

RIGHT TO EDUCATION UNDER ARTICLE 21 IN INDIAN CONSTITUTION.

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Abstract :

India is a country which is famous for its various elements like Art, Architecture, traditional practices, culture etc but India is also famous for Its constitution, which is considered as mother document of India and also the law of the land and Indian constitution is the lengthiest written constitution of any sovereign country in the world and ultimate Aim of the constitution makers were reflected in the preamble of Indian constitution and among all the features of Indian constitution like Directive principles of state policy, fundamental duties , fundamental rights are considered as most important feature which is dealt in part III of Indian constitution, as right to equality, right to freedom. Right against exploitation, right to freedom of religions, cultural and educational rights and right to constitutional remedies are the fundamental rights, Article 21 which provides Right to life and personal liberty guarantees every person that is both citizens and aliens to enjoy this rights absolutely this right is a fundamental right guaranteed by Article 21 is not reduced to a mere paper platitude but is kept alive, so that the country can effectively move towards the planned goal of establishment of an society as envisaged by the founding fathers while enacting the constitution of India along with its preamble where this right also provides various implied rights like right to livelihood, right to live with human dignity , right to shelter, right to pollution free environment, right to privacy, right against hand cuffing, right against food starvation etc, and the main aim of this study is to find important right implied under this Article 21 that is right to education

Keyword: India, Life, constitution, fundamental rights, personal liberty.

A STUDY ON RIGHT TO EDUCATION UNDER ARTICLE 21 IN INDIAN CONSTITUTION.

INTRODUCTION:

Fundamental Rights refers to a charter of rights which has been enshrined in Part 3 of the Indian Constitution. These Fundamental Rights guarantees civil liberties to the citizens of India. These rights which are endowed upon the citizens of India which are common to most of the Liberal democracies in today's day such as: Freedom of speech and expression, Right to assemble, Right to equality, Equality before law, Right to Constitutional remedies which are present for the preservation of the fundamental rights themselves by way of writs such as Habeas Corpus, Writ of mandamus, quo warranto etc¹(Gledhill)

In today's date, India has namely 6 broad Fundamental Rights which are contained in Part 3 of the Indian Constitution. If there is any violation of these Fundamental rights, it results in punishments as prescribed under the Indian Penal Code but is also subject to the Court's discretion. These Rights are mentioned as follows²(Wikipedia; Mansergh)

- 1, Right to equality
- 2, Right to freedom
- 3, Right against exploitation
- 4, Right to freedom of religion
- 5, Cultural and educational rights
- 6, Right to constitutional remedies³

¹ (Tayal, B.B. & Jacob, A. (2005), *Indian History, World Developments and Civics*, pg. A-23)).

UNI. "*Sardar Patel was the real architect of the Constitution*". Rediff.com.

²

³<http://wisdomcrux.lawtimesjournal.in/index.php/2017/01/07/introduction-fundamental-rights/>

The inclusion of Fundamental Rights into the Constitution of India was inspired by many countries' constitution. These countries include: Bill of rights of the United States of America, England's Bill of rights and France's Declaration of Human Rights. When India gained its independence on 15th August 1947, the humungous task which was in front of the Members of the Constituent Assembly was to draft the Constitution of India. For which, it took almost good three years for its completion. A significant development took place while the Indian constitution was still in its making. On 10th December 1948, United Nations General Assembly adopted the Universal Declaration of Human Rights which called for all the member states of United Nations to adopt these rights in their corresponding constitutions kesava nandha bharathi – In what became famously known as the “Fundamental Rights case”, the Supreme Court decided that the basic structure of the Constitution of India was unamendable⁴(Tripathi)

Aim of the study:

- To find various rights implied under Article 21
- To find practical usage of right to education under Article 21
- To compare Article 21 with united states

Research question:

Whether the right to education under right to life and personal liberty is being stringently following in the Indian society?

