



EDUCATIONAL INSTITUTIONS: SCOPE OF THE RIGHT TO ESTABLISH SUCH INSTITUTIONS

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ABSTRACT The nature and scope of the right to establish educational institutions have been studied in this research work. In the recent periods, the demand for educational institutions of varied types has increased manifold. Instances such as poor quality standards with less infra-structure and ill-qualified teachers have been noticed to cope with the demand with the sole motive of making money with little or less emphasis on educational needs and requirements. In the light of leading decisions of the apex court, the right being considered as a 'fundamental right' has been ruled out and consequently the remedy under Art 32 is not available. The impression that High Courts will not do justice needs to be eliminated and confidence has to be restored that it will do justice in the enforcement of rights. Various issues have been clarified. Appropriate amendments to existing laws have been suggested.

KEYWORDS : Regular Competent faculty Infra-structure facilities Trade or business Profit motive Constitutionality of the Statutes

III. INTRODUCTION

1. The nature of the right to establish educational institutions and its enforcement under Art 32 of the Constitution of India have been discussed in a recent case decided by the apex court.¹ In the light of increasing educational institutions of varied types like coaching centre, Training centre, Schools of Medical or Engineering Institutes or centre of excellence in education, there is a need to study this issue of the nature of the right and its enforcement in as much as in some of these institutions have been established with a profit motive and not for the real purpose of imparting knowledge. They are reported to be suffering from regular competent faculty, lacking in respect of infra-structure, library facilities and in respect of technology in imparting instruction.

IV. Text of the article

2. The institutions are subjected to periodic inspection such as Medical Inspection Committee and others related to the type and nature of the institutions in order to review their performance and to satisfy various standards prescribed for granting renewal of permission to run the colleges. In case of deficiencies in meeting the requirements, the permission is refused by the authorities. In cases like this the question of the right being considered as fundamental right and if so, its enforceability by moving the original writ jurisdiction of the apex court under Art 32 of the Constitution arises.

3. In Priya Gupta's case,² the time-limit is fixed for seeking remedy and in view of this, it makes the aggrieved party to seek expeditions remedy for the enforcement of the right the parties resort to Art 32 of the Constitution of India. A detailed examination of the recent case³ brings home with sufficient clarity an answer to such an issue.

Scope of Art 19

4. Under Article 19 of the Constitution, certain fundamental rights are guaranteed and in particular Art 19(g) which confer a fundamental rights to all citizens, "to practice any profession or to carry on any occupation; trade or business". This right is not absolute and qualified by provisions of Art 19(6) which enables the State to impose reasonable restrictions on grounds of interests of general public, to prescribe professional or technical qualifications or carrying on any occupation, trade or business or the carrying on by the State or by a business, industry or service whether to the exclusion, complete or partial of citizens or otherwise.⁴ The moot question which arises, is whether this right under Art 19(1)(g) includes the right to establish educational institutions.

Imparting education – Not a trade or business

5. The Supreme Court held in a case by the Constitution Bench of (5) days that "imparting education cannot be treated as a trade or business". The court observed thus:-⁵

- (I) (i) Trade or business normally connotes an activity carried on with profit motive;
- (ii) Education has never been nor can it be allowed to become 'commerce' in this Country;

- (iii) Education has always been treated in this Country as religion and charitable activity, and making it commercial is opposed to the ethos, tradition and sensibilities of the nation;
- iv) Citizens of this Country may have a right to establish an educational institution but no citizen, person, or institution has a right much less of fundamental right to affiliation or recognition.

(II) The Educational institutions can be classified broadly into two categories namely:-

- a) (1) Those which require recognition by the State;
- (2) Those which do not recognise any such recognition.
- (b) There is absolutely no fundamental right to recognise in any citizen;
- (c) The right to establish and run the educational institution with State's recognition arises only on the State permitting pursuant to a policy decision or the fulfilment of the conditions of the Statute.
- (d) When the right is dependent on the State's permission under the Statute or the exercise of an executive power, it cannot qualify to be a fundamental right;
- (e) The policy of the State may also a determinant factor.
- (f) Anyone desirous of starting an institution purely for the purpose of educating the students could do so, but Section 22 and Section 23 of University Grants Commission Act prohibit the award of degree except by a University.⁷

In view of⁸ what is stated above, the right to establish an educational institution cannot be treated as a "Fundamental Right".

Scope of Art 32

6. (1) Art 32 of the Constitution, keeping in view that every right must have a remedy and a right without a remedy is no right at all, guarantees the right to move the original writ jurisdiction of the Supreme Court for the enforcement of the fundamental right by appropriate writ. The sole object of Art 32 is to enforce Fundamental right.

