

Education: Trade, Profession, Occupation or Business

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Teaching shops

Taking note of the mushroom growth of medical colleges, which thrive on capitation fees, the Court said that such institutions are nothing but teaching shops. The students who would not otherwise get admission in recognized medical colleges, would get a back-door entry into medical training "solely by the ability to pay one's way through".

The Court had further said that "Restricting admission belonging to the richer section of society and denying the same to the poor meritorious, is wholly arbitrary, against the constitutional scheme and as such cannot be legally permitted" (Para 20) This is violative of Article 14 of the Constitution.

There are three important findings in Mohini Jain: (1) Every citizen has a Right to education as a part of Article 21 (Or as a human right) at all levels (ii) The State is under an obligation to establish educational institutions, (iii) When the State Government permits a Private Medical College to be set up and recognizes its curriculum the said College is performing a function "which under the Constitution has been assigned to the State Government" (Page 28) Since all these State recognized private colleges are agents of the State, they cannot charge any fee more than the tuition fee charged in the Government College. All such fees charged more than the Government fixed tuition fee, are nothing but the capitation fee, "whatever name one may give to this extraction of money" (Para 28).

The Court rightly did not go into the question as to how one should run one's educational institution — its economic viability, its budgeting and expenses, etc. The Court is just not qualified to lay down any scheme for running an educational institution. The Court took note of the fact that to "establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale" (Para 18). The Court was concerned with the State action or inaction and whether it would defeat the constitutional mandate. The Court came to the conclusion that the "State action in permitting capitation fee to be charged by State - recognized educational institutions, is wholly arbitrary and as such violative of Article 14 of the Constitution of India (Para 18).

However, as against this perfectly valid judgement, a vilification campaign both by the legal fraternity and the vested interest group was carried on to say that the Supreme Court ruling was against private commercial initiatives and the State has no resources and manpower to provide universal and all round education to all at all stages. The Editor of Supreme Court Cases Reporter wrote a 6 page editorial note criticizing the judgement, without even understanding, "Right to Education" is a recognized human right under the UDHR and ICESCR, and how the State is required to discharge its obligations, both under the Constitution and as enunciated under Art. 2 of ICESCR and even forgetting Municipal Council, Ratlam V/s. Vardichand (1980). It is even suggested that for

preventing extortion, the commercial enterprise should be allowed to grow "so that it turns from a seller's market to a buyer's market" — as if the private professional colleges are sellers and the students are buyers. Again has the extortion become less, now? Fortunately even the latest judgement has not fully endorsed this. (How many such Editorial Notes have been written when several judgements which were apparently wrong and contrary to earlier precedents were delivered?)