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CONSTITUTIONAL VALIDITY OF CHARGING HIGHER FEES IN THE PRIVATE SCHOOLS.

INTRODUCTION:

Education is the knowledge of an individual that is gained by giving them training, practical skills, and an understanding of the world around them. During the period of ancient India, the education system was focused both on learning and physical development. In short, the education system was focused on a healthy mind and healthy body. Based on that, the curriculum policy of education functions in India along with the model of western education, which was introduced to India by the colonial rule of the British Raj.

Education is a right given to the citizens of India, as by educating a citizen, it enables them to see the principles of the world working and gives them a right. At the end, they will tend to question the injustice and inequality happening around us in the forms of gender injustice, politics, caste-ism, religion, etc. It will allow individuals to widen their opportunities. Which will in turn help society build a society free from crimes, not following moral values, etc. And progressivism in the human world.

The majority of parents make their children join private institutions with the mindset that the children should have proper etiquette, good spoken English, a good environment, etc. These are some of the factors considered when choosing private institutions. Because of that, many private institutions started to set up shop in India. But the issue is that they started to charge higher fees for school education, and they turned education into a business to earn lots of profits. On the other hand, government schools started to shut down due to parents preferences for private schools. In this research paper, we will get to the answers to the constitutional validity of charging higher fees for school education by private institutions.

Research objectives:

1. To understand the right to education under the article 21A.
2. To critically analyse the charging higher fees for the school education with the case laws.
3. To understand the commercialization of Private Schools?

Research questions:

3.1 Whether charging higher fees for the school education is constitutional valid?

3.2 Whether the charging higher fees in the private schools with an intention earning profits is legal in India?

Hypothesis:

Charging higher fees for the school education is not constitutionally valid.

Research Methodology:

In this research paper, I have used secondary sources only as a descriptive form of writing as well as an analytical approach to derive my conclusions in this paper.

Review of literature:

Private Schooling in India:Size, Nature.and Equity effects, Economic and Political Weekly (1996), Geeta G kingdon.

In this article, the writer argues that the statistics which were used by the government were skewed data rather than accurate data not given.Overall,the whole article criticises the policymakers, analysts and international studies who are relying on the statistics which is basically not accurate to study the education system in India.

The effectiveness of the Right to Education (RTE) Act in unrecognised schools of Delhi,India Thesis submitted on behalf of Newcastle University (2018) was written by Gopalkrishnan Iver.

In this thesis paper, the writer focuses on the Right to Education Act,2009 which was introduced by the Parliament of India.The whole thesis talked about the outcomes of students who are studying in Delhi's private schools on the basis of charging higher fees in schools than charging low fees in schools directly impacts the learning outcomes of students using the questionnaire. Overall, the thesis provides deep insights about Right to Education,2009.

Right to Education vs. Right to Education Act, Social Scientist (2010) was written by Anil Sadgopal.

In this article, Sadgopal was a social activist and tries to criticises the Right to education Act, 2009 with the universal's right to education not attained in India.He critically examined the right to education with some implications when the act is fully implemented like whether act provides free and compulsory education to all, difference the universal accepted of the neighbourhood's school and the act's neighbourhood's school etc, questions are answered in this article.

Private Schools for Less Privileged: Some Insights from a Case Study.Economic and Political Weekly (2002) was written by Anuradha De, Claire Noronha, Meera Samson

In this Article, the authors were trying to say that the rapid growth of the private unaided schools in Haryana,Uttar Pradesh and Rajasthan. Also, it talks about the downfall of the government schools and the quality of education in the new private schools, their cost of education,their clientele. Overall,this paper focuses on comparing the government funded schools and the private unaided schools.

Education India Private Limited, Indian International Centre (2015-16) was written by Jyotsna Jha.

In this Article, the author provided deep insights about the commercialization of the school education sector in India. Overall, this article stressed a lot about the tuition fees charged by the private schools including admission fees, tuition fees, sports equipment etc. after the implementation of RTE act. Also, this article talks not about the government schools and talks only about the commercialization of the education sector in India

CHPATER 2: COMMERCIALIZATION OF PRIVATE SCHOOLS.

The private school has other forms of 'business' than the tuition money. It is the sole and perhaps highly stable component. Even though capitation fees are prohibited by the RTE (Right to Education), most (all?) private schools nonetheless impose them under disguise of development or admission fees. From Rs. 10,000 to Rs. 50,000, which supposedly rises to many hundreds of thousands for middle-income and elite institutions, the price is significant even for low charge schools. According to a research conducted in Bangalore, practically all parents who enrolled their kids in private schools under the RTE rules for the weaker sections also paid an admission fee of between Rs. 10,000 and Rs. 15,000 for each student.

