor and to guide them to their way to success.



I congratulate the Editorial Board for this issue of CPJ Law Journal and my sincere thanks to Advisory Board also for supporting and giving their valuable suggestions and insights.

This Vol. XIII, Issue No. 1 of CPJ Law Journal is a clear reflection of our years of sincere working for the Law students, Law Academicians and respected members of the legal fraternity.

Sh. Subhash Chand Jain

Chairman

**CPJ College of Higher Studies
& School of Law**

MESSAGE FROM GENERAL SECRETARY'S DESK

In today's competitive and globalized world, having a professional and specialized education becomes an imperative for future success. We, at the CPJ College of Higher Studies and School of Law, are committed to providing academic excellence in the fields of Management, Commerce, IT and Law. The research skill has been the most important part of legal field along with other intern disciplinary subjects. Keeping this in mind, we sought to create a platform which appreciates and accepts each and every idea and thoughts which are there in the form of treasure.



The initiative of the Chanderprabhu Jain College of Higher Studies & School of Law in regularly publishing CPJ Law Journal containing insightful research papers is an appreciable attempt by the Editorial Team in spreading legal awareness and knowledge. Quality legal research and standard publications constitute one of the important mandates of CPJ Law journal.

I am confident that readers will find the present issue of the Law Journal interesting and thought provoking. My highest regards to the Editorial Board to have meticulously worked and created this impeccable issue. We are also indebted to all our authors whose contributions in the form of article, legal studies etc. have made CPJ Law Journal listed with UGC CARE.

We hope that this Jan.-2023, Volume XIII, Issue No. 1 of our prestigious Journal will make a strongmark in the legal research fraternity.

Dr. Abhishek Jain
General Secretary
**CPJ College of Higher Studies
& School of Law**

MESSAGE FROM EDITOR-IN-CHIEF

My Message for CPJ Law Journal-2021 was penned during the second phase of the Covid-19 Pandemic in April-2021. More than a year down, we are still undergoing a tough and unprecedented time ever witnessed by the mankind. The gruesome impact of Covid-19 has brought drastic changes in the ways and working of the Education Industry and the Academia. The shift to e-learning methodology and opening up of new avenues is indeed a commendable step towards the same.



While welcoming you to the Jan.-2023 (Vol. XIII, Issue No. 1) edition of **CPJ Law Journal**, it is, indeed, our honour to share that CPJ Law Journal is now a **UGC Care** Listed Journal. It is a Peer reviewed Journal that aims to create a new and enhanced forum for exchange of ideas relating to all aspects of Legal Studies and assures to keep you updated with recent developments and reforms in the legal world in the form of Articles, Research Papers, Case Studies etc. I believe that learning is a never-ending process and one continues to discover oneself in this journey. In this process of learning, research studies have always been challenging with positive outcomes witnessed as a result of meticulous and persistent efforts. Researches in the field of Law have benefitted both the Industry and the Academia and it has always been our continuous endeavor to publish such scholarly Research Papers in this Annual National Journal of **CPJ School of Law**.

CPJ Law Journal is an open access Journal that aims at providing high-quality teaching and research material to Academicians, Research Scholars, Students & Law Professionals. This issue Includes papers from the Contemporary areas of Research in International Law, Corporate Governance, Data Privacy, Consumption Tax, Love Jihad, Juvenile Justice System, Sexual & Domestic Violence, Property Rights, Human Trafficking, Adultery Law, International Refugee Law, Adoption Law & Freedom of Expression.

We appreciate the tremendous response towards our “**Call for Papers**” and this compelled us to publish our CPJ Law Journal Bi-Annually (in January & July) from the year 2022. We once again welcome contributions in the form of unpublished original Articles, Case Studies or Legal Research Reviews for publication. We are obliged to our widespread readership for their continued support and encouragement in our endeavor to strengthen every issue of **CPJ Law Journal**. The credit to this achievement also goes to all Authors, Law Academicians, Editorial Board & Advisory Committee who have contributed to make CPJ Law Journal a quality journal. We highly solicit to have your continuous support and feedback for further growth of the Journal with quality learning for all the readers.

With this note, welcome once again to **CPJ Law Journal**, Jan-2022 edition!!

