Competitive Exams: Right to Education

Article 45 of the DPSP, which corresponds to article 13 (1) of the ICESCR, states, The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. Thus, while the right of a child not to be employed in hazardous industries was, by virtue of article 24, recognized to be a fundamental right, the child's right to education was put into the DPSP in part IV and deferred for a period of ten years.

The question whether the right to education was a fundamental right and enforceable as such was answered by the Supreme Court in the affirmative in Mohini Jain v. State of Karnataka (1992) 3 SCC 666. The correctness of this decision was examined by a larger bench of five judges in Unnikrishnan J. P. v. State of Andhra Pradesh (1993) 1 SCC 645. The occasion was the challenge, by private medical and engineering colleges, to state legislation regulating the charging of capitation fees from students seeking admission. The college management was seeking enforcement of their right to business. The court expressly denied this claim and proceeded to examine the nature of the right to education. The court refused to accept the nonenforceablity of the DPSP. It asked:

It is noteworthy that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the article merely calls upon it to endeavour to provide the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. Does not the passage of 44 yearsmore than four times the period stipulated in Article 45convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to notice that Article 45 does not speak of the limits of its economic capacity and development as does Article 41, which inter alia speaks of right to education. What has actually happened is more money is spent and more attention is directed to higher education than toand at the cost ofprimary education (By primary education, we mean the

education which a normal child receives by the time he completes 14 years of age.) . Neglected more so are the rural sectors, and the weaker sections of the society referred to in Article 46. We clarify, we are not seeking to lay down the priorities for the Governmentwe are only emphasising the constitutional policy as disclosed by Articles 45,46 and 41. Surely the wisdom of these constitutional provisions is beyond question.

The court then proceeded to examine how this right would be enforceable and to what extent. It clarified the issue thus: The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State. More caution followed. The court's apprehension clearly was that recognition of such a right might open the flood gates for other claims. It clarified:

We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21, it does not follow automatically that each and every obligation referred to in Part IV gets automatically included within the purview of Article 21. We have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, we have referred to Articles 41,45 and 46 merely to determine the parameters of the said right.

In fact, the court had broken new ground in the matter of justiciability and enforceability of the DPSP. The decision in Unnikrishnan case has been applied by the court in formulating broad parameters for compliance by the government in the matter of eradication of child labor. This it did in a PIL where it said:

Now, strictly speaking a strong case exists to invoke the aid of Article 41 of the Constitution regarding the right to work and to give meaning to what has been provided in Article 47 relating to raising of standard of living of the population, and Articles 39 (e) and (f) as to non-abuse of tender age of children and giving opportunities and facilities to them to develop in a healthy manner, for asking the State to see that an adult member of the family, whose child is in employment in a factory or a mine or in other hazardous work, gets a job anywhere, in lieu of the child. This would also see the fulfillment of the wish contained in Article 41 after about half a century of its being in the paramount parchment, like primary education desired by Article 45, having been given the status of fundamental right by the decision in Unnikrishnan. We are, however, not asking the State at this stage to ensure alternative employment in every case covered by Article 24, as Article 41 speaks about right to work within the limits of the economic capacity and development of the State. The very large number of child labour in the aforesaid occupations would require giving of job to a very large number of

adults, if we were to ask the appropriate Government to assure alternative employment in every case, which would strain the resources of the State, in case it would not have been able to secure job for an adult in a private sector establishment or, for that matter, in a public sector organisation. We are not issuing any direction to do so presently. Instead, we leave the matter to be sorted out by the appropriate Government. In those cases where it would not be possible to provide job as above mentioned, the appropriate Government would, as its contribution/grant, deposit in the aforesaid Fund a sum of ₹ 5000/-for each child employed in a factory or mine or in any other hazardous employment. M. C. Mehta v. State of Tamil Nadu (1996) 6 SCC 772, para. 31

The court, while recognizing the importance of declaring the child's negative right against exploitation and positive right to education, chose a pragmatic approach when it came to enforceability. Earlier the court would have shrugged off the whole issue as not being within its domain. That has now changed as is clear from the recent trend of cases.

It is here the Supreme Court read into our Constitution several provisions of International Covenants. The Judges also considered DPSP and how the same could be read together with the Fundamental Rights. As stated in the case of Unnikrishnan v/s. State of AP [(1993) 1 SCC 645, para 165] In order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution. The provisions of Part III and Part IV are supplementary and complementary to each other. That is why very often the court reads the two together. There is no conflict between the two. It is wrong to assume that fulfillment of obligations relating to social and economic human rights would impair fundamental rights. That is why we incorporated Article 31 – C (25th Amendment Act 1971) which says, Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19. As Glanville Austin says: The core of the commitment to the social revolution lies in Part III and IV in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution. This is what Bhagwati J. Said in Minerva Mills case (AIR 1980 SC 1789 at 1846) : The core of the commitment of the social revolution lies in the Fundamental Rights and directive principles of state policy.

The Directive Principles also urge the nation to develop a uniform civil code and offer free legal aid to all citizens. They urge measures to maintain the separation of the judiciary from the executive and direct the government to organize village panchayats to function as units of self-government. This latter objective was advanced by the Seventy-third Amendment and the Seventy-fourth Amendment in December 1992. The Directive Principles also order that India should endeavor to protect and improve the environment and protect monuments and places of historical interest.

The Forty-second Amendment, which came into force in January 1977, attempted to raise the status of the Directive Principles by stating that no law implementing any of the Directive Principles could be declared unconstitutional on the grounds that it violated any of the Fundamental Rights. The amendment simultaneously stated that laws prohibiting “antinational activities” or the formation of “antinational associations” could not be invalidated because they infringed on any of the Fundamental Rights. It added a new section to the constitution on “Fundamental Duties” that enjoined citizens “to promote harmony and the spirit of common brotherhood among all the people of India, transcending religious, linguistic and regional or sectional diversities.” However, the amendment reflected a new emphasis in governing circles on order and discipline to counteract what some leaders had come to perceive as the excessively freewheeling style of Indian democracy. After the March 1977 general election ended the control of the Congress (Congress (R) from 1969) over the executive and legislature for the first time since independence in 1947, the new Janata-dominated Parliament passed the Forty-third Amendment (1977) and Forty-fourth Amendment (1978) . These amendments revoked the Forty-second Amendment’s provision that Directive Principles take precedence over Fundamental Rights and also curbed Parliament’s power to legislate against “antinational activities”