

## Quadrant II - Notes

**Course Code: LAE - 1016**

**Module Name: Constitutional Goals: Right to Education U/A 21 A**

**Module No: 6**

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### Notes

The Indian Constitution at its birth gave status to education as non-justifiable right. Article 45 made provision where State would ensure free and compulsory education up till 14 years of age and this was to be achieved by 1960. Articles 24 and 39 dealt prohibited children from being employed in factories, mines or in the hazardous employment; development and protection of the tender age of children. However, must awaited dream of public education system in country could not be achieved within the span.

Meanwhile NPE 1968 was implemented. However it was the Report of Ramamurthi Committee which laid the proposal of having 'Education as Right'. Other events that followed: CRC where India became signatory and weightage had to be given to the International convention by virtue of Art. 51( c) which says that states shall endeavour to foster respect for international law and treaty obligations. One of the article in the convention, State 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.

Apex Court also laid the foundation stone pertaining to this Right in **Unni Krishnan Case** and **Mohini Jain Case**. Further, the 'Common Minimum Programme' in 1994 of the then government set up Saikia Committee to examine the proposal of Ramamurthi Committee Report. The report recognized the right to education as one of the fundamental rights of the Indian citizens for which necessary amendments to the constitution many have to be made and conditions be created in society so that this right would be available to all children of India. The CMP resolves to make the right to free

and compulsory elementary education into a fundamental right and to enforce it through suitable measures.

The Saikia Committee report recommended, The constitution of India should be amended to make the right to free elementary education up to the 14 years of age a fundamental right. Simultaneously, an explicit provision should be made in the Constitution to make fundamental duty of every citizen who is a parent to provide opportunities for elementary education to all children up to 14 years of age. The decision of the Apex Court was considered by the legislature and with the aid of the Report, Bill on the 'Right to Education' was introduced in 1997, bill was amended in 2001 and finally through 86<sup>th</sup> Amendment Act 2002 Article 21A was inducted in Indian Constitution. The courts have prior to this projected the Right through Art. 21.

Unfortunately the decision pronounced in *Mohini Jains' Case*<sup>1</sup> and *Unni Krishnans' case*<sup>2</sup> watered down in the 86<sup>th</sup> Amendment Act 2002 of the Indian Constitution where Article 21-A evidenced the right of free and compulsory education limiting it to age group of six to fourteen years instead of zero to fourteen years.<sup>3</sup>

Article 45 in Chapter IV of the Constitution was also amended to provide early childhood care and education to children below six years of age. Further the Amendment Act sought to add an additional clause to Fundamental Duties where, by virtue of Article 51A(k) the parent or guardian are obliged to provide opportunities for education to his child or ward between the age of six and fourteen years.

However, the phraseology of Article 21-A added a qualification that the fundamental right expressed therein would be determined by a follow up consequential legislation which compelled the legislature to enact a central law in August 2009, which was brought into force on 1<sup>st</sup> April 2010 referred to as RTE Act.

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<sup>1</sup> AIR 1992 SC 1858 : 1992 SCR (3) 658.

<sup>2</sup> AIR 1993 2178:1993 SCR (1) 594.

<sup>3</sup> Article 21A: RIGHT TO EDUCATION: 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.

**In *Bachpan Bachao Andolan v. Union of India* AIR 2011 SC 3361**

The SC in a PIL for the serious violations and abuse of children forcefully detained in circus without access to their families under extreme inhuman conditions and deprived of their basic human needs issued these directions:

- 1) For implementing fundamental right under Article 21 A, the central government must issue suitable notifications prohibiting the employment of children in circuses within 2 months.
- 2) Simultaneous raids to be conducted by the respondents in all circuses to liberate the children and check the violation of their fundamental rights and the rescued children would be kept in the Care and Protective Homes till attainment of 18 years of age.

In *Pramati Educational & Cultural Trust and Ors v. Union of India & Ors*<sup>4</sup>, the court justified saying that RTE 2009 was enacted in consequence of the independent power conferred by virtue of Article 21 A of the Constitution on the State.

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<sup>4</sup> 2014 SC 166.