

Case Analysis: Unni Krishnan, J.P. v/s State of Andhra Pradesh

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The constitutional question as to whether the "right to life" in Article 21 of the Constitution of India provides a fundamental right to education for the people of India. The petitions were made that higher education should also be part of the right to education. The key point on the part of the petitioner is that, because the right to education extends to primary education, it, therefore, extends to higher education. The bench of the Hon'ble Supreme Court disapproved of the argument, and the appeal was dismissed.

The case was based on the decision in *Mohini Jain v. State of Karnataka*^[i], where the Court ruled that people have a constitutional right to education. However, the particular issue that the right to primary education referred to in Article 45 of the Constitution of India is a constitutional right under Article 21 is not addressed in the above-mentioned case. It is therefore reasonable, on the part of the Supreme Court, to explain this issue.

Case No: (1993) 1 SCC 645

Appellants: **Unni Krishnan J.P & ors v/s Respondent: State of Andhra Pradesh & Ors**

Date of Decision- 4 Feb. 1993 - Bench: M. Sharma C.J.; R. Pandian; Mohan; P. Jeevan Reddy; P. Bharucha - Supreme Court of India

Fact Of Case

In these writ petitions, filed by private educational institutions engaged in or proposing to engage in imparting medical and engineering education the correctness of the decision rendered by a **Division Bench comprising Kuldip Singh and R.M. Sahai JJ.** in *Miss Mohini Jain V. State of Karnataka and Ors.*, is called in question.

A citizen of Meerut had appealed in the case of *Mohini Jain v. the State of Karnataka*, Admission to Sri Siddhartha Medical College, Karnataka, for the course of MBBS, against the quota of government seats for the February / March 1991 session. Nonetheless, The management told her that only after paying the tuition fee of Rs. could she be admitted.

For the first year, 60,000/- and that she also had to create a bank guarantee for the 4 years left. Mohini couldn't pay such an expensive amount and owe to their poor economic situation, her relatives. In addition, Mohini has also alleged that the college had even asked her for the Rs. capitation fee.

Four and a half lakhs, later on, which was denied by College. following this, Mohini lodge a writ petition under Art.32 of the Indian Constitution challenging the legality of notification of the Karnataka Government allowing private medical colleges in the State of Karnataka to charge high tuition fees to Students other than those accepted to the "Seats of Government." She was also asking for the Explanation of the "Right to Free Education" to the people of India and its limits.

The Court held that the students should not be paid the capitation fee. Admitted against the government seat requirement. The Court also claimed, however, that under Article 21 of the Constitution, people have a constitutional right to education, though it remained silent on its limitation. The issue that was not severely dealt with in Mohini Jain's case surrounding the right to education has now become inevitable.

Again, the right is the Right to Education was being scrutinized. This writ petition was eventually made by numerous petitions, The education department institutions argued against the State for restricting the college fee and even argued with the court to include a detailed definition of the right to education.

Issues which were in Challenge

This decision is concerned mainly with the correctness of Mohini Jain and the following three questions, which were framed by the court.

The three questions are:

1. Whether the Constitution of India guarantees a fundamental right to education to its citizens?
2. Whether a citizen of India has the fundamental right to establish and run an educational institution under Article 19(1)(g) or any other provision in the Constitution?
3. Whether the grant of permission to establish and the grant of affiliation by a University imposes an obligation upon an educational institution to act fairly in the matter of admission of the students?

Judgement

While dealing with the first issue court relied on some judgment which is given by this court in *The State of Madras v. Champakam Dorairajan*^[ii], *Hanif v. State of Bihar*^[iii], and in *Minerva Mills v. Union of India*^[iv]. Court held It is thus well established by the decisions of this Court that the provisions of Parts III and IV are supplementary and complementary to each other and that Fundamental Rights are but a means to achieve the goal indicated in Part IV.

The Court held though the right to education is not expressly mentioned as a fundamental right, it is implicit and flows from the right to life guaranteed under Art.21. Though the Right to education flow from the right to life and personal liberty under article 21 but these rights are not absolute. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has the right to free education before he or she reaches the age of 14.

The right to higher education of the person, at the end of the age of 14 years, is not unconditional but is subject to limitations on the economic ability and growth of the state. Limitation of economic potential relies on subjective state satisfaction. Therefore, The duty of the State to provide education is thus subject to the limitations of its economic potential and growth^[v].

