

4. It ensures participatory, quick and inexpensive delivery of justice at the door of villagers.
5. It encourages public participation as people do not hesitate and are encouraged to fight for their rights.

Thus it removes all the barriers *i.e.* psychological, geographic and economic as no stamp fee lawyers' fee, unnecessary adjournments travelling to town, cumbersome and formalistic procedures are involved. Thus it's a panacea for settlement of petty disputes cheaply and expeditiously.

Jurisdiction - Powers Authority Responsibilities

Normally the panchayat tries to solve the disputes by consensus. If consensus does not arrive then decision will be by majority. Normally lawyers are not allowed. State legislature may endow the Panchayats with such powers and authority as may be necessary to enable them to function as an institution of self-Government. These include preparation of plans for economic development and social justice and implementation of schemes for social development and social justice including those related to matters listed in the 11th Schedule. The matters in 11th Schedule are agriculture, land reforms, animal husbandry, poultry, fishery, small scale industry, rural housing, cottage industries, adult education health and sanitation, primary health centers, welfare of weaker sections *etc.*

State Legislature may also make law providing panchayats with authority to levy, collect and appropriate certain taxes, duties tolls and fees.

Suggestions and Conclusion :

The administration of justice under ADR is very similar to the Banjara administration of Justice System.

Since these practice followed from the period of Mahabaratha and this system is not new to the Banjara community.

At present after going through the enactment of legislation of ADR we come to know that the present legislation is taken from practice followed by Banjara Tribal Community.

After establishment of Court system our community people are mostly approaching to solve their disputes.

The practice followed by our tribal community must be encouraged and awareness programme must be created so that this practice also useful to other communities in solving their disputes.

Even now in Thandas the tribal community is following the same practice and solving their disputes amicably.

So the present practice must be encouraged so that the disputes will be resolved speedily and quickly.

CHANGING FACE OF RIGHT TO EDUCATION IN INDIA

By

**—Dr. JETLING YELLOSA, B.Com., L.L.B., L.L.M., Ph.D.,
Assistant Professor of Law
Head, Department of Law, Talingana University,
Dichpally, Nizamabad, A.P.**

The Constitution of India is a sacrosanct document in every respect. The part third of our constitution enumerates basic and

indispensable rights of human beings and in our constitution those are termed as the Fundamental Rights. The basic spirit of our

fundamental rights has been borrowed from the international covenants like the Geneva Declaration of the Universal Declaration of Human Rights of 1948, the American and British constitutional principles. The fundamental rights are foundation for survival of human beings without which we cannot think of existence of human beings.

The part third of our constitution guarantees almost all kinds of rights which are indispensable to existence of human beings which include the right to equality, freedoms, the life and personal liberties, right against exploitation, the right of religion, the cultural, educational of minority rights and approaching the apex Court for redressal and protection of fundamental rights *etc.*. It is to be noted that the makers of the constitution have purposefully not accommodated getting of education as a fundamental right, as at that point of time we have just liberated from the clutches of foreign power and we have had not having sufficient means to accord the education as the fundamental right, instead they have inserted it under the part fourth of the constitution which deals with the directions those the state has to adhere and which are popularly termed as the Directive Principles of State Policy which rights are not justifiable in the Courts. The importance of education is very much recognized by the Constituent Assembly while preparing the constitution but due to paucity of resources lead to placing the education in the part fourth of the constitution under Articles 38, 39(a), 41 and 45 to avoid enforceability of them.

In the post emergency period the apex Court of the land, the Supreme Court of India embarked on liberal interpretation of the Article 21. The article 21 which deals with life and personal liberties have received a sort of strength on account of decision rendered by it in *Maneka Gandhi v. Union of India*,² in this case, the Court has expounded that for survival of the human being the life and personal liberty must to be guaranteed by the State under all circumstances and it is utmost positive duty of the state to protect it.

The Supreme Court has implied that the “Right to Education” as a fundamental right from the Article 21. The word “life” has been including ‘education’ as the education is major factor for promoting goodness and dignity in the life of any individual. In our country for the first time whether education is fundamental right or not aroused before two judge bench of the Supreme Court in *Mobini Jain v. State of Karnataka*¹.

The apex Court of the land accepted that the Constitution of India does not expressly guarantee the right to education as such, as a fundamental right but reading cumulatively the Article 21 along with the Directive Principles of State Policy contained in Articles 38, 39(a), 41 and 45 the Court opined that “it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens”².

The apex Court further stated that without making the right to education under Article 41 a reality, the Fundamental Rights would remain beyond the reach of large majority of citizens, who are illiterates, the Fundamental Rights including the freedom of speech and expression and other rights guaranteed under Article 19 cannot be fully appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity. Further, the ‘life’ in Article 21 means right to live with human dignity. The “Right to life” is the compendious expression for all those rights, which are basic to be dignified enjoyment of life. The Supreme Court ruled that “the right to education” being concomitant to the fundamental rights, “the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens”.

The apex Court clearly remarked that

“We hold that every citizen has a ‘right to education’ under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the

1. AIR 1992 SC 1858 = (1992) 3 SCC 666

2. Ibid, 1867

said right. The State may discharge its obligation through State owned or State recognized educational institutions..... Charging capitation fee in consideration of admission to educational institutions is a patent denial of a citizen's right to education under the Constitution.