Mr. Yugank Chaturvedi
Director General
**CPJ College of Higher Studies
& School of Law**

MESSAGE FROM EDITOR

It is with pride and enthusiasm that I present Volume XIII, Issue No. 1, (Jan.-2023) of the CPJ Law Journal (CPJLJ). It consists of words and complete analysis of the articles/research papers covered. This issue of the Journal touches upon a number of issues worthy of note in present scenario. A highly evolved and complex justice system makes enormous demands on the people who work in it. Therefore, academicians, law students and legal professionals need upto date information as well as professional analysis on land mark judgments. CPJLJ delivers this vital information to them.



It is pertinent to mention that CPJLJ is a blind two fold Peer Reviewed Annual Journal. Accordingly, it brings to the readers only selected articles/research papers of high standard and relevance. In a country governed by the rule of law, it is important that awareness about the research is created among those who are supposed to be concerned with these researches. Academicians can play a very important role in the development of the higher research, and there is need to encourage young minds to participate in development of research based on the needs of the changing society and technical advances. This Journal provides an excellent platform to all the Academicians and Research Scholars to contribute to the development of sound research for the country.

I would like to express our gratitude to the Editorial Advisory Board and the Panel of Referees for their constant guidance and support. Appreciation is due to our valued contributors for their scholarly contributions to the Journal. Finally, and perhaps most importantly, I want to thank the entire editorial team of the CPJ Law Journal for the hard work, positive attitudes and dedication that make this Journal excellent on so many levels.

I, therefore, hope that this issue of CPJLJ will prove to be of interest to all the readers. We have tried to put together all the articles/research papers coherently. We wish to encourage more contributions from academicians as well as research scholars to ensure a continued success of the journal.

Prof. (Dr.) Amit Kr. Jain
Director, CA

MESSAGE FROM CO-EDITOR

It is the supreme art of the teacher to awaken joy in creative expression and knowledge- Albert Einstein

Dear Readers,

We are presenting to you Jan.-2023, Vol. XIII, Issue No. 1 of CPJ Law Journal. Our aim behind introducing this journal is to create a new forum for exchange of ideas on all aspects of legal studies and we assure to keep you updated with recent developments in the legal world. Future scope of journal is open to your suggestions. You are invited to contribute for the Journal and your submissions should include original research articles, criticism and commentaries on legal aspects.

The CPJ Law Journal is a UGC Care Listed journal which is published annually. The journal publishes scholarly articles and commentaries on various aspects of law contributed by jurists, practitioners, law professors and students. The primary aim of this journal is to provide close insights into the various contemporary and current issues of law to the readers. Contributing to this journal provides an opportunity to authors to take an in-depth study in specific areas of the law and enhances their skills in Legal Research Writings and Analysis.

Talking about this Journal, it is great to be part of such a great initiative which provides all possible services to legal fraternity. Since it is not just confined to being a paper collection activity, rather it aims at providing services for all round development of law students, professionals and all others in this field. Also, being from law background, we feel that it is our prime duty to contribute for development of the society and we have taken many initiatives in this regard also by organizing various events of social relevance as well. Many exciting years for the journal have passed. Some notable developments might have been recognized by most of our readers but others probably have passed unnoticed to the majority. Therefore, this CPJ Law Journal is not only a retrospective on the previous years but also a good opportunity to summarize recent developments.

I hope you find this issue of Journal informative and interesting. The success of this enterprise depends upon your response. We would appreciate your feedback. You are also requested to submit your articles for the next issue January 2023 of CPJ Law Journal.

Dr. Shalini Tyagi

Dean

CPJ School of Law



MESSAGE FROM HON'BLE JUSTICE RAJESH TANDON

Any democratic country with rule of Law as its core value principle must guarantee Freedom of Speech and Expression. It is considered the mother of all freedoms. At times, the right to ask is more important than the right of life. Unless we express, we cannot live. It is, therefore, the social responsibility of any Educational Institution to further the understanding of Democratic Governance. It is in this context that a journal like CPJ Law Journal added importance and relevance.