The State may discharge the responsibilities generated by Articles 41, 45 and 46 of the Constitution either by creating its own institutions or by aiding, recognising and/or affiliating private educational institutions. Where assistance is not given to private educational institutions and only recognition or affiliation is provided, it can not be demanded that the private education institution shall charge only the fee which is charged for identical courses in

government institutions. **Private educational institutions must and are permitted to charge a higher fee, not above the limit set in that term.**

While dealing with the second question of whether the right to an established educational institute is a fundamental right or not court adopts the line of reasoning stated in **State of Bombay v. R.M.D.C**[vi], that imparting **education cannot be treated as a trade or business**. Education cannot be allowed to be converted into commerce nor can the petitioners seek to obtain the said result by relying upon the wider meaning of **occupation**.

Both the Parliament and the State legislatures have articulated this aim in an unmistakable way. Particularly in the light of our history and from the point of view of the broader public interest, marketing is favourably negative, as opposed to public policy. A resident of this country may have the right to set up an educational institution, but no resident, person or institution has the right to membership or approval or grant-in-aid from the State and court also cleared that if anybody wants to start an institution exclusively for the purpose of educating the students he could do so, although it must be taken into account Sections 22 and 23 of the University Grants Commission Act that forbids the granting of degrees only by a university.

On the question of whether recognition or affiliation make the educational institution an instrumentality of state? The Court has relied on relevant test summarises in **Ajay Hasia v. Khalid Mujib Sehravardi** [vii], gathered from the decision in the International Airport Authority's case and **All India Sainik Schools Employees Assn. v. Sainik Schools Society** [viii]. Applying these tests courts held that **a private education can't be treated as the instrumentality of state either by recognition or affiliation to the university.**

The Court also conveyed its opinion on the consistency of Article 45, which is the only article that places a time limit on the right of a person, whether a constitutional right or some other legal right. The Court also asked why the need to address the minimum time limit shifted after 44 years. The Court concluded, however, that financial and social considerations must be taken into account.

The court held that the scheme set out herein regulates the entry of a student and the payment of fees to a private professional college. The scheme concerned here is in the nature of the rules levied and enforced by the relevant government and the recognition and affiliation authority, in addition to the other requirements for granting authorisation, granting recognition or granting affiliation, as the case may be.

Analysis and Conclusion

No doubt this case was one of the important cases in the history of India. The Court held that the right to education is not explicitly specified as a fundamental right, it is inherent in the right to life guaranteed under Article 21, taking into account the broad and expansive meaning provided by the court. One of the most important was the right to education.

The life of a person and a country has profound importance. The aims set out in the preamble to the Constitution can't be done without education for the citizen of this land. It'd fail the constitution.

The Court recognised the right to education flow from the right to personal liberty under Art.21 but this right is not absolute. In other words, every child/citizen of this country has the right to free education before he or she reaches the age of 14 as provided in Art.45 prior to its amendments in 2002.

A professional degree required higher finance so it depends upon the economical and financial condition of the state government. The court also established both Fundamental Rights and DPSP are complementary and supplementary to each other. If any dispute may arise between Fundamental Rights and DPSP then Fundamental Rights are given more importance.

Establishing an education institute can't be treated as a trade, business, profession, or occupation under article 19(1)(g)&(6) of the Indian Constitution. The establishment and operation of educational institutions as trade is counter to the culture and practice of our society.

The Court also issue guideline and regulation for establishment, recognition or affiliation and admission in the professional institution which is good for national education policy and right to education.

This case presents a clear example of how the right to life (at least primary education) can be viewed as including the right to livelihood and specifically the right to education. The Indian courts have so far been exceptional in reading the right to education explicitly into the right to life, it should be remembered.

Furthermore, the Court claimed that, in order to regard a right as a fundamental right, it is not necessary to say directly, as one of the provisions of Part III of the Constitution, that the provisions of Part III and Part IV are complementary and supplementary. The Court denied the fact that the privileges specified in Part III are preferable to the substantive arguments and desires contained in Part IV.

End Note:

- i. 1992 SCR (3) 658;
- ii. AIR 1951 SC 226;
- iii. [1959] S.C.R. 629;
- iv. A.I.R. 1980 S.C. 1789;
- v. Francis C Mullin v. Administrator, Union Territory of Delhi, [1981] 2 S.C.R.;
- vi. 1957 S.C.R. 874;
- vii. [1981] 2 SCR 79;
- viii. [1989] Supp 1 SCC 205;

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