Hypothesis:

Null hypothesis:

Right to education under Article 21 is not practically followed

Alternative hypothesis:

Right to education under Article 21 is practically followed

Research methodology:

A descriptive approach to research is called as foundation of research. The researcher referred more descriptive informations from books, articles, journals to gain more knowledge on concept of right to education under Article 21.^(Trishala A , Lakshmi T and Rajeshkumar S)

⁴ *Kesavananda Bharati vs. The State of Kerala; AIR 1973 S.C. 1461, (1973) SCC 225*

Different rights suggested under Article 21:**Right against sexual harassment at work place**

In the instance of Vishakha versus the State of Rajasthan, the court pronounced that lewd behavior of a working lady working environment adds up to an infringement of rights under Articles 14, 15 and 21 of the Indian Constitution. The rules have been set down keeping in mind the end goal to secure the rights of a lady at work environment Following which the Sexual Harassment of lady at Workplace (counteractive action, preclusion, and Redressal) Act, 2013 was passes (Tandon)

Right to Legal Aid

It has been held, on account of Hussainara Khatoon versus Province of Bihar, that right to free legitimate guide at the cost of the State to a denounced who can't manage the cost of lawful administrations for reasons of destitution, poverty or incommunicado circumstance is a piece of reasonable, just and sensible method under Article 21 of the Indian Constitution. In the instance of Khatri versus the State of Bihar, it has likewise been held that the trial court is under the commitment to illuminate the blamed for his right to free legitimate guide.^{5(Durbach)}

Right to speedy trial

The Code of Criminal Procedure does not particularly ensure expedient trial nor it has the Indian Constitution ensured under any of the Fundamental Rights however the Indian Judiciary on account of Hussianara Khatoon vs the State of Bihar, has settled on it settled choice that the right to expedient trial is a basic right under Article 21 of the Indian Constitution. (Chattaraj)

⁵ Durga das basu , Introduction to Constitution of India , lexis nexis , 20th volume , Jan 1 2011 .

Right Against Rape

Assault has been held to an infringement of a man's fundamental life ensured under Art. 21. Right to life right to live with human pride. Right to life, would, subsequently, incorporate every one of those parts of life that go ahead to make life important, finish and worth living.⁶ In *Bodhisattwa Gautam v. Subhra Chakraborty* the preeminent court held that "Assault is in this way not just a wrongdoing against the individual of a lady (casualty), it is a wrongdoing against the whole society. It devastates the whole brain science of a lady and pushed her into profound enthusiastic emergencies. It is just by her sheer self discipline that she rehabilitates herself in the general public, which, on coming to know about the assault, looks downward on her in ridicule and disdain. Assault is, in this way, the most loathed wrongdoing. It is a wrongdoing against essential human rights and is likewise violative of the casualty's most loved of the fundamental rights, to be specific, the right to existence with human nobility contained in Art 21". (Marsha A et al.)

Right to shelter

In *Chameli Singh v. Province of U.P* a Bench of three Judges of Supreme Court had considered and held that the right to protect is a fundamental right accessible to each subject and it was perused into Article 21 of the Constitution of India as including inside its ambit, the right to safe house to make the right to life more important. The Court watched that: Safe house for a person, hence, isn't a simple insurance he can possibly imagine and appendage. It is anyway where he has chances to develop physically, rationally, mentally and profoundly. Right to protect, subsequently, incorporates satisfactory living space, sheltered and better than average structure, spotless and not too bad environment, adequate light, unadulterated air and water, power, sanitation and other community conveniences like streets and so forth to have simple access to his day by day side interest. The right to protect, along these lines, does not mean a unimportant right to a rooftop over one's head yet right to all the framework important to empower them to live and create as a person⁷ (Kohn)

⁶ BL Hansari A Pasayat , Right to life and liberty under Constitution , NM Tripathi , Oct 28 2008 .

⁷ Nishanth kumar , What is Article 21 in the Indian constitution ? , May 6 2017 .

Right Against Honor Killing

A division seat of Allahabad high court, In Surjit Kumar v. Province of U.P took genuine note on badgering, in abuse and slaughtering of a man who was a noteworthy, for needing to get hitched to a man of another position or group, for conveying shame to family was not restricted in law, the court said that such routine with regards to "respect executing" was a blotch on society. The court, along these lines, guided the police to take solid measures, against the individuals who conferred such 'Honor killing'. (Kohn; Gill)

Right to get Pollution Free Water and Air

In Subhas Kumar v. Province of Bihar, it has held that a Public Interest Litigation is viable for safeguarding satisfaction in contamination free water and air which is incorporated into 'right to live' under Art.21 of the constitution. The court watched Right to live is a fundamental right under Art 21 of the Constitution and it incorporates the right of happiness regarding contamination free water and air for full pleasure throughout everyday life. In the event that anything imperils or impedes that personal satisfaction in discrediting of laws, a native has right to have plan of action to Art.32 of the Constitution for expelling the contamination of water or air which might be negative to the personal satisfaction ⁸

Right to privacy

In R. Rajagopalan v. Territory of Tamil Nadu , The right to security of natives was managed by the Supreme Court in the accompanying terms:

"(1) the right to protection is understood justified to life and freedom ensured to the natives of this nation by Article 21. It is a 'right to be not to mention'. A resident has a right to defend the security of his own, his family, marriage, reproduction, parenthood, childbearing and instruction among different issues. None can distribute anything concerning the above issues without his assent – whether honest or generally and whether commendatory or basic. In the event that he does as such, he would disregard the right to security of the individual concerned and would be obligated in an activity for harms. Position may, in any case, be unique, if a man deliberately pushes himself into discussion or intentionally welcomes or raises a debate.⁹ (Dr.Lakshmi T , Rajeshkumar S)

⁸ Vicky nanjappa , What is Article 21 of the Indian Constitution ? , AUG 24 2017 .

⁹ Ankita sharma , Substantive rights that flow from Article 21 , March 24 2004 .

(2) The lead aforementioned is liable to the special case that any distribution concerning the previously mentioned perspectives winds up unobjectionable if such production depends on open records including court records. This is for the reason that once an issue turns into a matter of open record, the right to protection never again subsists and it turns into an authentic subject for input by press and media among others. We are, in any case, of the conclusion that in light of a legitimate concern for goodness [Article 19(2)] a special case must be cut out to this run, viz., a female who is the casualty of a rape, grab, snatching or a like offense ought not further be subjected to the insult of her name and the episode being advanced in squeeze/media.¹⁰(Goyal and Kumar)

COMPARISON BETWEEN ARTICLE 21 OF INDIAN CONSTITUTION WITH US.

In the constitution of united states the below mentioned provisions are guaranteed, which can be compared with Article 21 of Indian Constitution-

Fourth Amendment (1791)

Against unreasonable searches and seizures of their citizens , property documents , and effects, it is safe to human rights, shall not be violated, and no warrants shall issue, but upon probable reason , supported by Oath or affirmation, (Lasson)

Amendment V (1791)

Any person who, as a capital, or generally notorious wrongdoing should be held to respond in due order regarding, aside from in circumstances emerging in the land or maritime powers, or volunteer army, on a presentment or prosecution of an excellent jury until the season of war or public risk, real administration, or any person in the in danger of life or appendage might be subject for a similar offense, to be an observer against himself, nor might be constrained in any criminal case, or life, to be denied of freedom, or property, without due procedure of law, or private property without just compensation, public utilize should be acknowledged for.

¹⁰ V Para brahma sastri , Right to life and personal liberty , Asia law house , 808 pages , Jan 27 2005 .

Amendment VI (1791)

Where any person who has committed a crime in any state or district which is held by jury that person has been guaranteed with right to speedy trial and public trial but that is based on the nature and cause of the complaint.

Fourteenth Amendment (1868)

All persons born or Naturalized in the United States and subject to its jurisdiction or to citizens of the United States and of the State wherein they reside. That no person in his or deny, or immunities abridge the right of any citizen of the United States shall, or enforce any law which shall, in any state without due process of law, life, liberty, or property of any person shall not be deprived of jurisdiction the equal protection of t(Miller)

RIGHT TO EDUCATION

<p><u>Article 21-a</u> <u>Brought by 86th amendment Act 2002</u></p>	<p><u>Article 45</u> <u>Changes made by 86th amendment Act 2002</u></p>	<p><u>Article 51k</u> <u>Inserted by 86th amendment Act 2002</u></p>
<p>21A. 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."</p>	<p>Provision for early childhood care and education to children below the age of six years." "45. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."</p>	<p>Amendment of article 51A- In article 51A of the Constitution, after clause (J), the following clause shall be added, namely:- "(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."</p>

The Constitution (Eighty-sixth Amendment) Act, 2002 embedded Article 21-An in the Constitution of India to give free and mandatory education of all children in the age gathering of six to fourteen years as a Fundamental Right in such a way as the State may, by law, decide. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which speaks to the noteworthy enactment imagined under Article 21-An, implies that each kid has a right to full time basic education of tasteful and evenhanded quality in a formal school which fulfills certain basic standards and benchmarks.^{11(Hemachand)}

Article 21-An and the RTE Act happened on 1 April 2010. The title of the RTE Act fuses the words 'free and obligatory'. 'Free education' implies that no youngster, other than a tyke who has been conceded by his or her folks to a school which isn't upheld by the suitable Government, might be at risk to pay any sort of charge or charges or costs which may keep him or her from seeking after and finishing basic education. 'Necessary education' throws a commitment on the suitable Government and nearby experts to give and guarantee confirmation, participation and consummation of rudimentary education by all children in the 6-14 age gathering. With this, India has pushed ahead to a rights based system that throws a lawful commitment on the Central and State Governments to execute this fundamental tyke right as cherished in the Article 21A of the Constitution, as per the arrangements of the RTE Act.^{12(Hemachand et al.)}