The CPJLJ is being launched with the aim of remedying the lack of authoritative academic writing devoted to the critical analysis of Law and Legal Institutions. It is intended to serve as a platform where Students, Academicians, Lawyers, Policymakers and Scholars can contribute to the ongoing Legal, Political Disciplinary research in the field. The Faculty of Law at CPJ aims at excelling in interdisciplinary research in the field of Law and other disciplines like Sociology, Political Science, Public Policy and Economics etc. As one of the first academic journals, it will have to look at the inter-disciplinary aspects between Law, Development and Society, which are three value-loaded terms in themselves. I believe that it is the obligations of the academia to initiate discussion, analyze the various issues that are being faced by India and the world at large and offer solution for the same. The CPJLJ provides a forum for interdisciplinary legal studies and offers intellectual space for ground-breaking critical research. It is not committed to any particular theory, ideology or methodology and invites papers from a variety of standpoints, ideologies, perspectives and methods. The journal aim to explore and expand the boundaries of law and legal studies.

I wish the CPJLJ and the Editorial Board success in all their endeavours and hope that they will keep up their academic work, which may provide some guidelines for the betterment of Socio-legal scenario in India in particular, and across the world in general.

Justice Rajesh Tandon

Former Judge

High Court of Uttarakhand

MESSAGE FROM SH. R.S. GOSWAMI

Dear Readers,

CPJ Law Journal is in its 12th year of continuous publication with a diverse, professional, highly engaged and expert global readership. This Law Journal is a box filled with original research-based papers, articles etc., which is an attempt to cover almost all the subjects relating to legal field.

Getting published is something all Law professionals strive to achieve, and it feels great to me that Chanderprabhu Jain College of Higher Studies & School of Law is providing that platform by bringing out the 12th Volume of the CPJ Law Journal with eagerness and enthusiasm.

The CPJ Law Journal Team deserves very high appreciation for this endeavor. I cherish my association with this journal since its inception and wish it all success and endurance. Such a journal for the practitioners, Law professors and Law students is the need of hour.



Adv. R.S. Goswami
Ex-Chairman
Bar Council of Delhi

MESSAGE FROM SH. MURARI TIWARI

I feel extremely exhilarated to be a part of CPJ Law Journal which aims to create all aspects of Legal Studies and also gives a highly readable and valuable addition to the recent developments and reforms in the legal world. It also helps to provide a different outlook to various legal issues that are prevalent in the contemporary society and also to extract exact solutions for the same. As Nelson Mandela said and I quote, "Education is the most powerful weapon which you can use to change the world."



The journal is a great way to invite one's thoughts for a fruitful experience in Legal Research and Drafting and especially for Academicians, Lawyers and the Law students as it has become a demanding area for the highly complex legal system. The relation between the Bar Council of India and Law Colleges/University of Delhi is exceptional and the Bar Council of India also promotes Legal Research such as conducting Seminars, Workshops, Conferences etc.

In my entire career as an Advocate, I have always affirmed with the idea that Journals and Research Work have quintessential means for advocating Societal Issues and thereby, changing the entire horizon of the Indian Legal system and for the betterment of Legal Fraternity.

I honor CPJ School of Law for giving me an opportunity to be a part of the Law Journal Advisory Board.

Adv. Murari Tiwari
Chairman, Enrolment Committee
Bar Council of Delhi

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Understanding Education As A Human Right In The Context Of Right Of Children To Free And Compulsory Education Act, 2009

Mr. T. Dev Joshi* & Prof. (Dr.) Reena Bishnoi**

ABSTRACTS

Role of education, is most important for the human beings, the social system, the countries and the world as a whole, as level of education creates rationality, a sense of responsibility, a collective sense of existence and wisdom transcending to equality, justice and peace for everyone. Education helps promote intellectual, social and moral democracy by laying the foundation of the excellent citizenry to be able to secure for them Justice, Liberty, and Equality and promote fraternity with secular values as also enshrined in the Preamble of the Indian Constitution. Our constitution has clear Directive principles which talked about 'free' and 'compulsory' education to be endeavored to be provided to all children up to 14 years of age in ten years from the date of the Constitution coming in force.

On the other hand, the Human rights are very crucial for the whole human mass for the required social order and governance, and therefore, necessary awareness about these rights and related duties and obligation thereof, are needed to be able to enjoy those in a proper and effective manner by one and all. This essentially, presupposes certain level and standard of education for appropriately understanding, using, enjoying and also to ordain self to related duties and obligations towards others attached with or incidental to their rights. All the rights primarily emanate from the Human rights to acquire the nature and the characteristics of either a Basic right or the Fundamental right or some special right.

