

**IN THE HON'BLE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

C.W.P. No 4909 of 2010

(Public Interest Litigation)

Hemant Goswami

...Petitioner

Versus

Union of India & Ors.

....Respondents

**LIST & DATES OF EVENTS**

January 26, 1950	Constitution of India was enacted on Jan 26, 1950. The Part III of the Constitution provided for fundamental rights of every citizen, including that of equality before law (Article 14), Freedom of Speech (Article 19) and Right to Life (Article 21). Article 41 provides that Right to work, to education and to public assistance in certain cases. It provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education etc. Article 45 provides for free and compulsory education for children and specifically mentions, "(1) The State shall endeavour to provide, within a period of ten years from the
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	<p>commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. (2) The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”</p> <p>Art. 46 reads, “Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections:- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”</p> <p>Article 39 further strengthens the resolve.</p> <p>Directive Principles engrafted in part IV of the constitution direct the State to provide free and compulsory education for all children until they complete the age of 14 years.</p>
Year 1989	India signs and ratifies “UN Convention on the Rights of the Child of 1989” which resolves to provide education to all children.

December 10, 1998

United Nations, on 10th December, 1998 adopted Universal Declaration of Human Rights. The Preamble to the UDHR stated that: "every individual and organ of society...., shall strive by teaching and education to promote respect for these rights and freedoms..." India being a member of the UN adopted the said declaration. Article 26 (1) of UDHR proclaims that: Every one has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."Article 26 (2) of UDHR states that Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace. Further, Article 26 (3) provides that parents have a prior right to choose the kind of education that shall be given to their children."

	<p>The right to education has also been recognized by the International covenant on Economic, Social and Cultural Rights (Article 13).</p>
<p>Year 2002</p>	<p>In the Year 2002, the Constitution was amended by the 86th Amendment Act wherein Art. 21A was inserted. It 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.</p> <p>Art. 51A (k) mentioned and added a fundamental duty which read that “who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”</p>
<p>1950 to till date</p>	<p>Chandigarh Administration, Central Government, State of Punjab and Haryana allot highly subsidised prime land to many schools, colleges and educational institutes to facilitate educational activities. Conditions imposed on all such educational institutions to provide economical education in a non-profit mode and to reserve at least 15% seats for absolutely free of cost education to economically under-privileged</p>

	children.
Year 1996	Chandigarh Notifies Allotment of Land to Education Institutional (Schools) Etc. on Lease Hold basis Scheme 1996
Year 2002, 2003, 2004 & 2005	Chandigarh amends Allotment of Land to Education Institutional (Schools) Etc. on Lease Hold basis Scheme 1996
November 2009	Information under RTI obtained from Chandigarh to know how many educational institutions were not following the 15% requirement of providing free education to students belonging to Economically Weaker Section (EWS) of the society. The partial list, as obtained, shows that most schools not following the norms.
22 <sup>nd</sup> February 2010	Representations and Complaints for not providing 15% seats to EWS students moved with the Administrator, Advisor, Education-cum-Home Secretary, Chief Administrator and Estate Officer. None replied and no action taken till date, to the

	knowledge of the petitioner.
1950 to till date	Despite being bound to provide free education to at-least 15 percent students' free-of-cost in-lieu of being provided free/ subsidised land and government grant-in-aid; the educational institutions held under private control continue to violate the necessary requirement and refuse to fulfil the legal requirement of providing 15% free seats.

Hence, this civil writ petition is being filed before this Hon'ble Court.

Chandigarh

Date:- March 16, 2010

(Hemant Goswami)

Petitioner

Through Counsels:-

(A.P.S Shergill) (Jagjeet Singh) (Nimarpreet Sidhu)

Advocates for the Petitioner

**IN THE HON'BLE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH**

C.W.P. No 4909 of 2010

(Public Interest

Litigation)

Hemant Goswami, S/o Sh B. M. Goswami, Chairperson, Burning  
Brain Society, #3, Glass office, Shivalikview Business Arcade,  
Sector 17-E, Chandigarh 160017 (E-Mail:  
hemantgoswami@gmail.com)

.....Petitioner

Versus

1. Union of India through Secretary, Ministry of Human Resource  
Development, Government of India, Shastri Bhawan, New Delhi-  
110001 (E-Mail: secy.sel@nic.in)
2. Union of India through Secretary, Ministry of Home Affairs, North  
Block, New Delhi 110001 (E-Mail: hm@nic.in)
3. Chandigarh Administration through Advisor to the Administrator,  
UT Secretariat, Sector 9, Chandigarh (E-Mail:  
adviser@chd.nic.in)
4. Chief Administrator, Chandigarh Administration, UT Secretariat,  
Sector 9, Chandigarh (E-Mail: fs@chd.nic.in)

..... Respondents

**CIVIL WRIT PETITION** under Articles 226/227 of Constitution of India for issuance of Writ or direction in the nature of **Writ of Mandamus** or any other appropriate Writ;

- I. directing the respondents to ensure that all the educational institution provide absolutely free (and same quality of) education to at-least a minimum of 15% students belonging to economically deprived segment of the society.
  - a. Ensuring that in compliance to providing free education, it shall also include 100% concession from payment of any sundry allowances, building funds, tour-picnic funds, etc. or any additional fund, by what ever name charged.
  - b. Ensuring that in compliance to providing free education, such students are also provided free books, reading material and necessary resources to carry on the education.
  - c. Ensuring that in compliance to providing free education, such students are also provided free transportation if their place of residence is away from the educational institution.

d. Ensuring that in compliance to providing free education, such students are provided the same quality of education during the regular hours along with the other regular students. If the educational institutional also runs additional/evening classes and other branches; the minimum balance of providing 15% free seats be maintained at all branches and classes at different timings be maintaining separately, independent of each other; such equal proportion/ratio be also kept in all the different age groups and/or the academic year of study.