The apex Court by above judgment has taken very rigid and absolutist view and castigated burden upon the state to provide education at all levels. It is pertinent to mention that it is highly improbable to country like India where natural resources are abundant but their exploitation is very meager and state has to provide education free of cost at every level it nothing but sailing upon the impossible task.. The above judgment may sound to be good theoretically but it is very difficult to implement in present day globalization and liberalization and other post World Trade Organization existence. This judgment is delivered by the apex Court when our country was just embarked on globalization and liberalization process on tune with international obligations and judges of the apex Court rightly interpreted and expounded the inherent inner meaning of the constitutional mandate in the judgment without considering the international pressures.

It is pertinent mention that in the post globalization and liberalization period the apex Court subsequently has taken reverse turn of above judgment in *Unni Krishnan v. State of Andhra Pradesh*³.

The Court has reiterated the proposition that having regard to the fundamental significance of education to the life of an individual and the nation, the right to education is implicit in and flows from the right to life guaranteed by Article 21, further the Court remarked that the parameters of this right is not absolute, have to be judged by taking into consideration of the Directive Principles of State Policy contained in Articles 41, 45, and 46. By embarking on new swift the apex Court has considerably lessened burdened of the State in providing educational facilities as follows:

1. Every Citizen has right to free education until he/she completes the age of 14 years.

2. Beyond that, the State has obligation to provide education is subject to the "limits of the economic capacity and development" of the State⁴.

The obligations created by Articles 41, 45 and 46 can be discharged by the State either by establishing institutions of its own, or by aiding, recognizing and or granting affiliations to private educational institutions. The Court while taking note of the inadequate outlay on education on education and limited economic capacity of the State to finance education, it has ruled that private educational institutions, both aided and unaided are a necessity in India, but "commercialization of educational cannot and should not be permitted" under any circumstances.⁵

While denouncing the levy of "capitation fee" by certain professional colleges, the Court has however accepted that unaided private educational institutions can charge higher tuition fee: they "have to and are entitled to charge the higher fee, but not exceeding the ceiling fixed" by the state and state has every power to interfere in fixing the fees. In the same judgment the Court opined that even the State has power to fix ceiling for charging of the fees by the private institutions.

In this context the apex Court stated that in private educational institutions also provide admission in their institutions on the merit criteria which are similar to that of state educational institutions. The Court goes on state that the policy of admissions should not be based on money considerations but meritorious considerations. The merit should be a consideration for admission even in private institutions The Court also evolved a scheme for collecting of fees by private educational intuitions.

3. AIR 1993 SC 2178 = (1993) 1 SCC 645

4. Prof. Jain M.P. Indian Constitutional Law, Fifth Edition, Wadhwa and Company, Nagpur, 2007 P.1131.

5. Ibid

By rendering the above judgment the Court has indirectly accepted and recognized the fundamental right of every child for free and compulsory elementary education upto the age of fourteen years as provided in the Article 45. Meanwhile to ensure sufficient and effective realization of this right as well as to reassert national will and commitment in this regard Article 21-A was inserted by eighty-sixth Constitutional Amendment in 2002. Though the amendment was brought way back in 2002 until 2009 the succeeding Governments have failed to enact any specific law for implementing given fundamental right of education. The United Progressive Government as it promised in its manifesto has brought the constitutional amendment in and added Article 21A in which the right to education is recognized as the fundamental right and now this Article 21A provides that upto 14 years of age the State must provide education at free and if the citizens have denied of their this right they have right to enforce by approaching the apex Court under Articles 32 and various High Courts under Article 226 of the constitution.

The Government of India has passed much delayed and needed enactment in 2009 which is called as the Right of Children for Free and Compulsory Education Act in 2009 and which came into operation from 27th of August, 2009. This is another landmark enactment in post liberalization, privatization, and globalization period in our country. The act encompasses into thirty eight sections in seven chapters. The main features of the act are the state has to provide free and compulsory education to all children in the six to 14 age group, no child shall be held back, expelled, or required to pass a board examination until completion of elementary education, a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age, provided that where a child is directly admitted in a class appropriate to his or her

age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed, provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years, proof of age for admission: For the purposes of admission to elementary education. The age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births and Deaths Registration Act, 1856 or on the basis of such other document, as may be prescribed. The Act further enshrines that no child shall be denied admission in a school for lack of age proof, a child who completes elementary education shall be awarded a certificate. The Act mandates that the ratio of student-teacher has to be fixed and creating of 25 percent reservation for economically disadvantaged communities in admission to class one in all private schools. The Act mandates improvement in quality of education, school teachers will need adequate professional degree within five years or else will lose job, school infrastructure (where there is problem) to be improved in three years, else the authorities shall cancel recognition to such erring schools, the financial burden relating to improvement of infrastructure will be shared between state and Central Government. The act further provides that disputes regarding the educational matters have to be litigated in specially constituted educational tribunals⁶.

The Right of Children for Free and Compulsory Education Act 2009 is another kind of welfare legislation enacted by the parliament in post privatization, liberalization and globalization period and which enumerating far reaching provisions. Its effect it can be come out in years to come and mere enactment of the act shall not result into the fulfillment of goals enshrined in the Act there should be strong and persistent commitment on part of the Governments at the central and state levels.

6. The Gazette of India, No.39, 27.8.2009.