Interestingly, it was the judiciary, which could deduce how our fundamental rights are interdependent and even could appreciate that certain fundamental rights have no meaning without the education and that how a very long period of forty four years has transformed a right towards education, which could not have been justified otherwise, into a right which can now be even enforced. With such judicial pronouncements, ultimately 86th Amendment Act, 2002, Article 21A was inserted in the Indian Constitution, in Chapter III, with its main aim

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to provide free and compulsory education to all children between the ages of 6-14 years as a matter of right. To effectively implement this fundamental right, the Right of Children to Free and Compulsory Education (RTE) Act, 2009 had got to be developed and passed, which took the responsibility for ensuring that the law is strictly enforced and the children get their right to be educated. "The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government, whereas it is the parents' responsibility to send the children to schools in the US and other countries".

Keywords: *Education a Human Right, Right to Education a Fundamental Right, Human Right and the RTE Act.*

EDUCATION AND ITS SIGNIFICANCE

The need of education, is not only important for an individual but also for the society that he or she is the part of. The more are the educated people, the better is going to be the society. Well learnt or informed or educated persons, are generally expected to have better knowledge about things and happenings, understand what is good or bad for them, what is proper or improper behavior, what would lead to a larger good etc. Similarly, well-educated societies have a better sense of order, behavior pattern, living standard, progressive and development driven mindset. Progressive societies grow in all aspects of life measures with the passage of time and attain prosperity and happiness. Role of education, thus, becomes most important for the human beings, the social system, the countries and the world as a whole, as level of education creates rationality, a sense of responsibility, a collective sense of existence and wisdom transcending to equality, justice and peace for everyone.

Education, thus, is the key driver to understand the meaning and the problems of life and the ways and means to solve it. Education also helps us to develop our innovative and creative faculties. Education is a very crucial type of freedom, as it enables an individual to lead a healthy and comfortable life. There is proven link of lack of education with poverty, deprivation, poor health, superstitions, under-development, orthodoxy, conservatism, population growth and lack of happiness etc. For a society to be progressive, growth and development for a larger good, education of all its members to the best of the level, is a mandatory expectation.

INFLUENCE OF EDUCATION ON THE DEMOCRATIC SYSTEM

For a democratic system like ours, education is a must, for its proper and effective functioning. Educated people can understand better the socio-economic conditions of the country and the way, those are being managed through the political system and be able to demand corrective measures from the leaders. The number of educated people and their level of education, has direct relationship with the quality of social order. Education helps promote intellectual, social and moral democracy by laying the foundation of the excellent citizenry to be able to secure for them Justice, Liberty, and Equality and promote fraternity with secular values. Education holds significant importance for any society. A society can progress and achieve requisite growth and

development only when the basic or fundamental rights of its citizens or members are fulfilled.

INDIAN CONSTITUTION AND THE EDUCATION

Our Constitution opens up with a deliberate emphasis on “We the people of Indian” to constitute India into a SOVERIGN, SOCIALIST, SECULAR, DEMOCRATIC REPUBLIC to secure JUSTICE, LIBERTY, EQUALITY and FRATENRITY. “It ensure all citizens equal rights regardless of their caste, religion, gender, place of birth, creed and other such factors. It becomes imperative for the government to provide a socially just environment to the people so as to enable them to perform their assigned tasks with desired diligence and care without any societal differentiation and restriction. A better way of ensuring equality in all these aspects related to justice is by providing them the required educational opportunities. On this basis, it can be inferred that improving literacy and providing adequate educational opportunities is the crux of fulfilling objectives and narrations made in the preamble of the Indian Constitution. Unless the people are properly educated, India cannot be turned into a Sovereign, Secular, Socialist, Republic and a Democratic nation in its true sense.”

