

## Avinash Mehrotra v Union of India (Supreme Court of India; 2009)

### Case at a glance

#### Full citation

[Avinash Mehrotra v. Union of India & Others, Writ Petition \(Civil\) No.483 of 2004, \(2009\) 6 SCC 398](#)

#### Country

India

#### Forum

Supreme Court of India

#### Date of decision

13 April 2009

#### Summary of decision

In this decision, the Supreme Court of India interpreted the right to education to include the right to the provision of a safe environment in schools, and imposed an obligation on schools to comply with certain fire safety precautions which were detailed in the judgment.

#### Significance to the right to education

The right to education became a fundamental right in the Indian Constitution in 2002 and Article 21A provides 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.' This decision provided that the State's duty cannot be discharged by the provision of unsafe schools. The State must ensure that children suffer no harm in exercising their fundamental right to education and, accordingly, must ensure that schools provide safe facilities as part of a compulsory education.

#### Issues & keywords

Right to education; Compulsory education; Health and safety; Regulation of private schools; Private schools, Minimum education standards; Quality education

# Context

The original Constitution of India included the right to education as a directive principle of State policy with a 10 year time-limit for implementation.

Subsequently, the Supreme Court of India affirmed the fundamental right to education in two landmark cases, *Mohini Jain v State of Karnataka* and *Unni Krishnan J.P. v State of Andhra Pradesh*.

In December 2002, the Constitution (Eighty-Sixth Amendment) Act was passed, entrenching the right to education in Article 21A which reads: '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.' Article 21A is in Part III of the Constitution and therefore the right to education is now considered a 'fundamental right' under the Constitution.

Article 21A contemplated enabling legislation. The Right of Children to Free and Compulsory Education Act, 2009 (RCFCEA) was enacted in August 2009 and entered into force on 1 April 2010.

## Facts

This case arose out of a fire that started in a middle-school in Madras. The school, a single thatched roof building with no windows and one entrance and exit was a private school that was said to have 'sprung up in response to drastic cuts in government spending on education'. The fire started in a nearby makeshift kitchen where cooks were preparing a midday meal, and killed 93 children and injured many others.

An instant writ petition was filed under Public Interest Litigation in order to protect school children against similar future tragedies and to improve the conditions of the schools in the country.

The Supreme Court issued notices to the Union of India, State Governments and the Union Territories. Twenty-seven States and Union Territories filed affidavits admitting that many schools did not meet their self-determined safety standards (which were in any event below the standards of the National Building Code of India, 2005).

## Issue

Whether there is a fundamental right to receive education free from fear of security and safety, and whether the State is obliged to ensure minimum safety standards in schools.

'It has become necessary that the Government set a realistic target within which it must fully implement Article 21A regarding free and compulsory education for the entire country. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21A, which, in the larger interest of the nation, must be fully implemented. Without Article 21A, the other fundamental rights are effectively rendered meaningless. Education stands above other rights, as one's ability to enforce one's fundamental rights flows from one's education. This is ultimately why the judiciary must oversee Government spending on free and compulsory education.'

*Ashoka Kumar Thakur vs. Union of India and others (2008) 6 SCC 1.*

## Relevant Legal Provisions

- Articles 21 and 21A of the Constitution
- Articles 14, 15, and 19 of the Constitution
- Article 51A(k) of the Constitution
- National Building Code of India, 2005

# Decision

The Court decided that there is a fundamental right to receive education free from fear of security and safety, and the right to education incorporates the provision of safe schools pursuant to Articles 21 and 21A of the Constitution. No matter where a family seeks to educate its children (i.e. including private schools), the State must ensure that children suffer no harm in exercising their fundamental right to education.

State Governments and Union Territories were directed to ensure that schools adhere to basic safety standards and that school buildings are safe and secure according to the safety norms prescribed by the National Building Code and affidavits of compliance were required to be filed by authorities concerned.

In interpreting the right to education Dalveer Bhandari, J. reasoned: 'Educating a child requires more than a teacher and a blackboard, or a classroom and a book. The right to education requires that a child studies in a quality school, and a quality school certainly should pose no threat to a child's safety.'

## Commentary

The Supreme Court did not cite international law but its reasoning is consistent with international interpretation of the right to education. In particular, one of the '4As' developed by the first UN Special Rapporteur on the right to education, Katarina Tomaševski, and later adopted by the Committee on Economic, Social and Cultural Rights in its General Comment 13 on the right to education (paragraph 6), is that education is 'acceptable', i.e. that the content of education is relevant, non-discriminatory, and culturally appropriate, and of quality; *schools are safe* and teachers are professional [emphasis added].

The judgment is also consistent with the obligation under international law to ensure that private schools meet minimum education standards as set or approved by the State (Article 13(4), International Covenant on Economic, Social and Cultural Rights).

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### Related cases

Unni Krishnan, J.P. & Others v. State of Andhra Pradesh & Ors. (1993) 1 SCC 645, R.D.

Upadhyay v. State of A.P. & Ors. AIR 2006 SC 1946,

Election Commission of India Vs. St. Mary's School & Ors. (2008) 2 SCC 390

Bandhua Mukti Morcha V. Union of India & Ors., (1997) 10 SCC 549.

With thanks to [White & Case](#) and [Advocates for International Development](#) for their support in compiling this case summary.

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