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**RIGHT TO 'UNRESTRICTED' EDUCATION IN INDIA – ANALYSING  
THE IDEA OF FAIR AND COMPLETE EDUCATION AS ENVISAGED  
BY THE INDIAN JURISPRUDENCE AND CONSTITUTION.**

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**ABSTRACT**

*“You cannot stop the spread of an idea by passing a law against it.”*

- Harry S. Truman

*The Preamble to the Constitution of India, one of the most important texts which gives the nature of the rights of the citizens of the country, states that India shall be a nation that shall secure the liberty of thought and expression of every citizen. It is a well-known and axiomatic fact the education of a person vastly affects his thought and expression. Thus, it is crucial for a democracy like our nation to ensure that the education imparted in our country is designed to enable every citizen to think in a liberal way and live a dignified life.*

*Recently the Central Board of Secondary Education (CBSE) along with the Assam Higher Secondary Education Council (AHSEC) made some reductions in the curricula which are to be studied by secondary students for the year of 2020-21. A perusal of topics removed gives us a fair idea that these reductions have been politically motivated to push forward a certain ideology.*

*This paper seeks to delve into the Right of 'Unrestricted' Education of children in India. The paper shall start with a comprehensive analysis of the Right to Education using statutory developments and judicial observations. After that, the right to "receive information" which is recognized by the Indian jurisprudence as a fundamental right under Article 19(1) of the Constitution, shall be perused in depth- including all its facets and restrictions on it. In the conclusive parts of the paper, the author shall venture to interpret both the article together with the help of sociological principles of JS Mill to infer whether*

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*the children in India have a right to "undoctored" and "unrestricted" education in India and whether the State is violating the fundamental Right to Education enlisted in Article 21A by trimming key portions of syllabus which are a prerequisite for their knowledge, information, and well-being.*

## **KEYWORDS**

Right to Education, Right to Receive Information, JS Mill, Article 21A, Individualistic Dignity

## **INTRODUCTION**

Swami Vivekananda, one of the greatest luminaries our nation has ever produced, once highlighted the sanctity of education in an individual's life by expressing that -

*“Education is the manifestation of perfection already present in a man. Education – what a huge meaning it has in our lives, but sadly the meaning is reduced to the fact that it will go on to become our source of bread and butter – nothing more and nothing less. Is this what education stands for in our life? Is not education a way to make life better? I believe that education is not an accessory to life but it is a necessity.”<sup>2</sup>*

Education, which is one of the most basic needs of the individual, is a process that provides for the development of humans. The aim of education is to nurture the person and to help him realize the full potential that already is in existence within him.<sup>3</sup> Such is the reason why the significance of quality education is monumental in a person's life.

One strand of educational thought has always believed that the strengthening and vitalization of a child's thinking and perception abilities should be the cardinal aim of schools and other institutions and not just a tangential outcome.<sup>4</sup> Proper and unchanged education imparted should show the students what and how to learn. This leads to the enhancement of thinking capacities in a student.<sup>5</sup> As Cotton [1991] has expounded *“If students are to function*

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<sup>2</sup> Swami Vivekananda, “My Idea of Education” [Advaita Ashrama India Publications 2010].

<sup>3</sup> Meyer, J., and B. Rowan. "Notes on the Structure of Educational Organizations." Paper read at the annual meeting of the American Sociological Association, San Francisco, August, Mimeographed. Stanford, Calif.: Department of Sociology, Stanford University. [1975].

<sup>4</sup> Lipman, M. Thinking in education. [Cambridge University Press 2003].

<sup>5</sup> Serap Emir, “Education faculty students’ critical thinking disposition according to academic achievement” [Procedia Social and Behavioural Sciences 1 (2009)].

*successfully in a highly technical society, then they must be equipped with lifelong learning and thinking skills necessary to acquire and process information in an ever-changing world”*<sup>6</sup>

Another important objective of “*unmanipulated*” education should be developing students' thinking as well motor skills, which is the main goal of current approaches in education. This leads to students being active and not passive while they are realizing critical education.<sup>7</sup> Such is the importance of proper and unrestricted education for a human being.

Recently, the Central Board of Secondary Education [CBSE]<sup>8</sup> made some cuts [up to 30 percent] in the syllabus of class 9<sup>th</sup> and class 10<sup>th</sup> students for the year 2020-21. CBSE expressed that such reduction in the syllabus in order to ease the burden on students because of the Covid pandemic.<sup>9</sup> The Board dropped topics like Democracy, Gender, Religion, Cast, and Secularism.