The RTE Act accommodates the:

Right of children to free and necessary education till consummation of rudimentary education in an area school. It clears up that 'necessary education' implies commitment of the suitable government to give free rudimentary education and guarantee mandatory affirmation, participation and finish of basic education to each tyke in the six to fourteen age gathering. 'Free' implies that no kid should be subject to pay any sort of charge or charges or costs which may keep him or her from seeking after and finishing rudimentary education.¹³

It makes arrangements for a non-conceded kid to be admitted to an age suitable class.

It determines the obligations and duties of suitable Governments, neighborhood specialist and guardians in giving free and mandatory education, and sharing of money related and different duties between the Central and State Governments. (Das)

¹¹ Nishatha jaswal , Role of Supreme court with regard to the Right to life and personal liberty , Ashish public house 1990 , 438 – 439 pg , Oct 28 2008 .

¹² Simply decoded , Article 21 Constitution of India , Dec 20 2016 .

¹³ Bhavanani laksha , A Critical analysis of Article 21 , May 18 2017 .

It sets out the standards and models relating to Pupil Teacher Ratios (PTRs), structures and foundation, school-working days, instructor working hours. (Ghosh)

It accommodates normal sending of educators by guaranteeing that the predefined understudy instructor proportion is kept up for each school, as opposed to similarly as a normal for the State or District or Block, in this manner guaranteeing that there is no urban-country awkwardness in instructor postings. It additionally accommodates preclusion of sending of instructors for non-educational work, other than decennial evaluation, races to neighborhood specialist, state lawmaking bodies and parliament, and debacle alleviation. (Kurian and Parvati)

It accommodates arrangement of properly prepared instructors, i.e. instructors with the imperative passage and scholarly capabilities. (Agrawal)

It forbids (a) physical discipline and mental badgering; (b) screening methods for confirmation of children; (c) capitation charge; (d) private educational cost by educators and (e) running of schools without acknowledgment,

It accommodates improvement of educational programs in consonance with the qualities cherished in the Constitution, and which would guarantee the inside and out advancement of the youngster, expanding on the tyke's information, probability and ability and influencing the tyke to free of dread, injury and tension through an arrangement of kid agreeable and tyke focused learning. (Veeraraghavan)

CONCLUSION

Along these lines, in the closing comments it is normal that that female horse passing a demonstration isn't adequate. The need of hour is to keep an appropriate beware of the working of the demonstration . The steady observing and solid political will is an absolute necessity to make it viable. According to the UNESCO's „Education for All Global Monitoring Report 2010“, around 135 nations have constitutional arrangements for nothing and non-oppressive education for all. The much anticipated Right to Education (RTE) Act which has been passed by the parliament of India should assume ansignificant part in accomplishing widespread rudimentary education in India. The triumph and annihilation of RTE would to a great extent rely upon reliable political care. Budgetary allotment of assets ought to be satisfactory in this regard. The adolescent in India should approach and spread the utility of education to ignorant guardians who can't value the noteworthiness of education in restricting the social shades of malice. Social

contrasts and imposing business model by any gathering ought not be acknowledged at any cost. Education which is free of cost up to a specific age must be available to each and everybody . (Kurian and Parvati; Pandya et al.)

Right to education for all and free education for particular age gathering of individuals is a splendid strategy by the legislature and we value that, as key to a created country is that its residents are sufficiently proficient to acquire their bread and to contribute in the economy. Each coin needs to faces comparatively RTE faces both feedback and gratefulness at the same time, The right to education is a fundamental right and UNESCO purposes education for all by 2015. India alongside different nations of the world should likewise put real and genuine endeavors to make this objective a genuine accomplishment (Jaisinghani)

. And from the comparison between US and India it is clear that right to life and personal liberty is been given to people of India only by means of Article 21 but it had took various amendments in US and at a same time, scope of Article 21 is wider than provisions of US constitution and US constitution gives protection only to their citizens rather Indian Constitution gives protection to both citizens and aliens of India.

Recommendations; Even though speedy trial itself an fundamental right it is not being practically guaranteed for all, still the delay in execution is considered as major drawback thus execution should be made faster.

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