Then follow requires and guidelines that have all been driven by business objectives; they might involve specific products of shoes and uniforms, as well as, occasionally, educational materials and sporting goods. Evidently, certain schools are also promoting "projects," where all the material needed for a single discovery-based project can be "discovered" in a single packet for a fee, as Continuous and Comprehensive Evaluation (CCE) becomes required in the post-RTE phase. Teachers have a long-standing tradition of requesting extra payment from pupils to attend individual lessons; more recent alternatives include tuition confinement, which can be Physical or On-line. The majority of private schools are purchasing and providing students for extra costs charging which consists of a variety of technology- and non-technology-based education methods and equipment that a number of education businesses have come to the education market with.

There are no issues the reason why the school wasn't in charge of teaching these abilities; they are simply absorbed and promoted by the institution as essential for "speaking English," "JEE Coaching" and "NEET coaching." The marketplace concept is in full effect, forcing the customers of one school to also become customers of all these supplemental companies. It is often compared to a buyer who, after purchasing a specific brand of vehicle, is forced to purchase its spare parts, regardless of cost. Education is beginning to resemble other sectors where manufacturing is getting more deterrent and components are bought in small quantities and put together by a multinational corporation at an expensive price. Consumers is unquestionably not king in the education industry. The consumers are powerless kids, yet their concerned parents want to spend as much money as they can to protect their kids' livelihoods.

Before 1990s, there were only two main types of private schools in India: (i) convents; and (ii) private schools based run by the Trust, which were primarily attended by members of the middle and upper middle classes. The emergence of referred to as budget schools at the level of primary school, as well as their limited exit, and the admission fees of higher rate, elite "international" schools providing the IB (International Baccalaureate) curriculum and the option of indian education as well as the outside Board

certifications, such as the British General Certificate of Education (GCE), on providing O (Ordinary) and A (Advanced) levels of education, respectively, represent important departures from both ends of this range. It's fascinating to take into account that all of the above scenarios vary from the norm not just when it comes to cost structures and customer bases, but also in considerations of how they handle curriculum development and learning-teaching procedures.

The Lower budget schools were searching for methods which promote utilisation of technologically enabled or along with planned teaching-learning, tool-based "learning" options with the assistance of low-paid, not qualified teachers. While the elite schools those stressed an extensive inquiry-based method with the goal of creating thinking, logical, and reflective talents among students with highly trained, paid well teachers. As a solution to the fixed, repetition learning-based education system, the wealthy transformed out from conventional to the private schools and preferred the elite schools alternatives, while the budget private schools, predominantly run by "education managers," were strongly promoted as a "affordable and effective" then resorts to the "dysfunctional, low-quality state schools" for those with limited resources.

In the past decade, there has occurred constant and motivated campaigning in favourable to policy assistance as well as public funding in different kinds for affordable or accessible private schools under the disguise of giving the poor's school decision-making" (e.g., giving parents coupons that might be redeemed at the school that was their choice, instead of choosing a public school). In disguise as programmes of fairness and excellence, these initiatives seek to influence the general public and secure governmental backing for low-budget but obviously for-profit schools. It doesn't seem difficult considering these are the two main issues with the Indian educational system. A number of Indian IT businesses and international groups with origins in the UK and the USA, which are committed to championing reforms based on markets in every sector, included education, have played a significant role in constructing the agenda. The academic tasks that go along with this advocacy's complex character includes massive media attention-seeking activities and research. The goal is to exploit the achievements here to encourage the same in other countries as well as to gain validity for the education sector in India.

The classic example is the Velammal schools IT raid conducted in the year 2020. The Income Tax (IT) Officials said that while conducting search for the 2 crores unaccounted cash and found that 532 crores rupees were not disclosed to the Income Tax Department. Also, the money allegedly came from the fees collected from the students which were not disclosed consist of loans repayment receipts, schools fees which were received in cash and not accounted for etc. It crystal Clearly pointed out that the recent private schools whether it is low budgets or the elite schools being the mindset of the economic profits than the quality of education providing to the students which is not constitutional valid under the article 21A of the Indian Constitution.

When it comes to the school fees structure in the elementary education, they are charging fees for the science lab, computer lab, smart board usage, and A/C rooms. The question is whether the fees charging for all this science lab, computer lab, smart board, and A/c rooms are used by the private schools for the based on teaching and training method ? Even, they are using all of this fees charging, how often are they using all of this facilities in the private schools ? The answers for all of this questions are not used efficiently and also, they are not training the students for this facilities established by them. Recently, they are also started to charging a separate classes for the students who are enrolled in the classes of JEE and NEET at the grade of 6th itself. The question is why they are providing training to those students who wants to appear in the entrance exams which is basically after the high school in the 6th grade itself ? what is need for charging it at the primary education in the schooling which they can started their coaching at the time of joining the high school ? So, far the private schools are not giving the answers to those questions mentioned. But, it is clearly point out that they are gaining profits by doing this method of teaching and training. Also, the private schools started to expand their schools and started to establish branches in the same city like Velammal, etc. The question is where the funds are coming from ? and if, they are earning more profits. Why the IT department are not asking the accounts details of transaction took place in the schools ? The answers for this question is simple, the word 'corruption'. In the contemporary time-frame in India, they have established commercialized education in the primary education i.e objective of gaining more profits in the education industry.