On the other hand, (AHSEC) decided to remove important and sub-topics on India's first Prime Minister J. Nehru's contribution to building of the nation, his term in the office, foreign policies implemented by him, and the pioneer general elections of the nation which etched India's position in the modern world as a successful democratic nation from the course material of 11<sup>th</sup> and 12<sup>th</sup> class students.<sup>10</sup>

Furthermore, topics including Navnirman Movement in Gujarat, politics of ‘*Garibi Hatao*’, Anti-Sikh riots, Suspension of 5-year plans, Mandal Commission Report, 2004 general elections, Ayodhya Dispute and the Gujarat riots of 1992, etc. have also been axed from the curriculum.<sup>11</sup> These moves of the CBSE and AHSEC have drawn sharp criticism from the

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<sup>6</sup> Cotton, K. “Teaching thinking skills. School Improvement Research Series”, [NW Archives 1991].

<sup>7</sup> Linda Eder and Richard Paul, “Critical Thinking: Intellectual Standards Essential to Reasoning Well Within Every Domain of Thought”.

<sup>8</sup> Business Standard Web Team, “CBSE syllabus reduction: Controversy and the politics explained in pictures” Business Standard, (April 12, 2021, 10:21 AM) available at: [https://www.business-standard.com/article/education/in-pictures-politics-over-cbse-s-changes-in-class-9-12-syllabus-120070900333\\_1.html](https://www.business-standard.com/article/education/in-pictures-politics-over-cbse-s-changes-in-class-9-12-syllabus-120070900333_1.html).

<sup>9</sup> *Id.*

<sup>10</sup> Gaurav Das, “Rewriting History: Assam Higher Secondary Council Criticised for Dropping Key Topics” (April 12, 2021 11:23 AM) The Wire, available at: <https://thewire.in/education/rewriting-history-assam-higher-secondary-council-syllabus-cut-covid-19>.

<sup>11</sup> *Id.*

Opposition parties<sup>12</sup> like Mamta Bannerjee<sup>13</sup> and Manish Sisodia<sup>14</sup> and other experts<sup>15</sup> who are accusing that the state government's actions are aimed at 'saffronisation', 'brainwashing' and 'coercing' young minds into following the agenda backed by the Bharatiya Janata Party (BJP) and the Rashtriya Swayamsevak Sangha (RSS)."

If we observe the syllabus reductions made by both the educational boards, we will see a particular ideology being pushed forward by both of them by reducing the important course material for students. Key § s of the syllabus are trimmed which have greatly compromised the quality of education to be imparted to these students. As CBSE is an instrumentality of the State<sup>16</sup> for the purposes of the Constitution<sup>17</sup>, this move of the CBSE has violated Article 21A of the Indian Constitution which gives every child in India a right to education.

The primary purpose of this paper is to evaluate the right of 'unrestricted' education of children in India. The author shall first discuss in depth the fundamental right to education of children in India. After that, the right to "receive information" which is recognized by the Indian jurisprudence as a fundamental right under Article 19(1) of the Constitution, shall be perused in depth- including all its facets and restrictions on it. In the conclusive parts of the paper, the author shall venture to interpret both the article together with the help of sociological principles of JS Mill to infer whether the children in India have a right to "undoctored" and "unrestricted" education in India and whether the State is violating the fundamental Right to Education enlisted in Article 21A by trimming key portions of syllabus which are a prerequisite for their knowledge, information, and well-being.

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<sup>12</sup> TOI Web Team, Opposition slams dropping of chapters like Secularism, Democracy;" CBSE says syllabus reduced only for this year Mixed Response form the Academicians" (April 14, 2021, 8:34 PM) available at: <https://timesofindia.indiatimes.com/india/opposition-slams-dropping-of-chapters-on-democracy-secularism-cbse-says-syllabus-reduced-only-for-this-year-mixed-response-from-academicians/articleshow/76860159.cms>.

<sup>13</sup> Express Team, Shocked to know deletion of important topics like secularism from the syllabus: Mamata Banerjee (April 23, 2021 9:34 PM) available at: <https://indianexpress.com/article/india/shocked-to-know-deletion-of-important-topics-like-secularism-from-syllabus-mamata-banerjee-6497075/>.