Directive Principles of State Policy are in the form of instructions/guidelines to the governments at the center as well as states. Though these principles are non-justiciable, they are fundamental in the governance of the country. The idea of Directive Principles of State Policy has been taken from the Irish Republic. They were incorporated in the “Constitution in order to provide economic justice and to avoid concentration of wealth in the hands of a few people.” Therefore, no government can afford to ignore them. They are in fact, the directives to the future governments to incorporate them in the decisions and policies to be formulated by them. There were clear Directive principles which talked about ‘free’ and ‘compulsory’ education to be endeavored to be provided to all children up to 14 years of age in ten years from the date of constitution coming in force.

HUMAN RIGHTS AND THE EDUCATION

Human rights mean to refer to certain standards, which recognize and ensure the dignity of the human beings. These rights govern the manner in which individual human beings live in the society and relate with each other, apart from defining their relationship with the State and states obligations towards them. While using their Human rights, individuals are expected to respect and honor others rights too. In other words, every government, group of individuals and the individual person has no right to violate another’s right by doing something. These rights are governed by the principles of 1) Universality and inalienability- that all the human beings irrespective where they are located, are entitled to these rights. Neither can these be given up voluntarily nor can anyone take these away. 2) Indivisibility – That these rights, are inherent to the dignity of each and every human person, are of equal status with no hierarchy of rights and, are indivisible irrespective their nature like civil, political, economic, social or cultural etc. 3) Equality and non-discrimination – That by virtue of

the inherent dignity of each and every human being, all individuals are considered as equal, entitled to their human rights without discrimination of any kind whatsoever.

4) Participation and inclusion – That these rights enable each and every person, to get them entitled to participate and contribute actively, meaningfully and with full freedom in and for the enjoyment of their civil, political, economic, social and cultural development.

5) Accountability and rule of law – That these rights subject the States and all others, who are under obligation, to an accountability to comply with the norms and standards stipulated in various Human Rights Instruments. Since, these rights are very crucial for the whole human mass for the required social order and governance, necessary awareness about them and related duties and obligation thereof, are needed for their proper and effective enjoyment, which presupposes certain level and standard of education.

HUMAN RIGHTS AND FUNDAMENTAL RIGHTS

The primary contrast between fundamental rights and human rights is that the fundamental rights are particular to a specific nation, while human rights have universal application and an overall acknowledgment. Fundamental Rights and Human Rights are essential for the presence and improvement of people. It makes a superior domain and better living conditions for individuals, and in addition, they, protect their nobility. Human rights and fundamental rights are the key rules that remain at the basic premise of any fair and equivalent society.

FUNDAMENTAL RIGHTS AND EDUCATION

According to the Indian Constitution, there are six fundamental rights – “Right to Equality (Articles 14-18), Right to Freedom (Articles 19-22), Right against Exploitation (Articles 23- 34), Right to Freedom of Religion (Articles 25-28), Cultural and Educational Rights (Articles 29-30) and Right to Constitutional Remedies (Article 32).” There are certain features, which make these rights fundamental in nature and thus, distinctive from other rights. Constitution makers wanted to give the people of India maximum rights but due to the country’s social, economic, political and other conditions, it was not possible for them to give much to the people in the form of Fundamental Rights. Accordingly, whatever, they considered possible or feasible, they provided in the form of Fundamental Rights and the rest they incorporated in the form of Directive Principles with the desire that with the passage of time, these might become justiciable rights. It has also been established that Right to Equality 14 provides further protection to the Right to life and Personal liberty guaranteed under Article 21. A finer examination of Right to life and personal liberty reflect that both have an important bearing with the education so as to enjoy these rights meaningfully. The Apex court has observed that the term ‘life’ has been added to the context of ‘education’ because it clearly defines and segregates that education is the key for a healthy and comfortable life, besides stating that it is the duty of the government to ensure that access to basic education is provided to all the people.

The *Francis Corraile Mullin v. Administration, Union Territory of Delhi*¹ is a very good example in this regard. In this case, the Court decided that the right to life does not mean that a person should lead a life like the sort of an animal, instead the individual must be able to lead a healthy and comfortable life. The opportunity to lead a dignified life is the prime aspect in the right to life and right to education. Due to this reason, education is widely believed to be the key for developing personality of the people and thereby enabling them to live a healthy and comfortable life. The Supreme Court in the *Chameli Singh v. State of Uttar Pradesh*, stated that the Article 21 argues for the need to lead a healthy, civilized and decent lifestyle where right to education, food, water, medical care, shelter, decent environment are essentially available. In this regard, it can further be said that an individual can lead such a life only if he has been nurtured through the background with education. This way the concerned individual can develop a sense of life, which can then enable that individual to live and enjoy a comfortable and dignified life.