CHAPTER 3: RIGHT TO EDUCATION IN INDIA

Article 21A:

The major effort for elementary education policy in India as an independent nation is the right to education. In 1992, the Acharya Ramamurti Committee placed great importance on a national vision for cheap and required primary education. The Right to Free and Compulsory Elementary Education Act, often known as the RTE Act, 2009, was passed and went into effect on April 1st, 2010, as a result of numerous rigorous and ongoing policy discussions since then.

Under the Article 21A of the Constitution says that “*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*”¹Eventhough, the article 21A says that the government shall provide that free and compulsory education from the age of 6 to 14 years of children, it doesn't says anything pertaining to the particular topic of charging fees etc. As well, it did mentioned that the government should be the only one to be handling the schooling in India which means that it can be private schools as well. Also, it didn't says that the government must be providing free education to all the children of the age of 6 years old to the age of 14 years old which means that even, the private as well as the government can charge fees for the schooling in India.

Right to Education was regulated under Right to Free and Compulsory Elementary Education Act, also referred as the RTE Act, 2009. Under this act, sub-section (2) states that “*For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.*” It says that in case of the children's parent are not in good financial condition to pay the fees, they are not liable to pay the fees or any kind of expenses which prevents the children continue their primary education (6 to 14 years of old children) or completing their primary education.

Under Sec 8 and 9 of the Right to Free and Compulsory Elementary Education Act, 2009 says that if a child is admitted by the parents or the guardian of their own choice of a schools which is not owned, established, funded and controlled by the government indirectly or directly, they cannot ask for the claiming of reimbursement incurred expenses for the elementary education. In short words, the children cannot ask for the expenses incurred for the primary education, he/ she cannot ask for it from the type of schools funded by the private schools. Other than Private schools, the children can claim for the reimbursement of expenses incurred during the period of studying the elementary education i.e the first Standard to the Ninth Standard of the schooling.

¹ The Constitution of India, Art. 21A.

Under the section of 13, Right to Free Education and Compulsory Elementary Act,2009 says that “**No capitation fee and screening procedure for admission.—**

(1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

(2) (2) Any school or person, if in contravention of the provisions of sub-section (1),—

(a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.”

It means that no capitation fees or donation money can be received from the parents or the guardian to admit their children in any types of schools which are funded directly or indirectly or not funded by the government. If, any schools does charging the capitation fees to admit their children in any type of schools, they will be punishable with fine which consists of ten times the capitation fees charged by the schools or any person.if, any school did collected donation fees pertaining to the screening procedure in the schools, they will be punishable with fine of twenty five thousand rupees for the first time collecting and fifty thousand thousand rupees for each time collecting of donation fees from the parents.In the year 2013, a survey which was conducted in Delhi claimed that parents are struggling to get admission in the top nursery schools as the donation fees charging are ranging between three lakhs rupees to eight lakhs rupees.Also, it says that the fee structure for the nursery schools were costlier than the Delhi University fees structure.Even though, it is not constitutionally valid, the incident took place in the Delhi.So far, there is no regulation or the committee which says that there should be standard amount of fees charging or no donation money to the private schools.

At this point of time, there are two important judgements given in two cases are Mohini Jain v. State of Karnataka,1992²and the 1993 case of Unnikrishnan v. State of Andhra Pradesh³. According to which “**the ‘right to education’ is concomitant to fundamental rights enshrined under Part III of the Constitution**”⁴ Additionally, according to the Constitution, “**every citizen has a right to education.**”These Two examples involving enrollment in private higher education institutions, yet their decisions ended up serving as the defining rulings interpreting the education is a right.In case of Unnikrishnan v. State of Andhra Pradesh is the matter at hand.

² Mohini Jain v. State of Karnataka, (1992) SCR (3) 658

³ Unnikrishnan v. State of Andhra Pradesh, (1993) SCR (1) 594

⁴ Supra note 1

The Article 45 of Part IV's status was altered by the Supreme Court. The supreme court of India says in this case that the article 45 should be viewed in harmony with Part III's Article 21 (Right to Education). Since the "right to life" has no significance without education. Additionally noted in the ruling that ***“every child/citizen of India has a right to free education until he completes the age of fourteen years and beyond this, the right to education is subject to limits of economic capacity and development of the state”***

In *TMA Pai Foundation v. State of Karnataka* (2002)⁵, the Apex court said in these case as the constitutional basis for limiting the fees set by private unaided educational institutions. The court ruled that states must create the necessary mechanisms to prevent profit and capitation fees. However, it was acceptable to donate a "reasonable surplus" to more schooling.