<sup>14</sup>The Mint Web Team, CBSE syllabus reduced; Deputy Cm Manish Sisodia expresses Concern (April 3, 2021, 2:26 PM) available at: <https://www.livemint.com/news/india/cbse-syllabus-reduced-delhi-deputy-cm-manish-sisodia-expresses-concern-11594251942139.html>.

<sup>15</sup> "Rewriting History: Assam Higher Secondary Council Criticised for Dropping Key Topics" Supra note at 9.

<sup>16</sup>CBSE is controlled by the Ministry of Education, Government of India.

<sup>17</sup> INDIA CONSTI. Art 12.

## **RIGHT TO EDUCATION AS ENUNCIATED IN THE CONSTITUTION AND EXPOUNDED BY THE JUDICIARY**

In this section, I shall analyse the entire meaning, ambit, concept, and implications of the Right to Education of children in India. I shall be tracing the development of said right using a multitude of judicial observations from the time of inception of the Constitution till recent years. This section of the paper shall be focused on tracing the nature of the Right to Education in a comprehensive and exhaustive manner.

In the starting years of the working of the Constitution, the Right to Education was not one of the fundamental rights.<sup>18</sup> It formed a part of the Directive Principles of State Policy [hereinafter “DPSP”] which required the State to endeavour to provide for free and compulsory education of all children under they complete 14 years of age.<sup>19</sup>

According to this directive, ideally speaking, the education of children up to age of 14 years should have been free at the latest by 1960. However, only a few states in India made fitful efforts to pass laws in accordance with Article 45 of the Constitution.<sup>20</sup>

### **Directive Principles’ Obligation On State Vis-À-Vis Right To Education**

During the period between “1950-1960”, the Supreme Court inferred the “right to education” from provisions of the Constitution of India such as Articles 21-24, 30(1), and 39(e) and (f).

In *Re Kerala Education Bill*<sup>21</sup> the Apex Court observed that the action of the State of Kerala banning charging of fees from pupils who studied in institutions aided by religious minority groups was violative of Article 30(1) of the Constitution since the State had made no provision for payment of grants for compensation of loss caused to them as a result of such ban.

The Court noted that the only obligation imposed on the State due to Article 45 is to “*provide free and compulsory education for children*” can be discharged by institutions or government-aided schools and it is not required by Article 45 that “*obligation is to be discharged at the expenses of minority communities*”<sup>22</sup>

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<sup>18</sup> MP JAIN, INDIAN CONSTITUTIONAL LAW, 1280 [8<sup>th</sup> ed. 2018].

<sup>19</sup> INDIA CONST. art 45.

<sup>20</sup> Assam, Andhra Pradesh, Bihar, Goa, Gujarat, Himachal Pradesh, Maharashtra, Orrisa, Punjab, Rajasthan, Sikkim, Uttar Pradesh, Haryana, Chhattisgarh, Sikkim, Tamil Nadu, West Bengal, Delhi, etc.

<sup>21</sup> *Re Kerala Education Bill*, AIR 1958 SC 956: 1959 CR 995.

<sup>22</sup> *Id.* at para [57].

In *Unnikrishnan*,<sup>23</sup> the highest court of the nation understood the right to education from the ambit of the right to life and personal liberty as under Article 21. Given the fact that Fundamental rights of the individual and DPSP of the State complement each other, the meaning and concept of the right to education were discussed in Article 41 [*Right to work, to public assistance and to education in certain cases*], Article 45 [*Providing for free and mandatory education for children*], and Article 46 [*Promoting economic and educational interests of members of Scheduled Castes, Scheduled Tribes, and other weaker sections*]. Therefore, the concept of the right to education of a child w.r.t. to DPSP amounts to -

- a. *Every child has an inherent right to be educated free of cost till the age of 14*
- b. *After he has attained 14 years of age, his/her right to education shall be circumscribed by the economic abilities and capacity of the State and its development.*

The Court had further emphasized in *Unnikrishnan* case that such obligation on the State on the State also be discharged by Govt. schools or private schools run by NGOs which are aided and recognized by the State.<sup>24</sup>

Further, it has been recognized that is compulsory for the state to grant aid to recognized institutions imparting education to children between 6 to 14 years of age.<sup>25</sup> Here, the Supreme Court while expanding the rights and liberties of an individual noted that a citizen has a right to call upon the State to provide free education within its limits of economic capacity. This does not mean that the Court was seeking to transform a DPSP<sup>26</sup> into a Fundamental Right. The Court was "*merely relying upon the Article 41 to illustrate the content of the right to education flowing from Article 21*".<sup>27</sup>