But the post-independence developments clearly indicate that the way education was accorded priority by the state, it has left much to be desired. It remained for a long time just a matter of Directive principle and that too, the indicated time frame with in which children of certain age group were to be covered for free and compulsory education, kept on extending. State could not evolve a will, for a long time that to address many problems of the country, education deserves to be a matter of right for the citizens, leave aside a fundamental right. In fact, it was the judiciary, which could deduce how our fundamental rights are interdependent and even could appreciate that certain fundamental rights have no meaning without the education.

EDUCATION A FUNDAMENTAL RIGHT

In the matter of *Mohini Jain*, which turned out to be a landmark case, a very important and pertinent question was raised as to “whether *the* right to education is actually guaranteed to the Indian citizens under the Indian Constitution?” In this regard, the Supreme Court observed that even though “life and personal liberty” is mentioned in the Article 21 of the Constitution, by implication these rights involve other rights as well for their proper and full enjoyment. Although, such other rights are essential for the full development of personality, they are not covered in Part III of the Constitution. Education being one of the factors which helps building a mental stature and in turns developing the overall personality of a person so as to understand what his rights are. This is how education got essentially integrated in Article 21 of the Indian Constitution. During this case, the Apex court had to deal with three very significant and important questions. One question was if there is a right to education actually guaranteed to the Indian people under the Constitution? Second question was that assuming that the right to education was guaranteed in the Constitution, whether asking for capitation fees is a violation of the right to education? And finally, the third question was whether charging the capitation fees by the educational institutes is arbitrary, unjust, unfair and thus, violates Article 14 of the Indian Constitution.

1 1981 AIR 746, 1981 SCR (2) 516

In this context, the Supreme Court stated that dignity of a human being can never be violated under any circumstance and it is the responsibility of the state to protect, safeguard and respect dignity of the citizens. The Supreme Court further said that dignity of an individual is largely dependent on personality of that person. Therefore, the role of education is imperative because it plays a pivotal role in personality development of an individual. In addition to this, the court further referred to various provisions in the Indian Constitution and stated that the preamble has promised justice, be it political, economic and social and freedom of thought, expression, faith, belief and worship to the Indian citizens. These objectives of the preamble cannot be achieved and will simply remain only on paper until and unless the citizens are educated. This means that the Supreme Court heavily emphasized on the need and importance of education for the citizens. The court also observed that even though right to education was not guaranteed in the Part III of the Indian Constitution, Articles 21, Article 38, Article 39(a), Article 41 and 45 together implied that the framers of the constitution had made providing education to the people a responsibility and duty of the state governments.

This case holds its significance as the judgment in itself is very historic in nature. The decision also had a tremendous introspective impact on the working of the state governments in terms of their failure to follow and maintain the provisions and guidelines set in the Article 45 of the Indian Constitution. But despite, the judgment brought mixed reactions from the people. Some believed the decision to be impractical and role of the court unnecessarily proactive, while some viewed this decision as being practical and logical.

Subsequent case of *Unni Krishnan v. State of Andhra Pradesh*² is also considered a monumental case in respect of right to education. In this case, some private professional educational institutions had challenged the very constitutionality of the state laws regulating charging of capitation fees by these educational institutes. In this case, the Apex court had observed that the right to education is automatically implied by the fundamental right to life as per Article 21, especially when it is considered alongside the directive principle on education in Article 45. A very long period of forty four years has transformed a right towards education, which could not have been justified otherwise, into a right which can now be even enforced. The court had further stated that the parameters to determine the right should be considered and understood in context of the Directive Principles of State Policy which consists of the Article 45. This Article states that it is the duty of the state government and machinery to provide free and compulsory education for all children between the ages of 6-14 years. However, the court clarified that there is no fundamental right for a professional degree in the Article 21.