In other words, the Supreme Court cannot be approached on any matter other than Fundamental rights. No doubt the High Courts have wider power under Art 226⁹ to issue writs not only for the purpose of enforcement of Fundamental rights but also ordinary legal rights. In other words, for the enforcement of the right to establish an educational institution, the High Courts can be approached for invoking the writ remedy.

2) Under Art 32, the Supreme Court will not interfere with an administrative order where the constitutionality of the statute or the order made there under is not challenged on the ground other than contravention of Fundamental rights.

3) The scope of ambit of Art 32 has been lucidly discussed in Northern Corporations case¹⁰ and the apex court stated thus:-

- (i) If there is a breach of fundamental rights, the petitioner can certainly have recourse to Art 32;
- (ii) For the enforcement of fundamental rights which is dependent upon adjudication or determination of questions of law as well as of questions of fact, without taking any resort to the provisions of the Act, it is not permissible to move this court on the theoretical basis that there is breach of fundamental right.
- (iii) Wherever a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right, though some-times it may be an action in breach of fundamental right.

6. Unni Krishnan's case AIR 1993 SC P.2178.
7. See Note 1 Para 15 dealing with the case Note5.
8. See for details Sec 22 and 23 of the University Grants Commission Act.
9. See for details Art 32 of the Constitution.
10. See for details Art 226 of the Constitution.
11. AIR 1991 SC P.764
12. AIR 1987 SC P.1159.
13. AIR 1990 SC P.851.
14. Dy. Chief Controller of Imports & Exports case AIR 1975 SC P.1208.
15. AIR 1957 SC P.733.
16. Note 1 Para 27.

7. Om Kanubhai Brahmabhatt's case¹¹, the Supreme Court stated that, 'if it takes upon itself to do everything which even the High Courts can do, it will not be able to do what it alone can do under Art 136 of the Constitution and other provisions conferring exclusive jurisdiction upto it'.

Power of High Court and its role vis-a-vis Justice

There is no reason to assume that the High Courts will do not justice or the Supreme Court alone can do justice. Directly approaching the Supreme Court in the cases, instead of approaching the High Court, may result in delay in the disposal of other cases involving exclusive jurisdiction of the Supreme Court resulting in immense hardship to tens of thousands of litigants.

There is a need to inspire confidence in the litigants that justice will be meted out by the hierarchy of courts, not only by the Supreme Court alone.

8. In Hindi Hitrakshak Samithi's case,¹² the Supreme Court held, "where the existence of fundamental rights has to be established by acceptance of a particular policy, or a course of action for which there is no legal compulsion or statutory imperative on which there are divergent views, the same cannot be sought to be enforced by Art 32 of the Constitution.

Wrong application of law –not a violation of Fundamental Rights

9. A wrong application of law would not amount to a violation of Fundamental right.¹³

In Gulabdas case¹⁴ the Supreme Court stated thus:-

"If an order is made under the provisions of a Statute which is intra-vires and the order is within the jurisdiction of the authority making it, there is no infraction of fundamental rights".

It follows that the reports of inspection committee regarding recognition on renewal of permission to run the course is well within the jurisdiction, which is a statutory body, to satisfy itself the compliance of various provisions of the Acts, rules and regulations, it cannot be considered as an infraction of fundamental rights, if an order of refusal to renew the permission is made.

10. The Supreme Court also held¹⁵ under Art 32 of the Constitution, the court is not supposed to go into findings of facts recorded by the authorities and to take a different conclusion".

V. CONCLUSION AND RECOMMENDATIONS

11. In conclusion, it may be stated thus:
 - i) The right to establish an educational institution is not a Fundamental right and there is no remedy by way of Art 32 is available;
 - ii) The right to establish an educational institution is only an ordinary right and therefore the hierarchy of courts set up having jurisdiction can be approached.
 - iii) The High Court's writ jurisdiction is available to parties under Art 226 of the Constitution.

With a view to put an end to further litigation on this, it is desirable to amend Art 19(1)(g) to the effect that the guaranteed right under this Art 19(1) (g) excludes "the right to establish or run educational institutions".

REFERENCES

1. Principal & Dean, Bharati Vidya Peeth, New Law College, Pune.
2. DM Wayanand Institute of Medical Sciences Vs. Union of India and P.Krishna Das and another Vs. Union of India, AIR 2015 SC P.2940.
3. AIR 2012 SC P.2413.
4. See Note 1.
5. See for details Art 19(1)(g) and Art 19 (i)(6) of the Constitution of India.