The Court further observed that it had held right to education as implicit in the right to life under Article 21 because of its intrinsic significance. It had referred to Articles 41, 45, and 46 merely to determine the limits of this right.<sup>28</sup>

Article 45 of the DPSP has also been held to be supplementary to Article 24 of the Indian Constitution which bars child labour below 14 years of age since no employment of a child less

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<sup>23</sup> *Unnikrishnan JP v. State of Andhra Pradesh*, AIR 1993 SC 2178, 2231. : (1993) 1 SCC 645; See also *Royal Polytechnic College and Ors Vs State of J. & K. And Ors*, AIR 1997 J K 123; *Maria Grace Rural Middle School vs The Government of Tamil Nadu*, 2006(5) CTC 193.

<sup>24</sup> *Id.* at Para [43].

<sup>25</sup> *State of UP vs. Pawan Kumar Dwivedi*, 2014 (10) SCJ 297: (2014) 9 SCC 692.

<sup>26</sup> INDIA CONSTI. Art 45.

<sup>27</sup> *Pawan Kumar*, Supra note 24.

<sup>28</sup> *Ibid.*

than 14 years of age obligates the State to keep him occupied in some educational institution.<sup>29</sup> Article 45 has also been held to complement to Article 39 (e) and (f).<sup>30</sup>

## **RIGHT TO LIFE AND RIGHT TO EDUCATION – MOHINI JAIN AND SUBSEQUENT RULINGS**

The consequence of quality education in stimulation of an adequate and solemn life has prompted the Supreme Court to imply "Right to Education" as a fundamental right flowing from Article 21 of the Constitution. The precise reason for attaching the "Right to Education" to 'life' is the monumental importance of it in a person's life.

The landmark case of *Mohini Jain*<sup>31</sup> gave a Division Bench of the Supreme Court [*Kuldeep Singh, J.*, and *Sahai, RM, J.*] the first opportunity to include Right to Education in Article 21. The main question of fact considered in this case was whether private educational institutions could levy exorbitant capitation fees on students?

The Court held that although Right to Education is not expressly stated in Part III of the Indian Constitution, cumulative reading of DPSPs<sup>32</sup> along with Article 21 of the Constitution, the Court noted that it was clear those framers of the Constitution of India made it compulsory for the State to provide education for its subjects.<sup>33</sup>

The Court in this case, observed that, without ensuring that right to education under Article 41 is a reality, the Fundamental Rights would remain unattainable for the generality of Indian citizens; it is impossible for a citizen to fully understand and enjoy his Fundamental Rights including freedom of speech and expression, unless he is completely aware of individualistic dignity.<sup>34</sup> Along with other rights cannot be fully comprehended and cherished unless a citizen is fully aware of his individualistic dignity. Further, 'life' in Article 21 means living with human dignity.<sup>35</sup> Right to Life is a compendious term encompassing every right which is vital for enjoyment. Thus, the Court ruled, "*The right to education is directly connected to the right to life*" and emphasised that the right to education is concomitant to the fundamental rights,

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<sup>29</sup> MP Jain, *Supra* Note 17, pp 1280.

<sup>30</sup> MC Mehta (Child Labour Matters) vs. State of Tamil Nadu, AIR 1997 SC 699; (1996) 6 SCC 692.

<sup>31</sup> Mohini Jain vs. the State of Karnataka, (1992) 3 SCC 666; AIR 1992 SC 1858.

<sup>32</sup> INDIA CONST. art 38, 39(a), 41, and 45.

<sup>33</sup> Mohini Jain, *Supra* Note 30.

<sup>34</sup> INDIA CONST. art 19(1).

<sup>35</sup> Mohini Jain, *Supra* note 30.

and that it is the constitutional duty of the State to provide education institutions at all levels for the advantage of its people.<sup>36</sup>

Viewing the rights of the citizens in an absolutist manner, the Supreme Court lastly observed that charging capitation fee in consideration of admission for educational institutions is a patent denial of fundamental rights of a citizen.<sup>37</sup>

In *Mohini Jain*, the Court took an extremely expansive and particularly unreasonable view of the State's obligation to provide education to everyone at all levels. Assigning the State, the obligation to provide an adequate number of institutions to provide professional and higher education to everyone was an approach that could not be considered viable, feasible, and reasonable from a pragmatic point of view. The present-day economic condition of the country could not provide for such measures and it would have placed an impossible financial burden on the State. Furthermore, there was no reasonable justification for completely ousting private institutions from the field of higher education. Also, it was axiomatic that if private institutions could not receive funds from the State, they should be allowed to charge higher fees to make both their ends meet.