This case holds another important dimension on account of the fact that judgment passed in this case was in partial disagreement with the judgment given in the Mohini Jain's case. The court, in this case, stated that a right cannot be considered as a fundamental right until and unless it is explicitly mentioned in the Part III of the

2 1993 AIR 2178, 1993 SCR (1) 594

constitution. It was also clarified that after a child reaches the age of 14 years, the right to education is dependent on the limits of economic capacity and development of the state. This is in conjunction with the Article 45.

RIGHT TO EDUCATION AND RTE, ACT 2009

Post this decision, things particularly at the political front starting moving into a direction to declare education a fundamental right, through various actions visibly perceived at the snail's speed. Ultimately, with the 86th Amendment Act, 2002, Article 21A was inserted in the Indian Constitution, in Chapter III, with its main aim to provide free and compulsory education to all children between the ages of 6-14 years as a matter of right. This resulted into 'free' and 'compulsory' education becoming a 'fundamental right' of all children within the prescribed age bracket in the country. To effectively implement this fundamental right, the Right of Children to Free and Compulsory Education (RTE) Act, 2009 had got to be developed and passed, (taking substantial time) which took the responsibility for ensuring that the law is strictly enforced and the children get their right to be educated. According to this Act, every child within the age group of 6-14 years has the right to a full-time elementary education which is of satisfactory standards and complies with various norms and regulations. The Article 21A, got its real impact when RTE Act, was enforced in April 2010. 'Free and Compulsory' words employed in the Act, had a well-defined purpose. 'Free Education' is meant to convey that a child, who has been admitted into a formal education setting by his/her parents is entitled to receive education as a matter of right through an educational institution established or aided by the Government of India free of any charge. On the other hand, 'Compulsory Education' denotes obligation of the government and its various bodies to ensure that formal education is provided to children within the ages of 6-14 years without fail. The local and national government, both, have a responsibility to ensure admission, attendance and completion of elementary education to children within the said age group.

With the implementation of this Act, "India became one of 135 countries to make education a fundamental right of every child". "The RTE Act requires surveys that will monitor all neighborhoods, identify children requiring education, setting up facilities with prescribed minimum standards for providing it. The World Bank education specialist for India, Sam Carlson, has observed: The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrolment, attendance and completion on the Government, whereas it is the parents' responsibility to send the children to schools in the US and other countries". Besides, "the Right to Education of persons with disabilities until 18 years of age is laid down under a separate legislation - the Persons with Disabilities Act".

SUGGESTIONS

In the premises, it is observed and inferred that the Education is essential for appropriately understanding, using, enjoying and also to ordain self to related duties and obligations towards others attached with or incidental to their rights. All the

rights primarily emanate from the Human rights to acquire the nature and the characteristics of either a Basic right or the Fundamental right or some Special right. Right to Education thus, is the Key Human right for all intent and purposes and the Right of Children to Free and Compulsory Education Act, 2009, is a legislation aimed to accomplish the Human right towards education with the measure of a Fundamental right.

In this background, Right of education to attain the characteristics of the Human right in complete optics of its measurement, a lot is still to be done. There is wide spread and varying gap in a) necessary processes in order to accomplish the education as a matter of right and b) opportunities of the desired order to be made available for the purpose. For this, social processes are required to be analyzed properly to develop two way relationship in pragmatic manner between the processes and the opportunities, besides, revisiting and revamping them.

The existing mindset and the pattern of compliance orientation needs to be converted into delivering a realistic value proposition in quality terms to upgrade the Right to education into a Human right so that there is no false assumptions or the claims or at least minimize to the extent possible.

Beginning from Public policy, to Budget, to Processes, to the provision of adequate opportunities, to Effective participation of all the stake holders, to Equality and Indiscrimination, to Inclusiveness, and to the accountability of the State etc., will have to be realistically and meaningfully thought through, redesigned, put into action with effective monitoring to make the Right to education a Human right. The concept of Universality, Inalienability and Indivisibility criterion would drive the process in true sense.

CONCLUSION

A reference to a General comment of the United Nations Committee monitoring the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) would sum up the discussion in a better way.

“Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labor and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make.”

Going along all this, Right to education of children kept attaining added focus and with a great deal of effort made to implement this Act, more than 95% children are now in school with much better developed infrastructure and teacher’s availability but with a challenge of improvement of the learning outcomes in India.

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