The definition of this "reasonable surplus" has additionally become a topic of legal dispute. According to the ruling in *Islamic Academy of Education v. State of Karnataka* (2003)⁶, each institution is free to set its own tuition schedule, taking into account the necessity to raise money to maintain the institution and provide the students with the amenities they require. The surplus resulting from this ought to be invested in that institution's expansion. In the same way, the Supreme Court upheld the *TMA Pai* decision in *PA Inamdar* (2005) and gave private institutions the ability to create their own fee structures that may be controlled to avoid profit and capitation fees.

It is significant to keep in mind that these court decisions are mostly concerned with fee regulations in schools of more advanced and professional education. The Supreme Court took into account the problem of fee increases in the privately run schools in Delhi in case of *Modern School v. Union of India* (2004)⁷. The court found that this liberty should not result in the commercialization of education while supporting the right of independent schools to produce "reasonable surplus" for growth and development. Furthermore, private schools must to adhere to the same accounting standards as non-profit institutions.

These judgment gave two clear points.

1. profit and the imposition of capitation fees are prohibited. As a result, state control is necessary for maintaining a lid on both of those activities.
2. a 'reasonable surplus 'should be generated by paying fees for schools that are private. Therefore, a certain amount of profit is OK as long as it remains exorbitant.

⁵ *TMA Pai Foundation v. State of Karnataka*, AIR 2003 SC 355.

⁶ *Slamic Academy of Education v. State of Karnataka*, (2003) 6 SCC 697.

⁷ *Modern School v. Union of India*, (2004) AIR SCW 2698.

They have been passed the state legislations laws in the states like Tamil Nadu, Delhi, Maharashtra, Uttarakhand, etc. to regulate fees charging in the private schools. So far, there was no good or development has been seen in the education industry.

CONCLUSION

In this research project, we have seen the commercialization of the primary school education in India along with the fees charging method adopted to gain profits as the motive objective in the education industry in the today's world. Even though, there are laws regulating in charging higher fees in private schools, judgements given by the reputed judges were there. There had been seen no decrease in charging higher fees in the schools run by the private. So, it would be good if it is run by the government itself than private institutions. As we can see in the low budget private schools, there are recruiting only the teachers based on the less trained not the over qualified teachers. If, it is run by the government schools, the teachers are selected based on the test marks. At the end, we can see the efficiency in the teaching. The certain sector are not played by the individuals or the private like nuclear power, etc. We can make the education of all the children in the country run by the government in the schooling. By doing this way, there will be no kind of issues related to the education corruption. In this paper, we have found out that charging higher fees in the private schools for earning more profits are not constitutional valid in India. It is illegal in India.

REFERENCES:

JOURNALS:

1. Resmi P. Bhaskaran, “*Right to Education Act, 2009*” 80 Indian History Congress 1264 (2019).
2. Geeta G. Kingdon, “*Private Schooling in India: Size, Nature, and Equity-Effects*” 31 Economic and Political Weekly (1996).
3. Jyotsna Jha, “*Education India Private Limited*” 42 India International Centre (2016).
4. Anuradha De., Claire Noronha, et.al., “*Private Schools for Less Privileged: Some Insights from a Case Study*” 52 Economic and Political Weekly (2003).
5. Anil Sadgopal, “*Right to Education Vs. Right to Education Act*” 38 Social Scientist (2010).

NEWSPAPERS:

1. “Hefty Donation, Fees Big Hurdle for Nursery Admission: Surve .. Read More At: [Http://Timesofindia.indiatimes.com/Articleshow/18677323.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](http://Timesofindia.indiatimes.com/Articleshow/18677323.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)”, The Times of India, Feb. 25, 2013, available at: <https://timesofindia.indiatimes.com/education/news/hefty-donation-fees-big-hurdle-for-nursery-admission-survey/articleshow/18677323.cms> (last visited on Aug. 25, 2023).
2. “IT Raids at Velammal Educational Trust Reveals Rs. 532 Crore of Undisclosed Income”, The Hindu, Jan. 24, 2020.

STATUTES:

1. Right Free and compulsory Education Act, 2009.

CASE LAWS:

1. *TMA Pai Foundation v. State of Karnataka*, (2002)
2. *Slamic Academy of Education v. State of Karnataka*, (2003)
3. *Modern School v. Union of India*, (2004)
4. *Mohini Jain v. State of Karnataka*, (1992) SCR (3) 658
5. *Unnikrishnan v. State of Andhra Pradesh*, (1993) SCR (1) 594