Accordingly, the question of whether the State could permit private institutions to permit capitation fees was considered by the Supreme Court in the case of *Unnikrishnan*<sup>38</sup> by a Constitution Bench of the Court.

The Court in *Unnikrishnan*, as has been previously stated in this paper<sup>39</sup>, held that the fundamental right to education of an individual was absolute till the age of 14. However, after the attainment of that age, such obligation of the State is restricted as per the limits of the economic and financial capacity and development of the State. Court further observed that private organizations and institutions are necessary for the State but "*commercialization of education could not and should not be permitted*" and that private institutions could charge capitation fees only up to a certain ceiling.<sup>40</sup>

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<sup>36</sup> Mohini Jain, Supra note 30.

<sup>37</sup> Mohini Jain, Supra note 30.

<sup>38</sup> Unnikrishnan Supra note 22 .

<sup>39</sup> See § I (a) of this Paper.

<sup>40</sup> Unnikrishnan Supra note 22.



This scheme in Unnikrishnan was later overruled, although only temporarily<sup>41</sup>, in *TMA Pai Foundation*<sup>42</sup>, in which Court opined that “*The scheme has the consequence of nationalizing education in respect of key elements, such as a private unaided institution's right to admit students and set its own fees.*”

The confusion regarding the say of the Government vis-à-vis charging of fees by private unaided educational institutions continues, with courts resorting to a certain amount of *ad hoc* practices in resolving disputes.<sup>43</sup> As a result, only the State and its instrumentalities are bound by Article 21 of the Constitution, not private assisted educational institutions.<sup>44</sup>

Thus, up till now, we have seen how the Right to Education was given utmost importance and gravity by the Apex Court. In the next §, we shall discuss the development of the Right to Education when it was incorporated as a fundamental right under Article 21A of the Constitution.

## **EDUCATION AS A FUNDAMENTAL RIGHT- INCORPORATION OF ARTICLE 21(A)**

The incorporation of Article 21A in the Constitution by the *Constitution Eighty-Sixth Amendment Act, 2002* expressly declared the right to education as a fundamental right of every child between ages six to fourteen. The manner in which this right is to be exercised is to be decided by the law made by the State.<sup>45</sup> By adding clause (k)<sup>46</sup> in Article 51A in the Chapter of Fundamental Duties, compulsoriness is sought by making it incumbent on a parent or guardian to provide opportunities for education to their child/ward.<sup>47</sup> At the same time, a new Article 45 was added, directing the state to make every effort to provide early childhood care and education to all children until they finish six years of education.<sup>48</sup>

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<sup>41</sup> Islamic Academy of Education vs the State of Karnataka, (2003) 5 JT 1; (2003) 6 SCC 697.

<sup>42</sup> TMA Pai Foundation v. the State of Karnataka, AIR 2003 SC 355; (2002) 8 SCC 481; See also PA. Inamdar v. the State of Maharashtra, AIR 2005 SC 3226; (2005) SCC 6 537.

<sup>43</sup> See for example Cochin University of Science and Technology v Thomas P John, AIR 2008 SC 2931; Modern Dental College v State of MP AIR 2009 SC 2432.

<sup>44</sup> Pramati Educational and Cultural Trust v UOI, AIR 2014 SC 2114; (2014) 8 SCC 1.

<sup>45</sup> See Society for Unaided Schools in Rajasthan v UOI, (2012) 6 SCC 1.

<sup>46</sup> INDIA CONST. art. 51A (k), amended by The Constitution (Eighty-Sixth Amendment) Act, 2002.

<sup>47</sup> See State of Maharashtra v Sant Dhyaneswar Shikshsan Shastra Vidyalaya, (2006) 9 SCC 1.

<sup>48</sup> The Constitution (Eighty-Sixth Amendment) Act, 2002.

