

UNNIKRISHNAN VERSUS STATE OF ANDHRA PRADESH¹

Unnikrishnan versus State of Andhra Pradesh (1993) is a significant case concerning the capitation fees charged by institutes for higher education and the Right to Education as a fundamental Right. The case had its antecedents in *Mohini Jain versus State of Karnataka (1992)*, where the question of right to education as a fundamental right was first raised. The case invoked Article 21, Article 41 and Article 45 of the Indian Constitution.

The roots of this case are in the capitation fees- the amount charged by the educational institutions, other than tuition fees. The last two decades of the 20th century saw a rise in demand for technical and professional courses like engineering and medicine. The state infrastructure was not able to cater for this surge of demand, and thus various private institutions opened. These private institutions filled some seats on the basis of the entrance test, while for some the management decided to admit students. For admission through 'management quota', they demanded a hefty sum of money.

Mohini Jain, an individual who was not from Karnataka, sought admission in a private institution in Karnataka for MBBS. She had to pay tuition fees of 60000 for the first year. The fee for the individuals who secured a government seat was 2000, and individuals from Karnataka who did not secure government seats had to pay 25000 for the same course. Other than this, a demand of 4,50,000 was also put forward by the institution as a capitation fee. Mohini Jain filed a petition against this, questioning the legality of the capitation fees as well as the right to education as enshrined in DPSPs, as well as its relation with the right to life and liberty, Article 21. The court held that the capitation fee is a violation of the right to equality and considered it unjustifiable. Though the right to education was not thoroughly addressed, the apex court did declare that the right to education forms an important part of the right to live a dignified life. Thus, this right was applicable in all stages of education.

State Government, after this, made laws to regulate the capitation fee and regulate the seats filled by 'management quota'. Other than Andhra Pradesh, similar regulations were introduced in Maharashtra, Karnataka and Tamil Nadu. While all the states were invited to represent themselves in the Supreme Court, only Andhra Pradesh appeared. The petitioners, Unnikrishnan and Others, mainly private educational institutions, filed a petition against these regulations, arguing that these regulations hinder their right to occupation enshrined under Article 19(1)(g). They argued that such regulations hinder the free flow of demand and supply. The respondent, on the other hand, argued that education is a noble occupation and thus should be saved from commercialisation. A bench of five judges was created for this case.

¹ AIR 1993 SUPREME COURT 2178

Question of Law

The major question of law in this case was regarding the applicability of the Right to occupation in the field of education as guaranteed by Article 19 (1)(g). The other significant question of law was regarding the right to education being a fundamental right stemming from Article 21, as well as Articles 41 and 45 of DPSP promote the right to education. Article 41 states that the state, in its capacity, should work for the promotion of education, and Article 45 states that every citizen has the right to have compulsory and free education till the age of 14. The petitioner argued that this right cannot be made universally applicable, and the cost of higher education in professional courses is significantly high.

Judgment

The court held that the right to education should be treated as a fundamental right stemming from the Right to life and liberty. However, this right cannot be made universally applicable to all stages of education. Thus, as stated under Article 45, free and compulsory education should be provided till the age of 14 to every citizen. Thus, it overturned the judgment held in Mohini Jain versus the State of Karnataka. The court stated that while it is not explicitly stated, the right to education in four decades has attained the stature of a fundamental right.

Regarding educational institutions as an occupation, the court held that educational institutions cannot be treated as any other occupation aimed at profiteering. While it acknowledged the right to open a private-funded educational institution, it held that the government should keep a check to prevent activities like the capitation fee, which promote inequality. For this purpose Unnikrishnan Scheme was formulated to strike a balance between private autonomy and common interests. The Right to education was explicitly declared as a fundamental right in the 86th Constitutional Amendment (2002). It placed it in Article 21A of Part III.