Article 21A has been hailed as one of the most important provisions in the Indian Constitution and stands above other rights as “*one's ability to enforce one's fundamental rights flows from one's education.*”<sup>49</sup>

Article 21A when read along with Article 19(1) of the Constitution has been construed to give each child a right to be given education in a medium of instruction of the own choice.<sup>50</sup> Article 21A has also given each child a right to study in a safe and secure environment.<sup>51</sup>

Ultimately in 2009, ***The Right of Children to Free and Compulsory Education Act, 2009***<sup>52</sup> was enacted by the Parliament which gave statutory backing to the right to education for children who have attained the age of 6 years. According to this Act, charging capitation fees is prohibited and no screening procedure is to be conducted by the schools on the child or her family. In accordance with Article 51A of the Constitution, the Act mandated that every legal guardian enroll or enable his or her child or ward, as the instance may be, to primary school in the neighbourhood school.<sup>53</sup>

Thus, we can conclude that the Right to Education has been solidified and given legislative backing which only goes to prove its sanctity and pre-eminence. Therefore, any compromise with the quality of education imparted to the children of the nation has significant ramifications on the way of life and thinking of a child which violates its fundamental right under Article 21A.

## **RECEIVING IMPARTIAL AND COMPLETE INFORMATION – AN ESSENTIAL PART OF FUNDAMENTAL RIGHTS**

In this section, of the paper, I shall discuss the entire jurisprudence related to the “Right to Receive Information” under Article 19(1) (a) of the Indian Constitution. The main 3 facets of the said right -1) Information related to elections and electoral rights, 2) Information related to matters of public interest, and 3) Restrictions of Right to Information under Article 19 (1)(a).

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<sup>49</sup> Ashok Kumar Thakur v Union of India, (2208) 6 SCC 1.

<sup>50</sup> Associated Managements of Primary and Secondary Schools in Karnataka v The State of Karnataka by its Secretary, Department of Education and Ors. ILR 2008 KAR 2895.

<sup>51</sup> Avinash Mehrotra v. UOI, (2009) 6 SCC 398.

<sup>52</sup> The Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament, 1949 (India)

<sup>53</sup>Id. §10.

## **SUPREME COURT'S VIEW UNDER ARTICLE 19(1)(A) AND ELECTORAL RIGHTS**

Article 19(1) (a) of the Indian Constitution gives the fundamental right to "freedom of speech and expression" to every citizen of the country. In this article,<sup>54</sup> the term "freedom of speech and expression" has been interpreted to include the *right to obtain and share information*.<sup>55</sup>

In *People's Union for Civil Liberties*,<sup>56</sup> the Supreme Court carefully scrutinized the application of this principle in Right to Freedom of Speech and Expression. It was observed that the right of citizens to obtain information on matters relating to public acts, flows from the Fundamental Right enshrined in Article 19(1)(a). Obtaining information on candidates running for State Legislatures or Parliament fulfills the concept of freedom of expression, and thus the access to information is a natural and fundamental component of Article 19(1) (a).<sup>57</sup> The Court noted that the "expression" has manifold meanings and ballot is the instrument by which the voter expresses his choice between candidates.<sup>58</sup>

Voters have a right to know about the educational qualifications of the candidates contesting in an election. The Fundamental Right is concomitant to Electoral Rights.<sup>59</sup>

In case allegations of public patronage are made, the public, in general, has the right to know the circumstances regarding which their elected representatives got such allotment.<sup>60</sup>

If the right to freedom of speech and expression includes the right to disseminate information to as wide a § of the population as is possible, the access which enables the right to be so exercised is also an integral part of the said right.<sup>61</sup> A wider range of circulation of information or its greater impact, cannot restrict the content of the right nor can justify its denial.<sup>62</sup>

The Delhi High Court has also emphasized in *Association for Democratic Reforms*,<sup>63</sup> that the right to receive information acquires great significance in the context of elections.

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<sup>54</sup> INDIA CONST art 19(1) (a).

<sup>55</sup> MP Jain Indian Constitutional Law, Supra note 17.

<sup>56</sup> PUCL v. UOI, (2003) 4 SCC 399; AIR 2003 SC 2363.

<sup>57</sup> Id.

<sup>58</sup> Id.

<sup>59</sup> Mairambam Prithviraj v. Sharatchandra Singh, 2017 (3) ALD 79; 2017 (2) SCC 487.

<sup>60</sup> Onkar Lal Bajaj v. UOI, (2003) 2 SCC 673.

<sup>61</sup> Shreya Singhal v UOI, 2015 (4) SCALE 1; (2015) 5 SCC 1.

<sup>62</sup> Id.

<sup>63</sup> Association for Democratic Reforms v. UOI, AIR 2001 Del 126.

## RIGHT TO RECEIVE INFORMATION AND MATTERS OF PUBLIC INTEREST

In the landmark *Raj Narain*<sup>64</sup> case, the Supreme Court markedly observed that Article (19) (a) not only guarantees freedom of speech and expression, it also ensures the rights of citizens to know and the right to receive information regarding matters of public interest and concern. The right to know in a democracy was underlined by the Court when it noted that:

*"It is one of the most fundamental rights of the people of the country to know every public act, everything that is done in a public way, by their public functionaries. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. When secrecy is claimed for transactions that can, at the very least, have no repercussions on public security, the right to know, which is drawn from the principle of freedom of expression, though not absolute, is a consideration that should make one skeptical. The public's interest is not served by concealing regular activity behind a shroud of secrecy. Such anonymity is rarely desired legitimately. It is commonly sought for the sake of political parties, personal gain, or bureaucratic routine. Officials' responsibility to explain and justify their actions is the most important safeguard against oppression and corruption."*

In *Secretary, Ministry of Information and Broadcasting*,<sup>65</sup> the Supreme Court reiterated the observation that freedom of speech and expression guaranteed by Article 19(1) (a) includes the right to information and to disseminate the same vis-à-vis matter of public concern.

In *Dinesh Trivedi*<sup>66</sup> the Supreme Court observed that people should have a right to know about the operations of the government that, having been voted by them, strives to design reasonable strategies of governance directed at their welfare in modern constitutional democracies."

Thus, it is clear that every citizen of the country has a fundamental right to seek and gather information regarding matters of public interest and the Supreme Court has upheld the same with utmost conviction. In *Dinesh Trivedi*, the Apex Court very rightly remarked "*Democracy demands transparency, and transparency is an essential component of a democratic society, and the best disinfectant is sunlight.*"

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<sup>64</sup> State of Uttar Pradesh v Raj Narain, (1975) 4 SCC 478; AIR 1975 SC 865.

<sup>65</sup> Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal, AIR 1995 SC 1236.

<sup>66</sup> Dinesh Trivedi, MP vs UOI, (1997) 1 SCJ 697; (1997) 4 SCC 306.

## RESTRICTIONS ON FUNDAMENTAL RIGHT TO RECEIVE INFORMATION

Right to Information is a facet of the right to freedom of speech and expression and is indisputably a Fundamental Right.<sup>67</sup> However, the right to information under Article 19(1) (a) is limited by reasonable restrictions under Article 19(2) and is further bounded by working of Article 21<sup>68</sup> [though the right to privacy is not absolute].

In *People's Union for Civil Liberties* [2004]<sup>69</sup> the petitioners sought divulgence of information from the respondent regarding safety defects and violations in various nuclear power plants in India. The Court accepted the contention of the Union of India that information regarding the fissile matter is a matter of sensible information which may enable the enemies of the nation to monitor the activities of the country, hence any information regarding technology, process, and structure of nuclear power plants could not be disclosed.

Generally, the right to receive information is restricted vis-à-vis following subjects of information<sup>70</sup>:

- 1) Relations with other countries
- 2) Public Safety and National Security
- 3) Criminal inquiry, detection, and prevention
- 4) Governmental internal debates
- 5) Information obtained in confidence from a non-government source
- 6) Information on scientific breakthroughs
- 7) Information that would infringe on an individual's privacy
- 8) Economic information that would provide some people or businesses an unfair edge
- 9) Information that may be subject to a legal professional privilege claim.

Most of these subjects have been covered in the ***Right to Information Act, 2005***<sup>71</sup> which have legislative backing to the Right to Information. Thus, it is clear that in some spheres of information, there is a reasonable restriction on the right to seek information.

After analysing all the observations made by the Supreme Court regarding fundamental Right to Information under Article 19(1) (a), we can understand the significance of complete and impartial information in a person's life. In this regard, former PM Atal Bihari Vajpayee has

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<sup>67</sup> MP Jain Indian Constitutional Law, Supra Note 17 pp. 1063.

<sup>68</sup> *Thalappalam Ser Cooperative Bank Limited v State of Karnataka*, 2013 (12) SCALE 527; (2013) 16 SCC 82.

<sup>69</sup> *People's Union for Civil Liberties v. UOI*, AIR 2004 SC 1442; (2004) 2 SCC 476.

<sup>70</sup> MP Jain Indian Constitutional Law pp 1064.

<sup>71</sup> Right to Information Act, 2005 No. 22, Acts of Parliament, 2005 (India).

rightly said, *"The Government wants to share power with the humblest; it wants to empower the weakest. It is precisely because of this reason that the Right to Information has to be ensured for all."*

## **CONCLUSION - READING RIGHT TO RECEIVE INFORMATION WITH RIGHT TO EDUCATION SUING THE SUPPORT OF WORKS OF JS MILL**

Thus, after perusing both Right to Information under Article 19(1) (a) and Right to Education under Article 21A of the Indian Constitution, we can safely say that both play an epoch-making role in the shaping of a person's life.

For tracing a connection between the said two rights, it is expeditious to revert to the *Mohini Jain* observation to note the following observation from the judgment – *"Article 19's essential rights, such as the right to freedom of expression and other rights, cannot be completely appreciated and enjoyed until a person is thoroughly educated and aware of his individualized dignity."*

In order to explore the meaning of this "individualistic dignity", let us refer to a theory of the renowned sociologist JS Mill –

*"An overall State education is merely a ruse for influencing people to be precisely like one another; and because the mold in which it casts them is that which pleases the prevalent political power, whether this be a ruler, a ruling class, or a majority of the existing generation, it establishes a despotism over the mind, leading by a natural tendency over one's body."*<sup>72</sup>

This statement of the well-known philosopher very well highlights the two concerns which I had in mind when I came to know of the previously mentioned syllabus cuts made by CBSE and AHSEC. These are –

- 1) Imposition of ideological discipline on the student of the country
- 2) Political cleansing of ideas thorough education in the country

In the author's belief, the situation presented by the syllabus reduction is a classic example of the patronizing and paternalistic act, which goes against libertarian principles of individuality. The author agrees with the view of JS Mill when he emphasizes on the importance on the

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<sup>72</sup> John Stuart Mill, *On Liberty* ( Penguin Classics 2006).

liberty of people to investigate complete truth. Only through exploring and recognizing all aspects of the truth will an individual be able to assert their identity in the greatest meaning.

The view of *Mohini Jain* which requires that the education of a child should be able to help him attain individualistic dignity when combining with Mill's view of individuality gives a fair idea of the quality of education, the Indian jurisprudence has intended to be imparted in India.

To get a clearer picture of the significance of ideal quality of education, we should refer to the US case of *Ambach v Norwick*<sup>73</sup> as well in which it was opined – “...*The instructor has the ability to affect pupils' attitudes regarding government, the electoral process, and citizen social duty, and this impact is critical to the democracy's survival.*”.

John Dewey, a philosopher and psychologist of the USA has noted – “*The public schools are seen as a kind of 'assimilative force,' bringing together disparate and opposing components of our community on a broad but shared ground.*”<sup>74</sup>

As far as the substance of Right to Information under Article 19(1) (a) is concerned, we can relate the theory and principles of JS Mill regarding the nature of education to them as well. Right to Information under the said article placed absolute importance on the expression of choice of voters. If we analyse the theory of Mills, we will find that he laid great emphasis on half-truths in his works. If chapters such as the works and contributions of J. Nehru and the political history of India are removed, it would impede the ability of students of the country to compare the works of the present government to the works of the past governments. This shall be serious ramifications on their voting preferences because it will impede the level of understanding they have of the working and contributions of governments in the country.

Thus, we can conclude that the current reductions made by CBSE and AHSEC violate the fundamental Rights of Education and the Right to Receive Information of the children of the country. Right to Education and Right to Receive Information when read in a complementary manner safeguard the well-being of the students of the country by giving them a Right to Unrestricted Education.

Therefore, in my opinion, CBSE and AHSEC as a State have arbitrarily exercised their power and discretion. The judicial review should look at deciding elements such as topic selection process, board member diversity, and so on. Even if nothing can be done for this situation, the

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<sup>73</sup> *Ambach v. Norwick*, 441 U.S. 68, 99 S. Ct. 1589 (1979).

<sup>74</sup> John Dewey, *Democracy and Education: An Introduction to the Philosophy of Education* (Cambridge University Press 2017)..

Court should set a precedent by barring the educational boards from making such politically motivated and arbitrary amendments in the curricula of children in the future. The Right to Unrestricted Education in India is superior and should overpower any attempt made by the State to manipulate the young minds of the country.

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