II. directing the respondents to recover the complete fee and sundry charges and the profit/ surplus/ additional resources made by the educational institutions by evading to provide the minimum required 15% free seats to EWS students for all years of default since the inception of the educational institution; and to deposit the said fund in a separate account to be used for educational purpose and fund the existing Government schools.

- III. directing the respondents to resume the sites of those schools who continue to default on their legal obligation of providing the necessary 15% free seats to students belonging to EWS of the society and/or those who fail to refund and hand-over the amount collected by regular students towards fee and other funds, over the years, from 15% or such percent of shortfall of EWS students in their educational institutions, which they otherwise were supposed to enroll.
  
- IV. Directing the respondents to advertise in the beginning of academic year, the number of seats in every educational school in the EWS category and ensuring that the Government pro-actively reach the under-privileged by all means, including by distributing admission-coupons (by what-ever name called) through civil society/NGO's and social workers to families enrolled in other EWS schemes, etc.
  - a. Ensuring thereby that in case of any shortfall in admission in any school of the mandatory 15% students from the EWS section of the society, equal number of students, otherwise belonging to EWS section are transferred from the nearest Government school to the private

educational institution, so as to ensure that the necessary condition is maintained at all times.

- V. directing the respondents to form a permanent and full time body and a fool-proof mechanism to supervise and oversee the functioning of the private school;

And

- VI. Any other order, this Hon'ble Court deems fit and proper in the circumstances of this case be also made.

MOST RESPECTFULLY SUBMITTED:

1. That the Petitioner No 1 is a social activist associated with many civil society organizations including many national and international organizations and actively engaged in public welfare. The petitioner is engaged in various social, public interest and civil rights activities concerning the youngsters and the public in general. Petitioner is also working with civil society organizations called "Burning Brain Society," "Coalition for Social Engineering" and "Citizens' Voice." Many of the activities undertaken by the petitioner have produced positive results and have been widely recognized nationally and globally. The petitioner and the organization he represents have also conducted activities for polishing talents of children and for the right of children to live in a healthy environment. The circumstances of the present case entitles the petitioner to invoke the extraordinary jurisdiction of this

Hon'ble Court by way of public interest litigation as the issue involved touches the lives of more than a million people.

2. That the Constitution of India provides for "Equal treatment before the law," "Right to Life" and "Freedom of Expression." Denial of education directly infringes upon all of these fundamental rights guaranteed under the constitution. Article 41 provides that Right to work, to education and to public assistance in certain cases. It provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education etc. Article 45 provides for free and compulsory education for children and specifically mentions, "(1) 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. (2) The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years." Art. 46 reads, "Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections:- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation." Article 39 further strengthens the resolve. Directive Principles engrafted in part IV of the constitution direct the State to provide free and compulsory education for all children until they complete the age of 14 years.

3. That India also signed and ratified the “UN Convention on the Rights of the Child” on 12<sup>th</sup> Nov. 1992 which resolves to provide education to all children. That on 10th December, 1998, United Nations adopted Universal Declaration of Human Rights. The Preamble to the UDHR stated that: “every individual and organ of society...., shall strive by teaching and education to promote respect for these rights and freedoms....” India being a member of the UN adopted the said declaration. Article 26 (1) of UDHR proclaims that: Every one has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."Article 26 (2) of UDHR states that Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace. Further, Article 26 (3) provides that parents have a prior right to choose the kind of education that shall be given to their children."
4. The right to education has also been recognized by the International covenant on Economic, Social and Cultural Rights (Article 13) which India has signed and ratified. The Hon'ble Supreme Court has in Vishaka Vs State of Rajasthan held that international convention and

treaties can be read as part of the law when sufficient provisions in the domestic law do not exist.

5. That the Supreme Court too has also time and again emphasised on the necessity of free education to all children. The scope of free-education has been expanded to include all kind of financial requirements of a student to obtain education and in various judgements on right of children to have free-education; various courts of even the developed world (and capitalist countries) including United Kingdom have held so. In a case titled “**Devon County Council v George [1989] House of Lords,**” [AC 573, 604B leading judgement by Lord Keith] the court held that “Securing that education is accessible has also generated jurisprudence where transportation should be provided, free of charge, to facilitate compulsory school attendance of children who live beyond the walking distance to school. The Court stated; ‘In the case of pupils (living further away than walking distance), a local education authority would be acting unreasonably if it decided that free transport was unnecessary for the purpose of promoting their attendance at school, because if it were not provided that parents of these pupils would be under no legal obligation to secure their attendance.’” Similarly in “**RV Richmond upon Thames London Borough Council, ex parte McCarthy & Stone**” case ([1992] 2 A.C. 48 United Kingdom), The Court held that the obligation of the state to make education free requires the prohibition of charges for registering pupils, or their entry for examination, or for the transportation provided to pupils who live beyond walking distance.

6. That in India almost 50 percent of the population remains illiterate, and an estimated 58 million out of 185 million children aged between 5 and 14 years are not in school.<sup>26</sup> The Indian Government reported in 2003 that the enrolment rate in rural areas nationwide was only 71%, with a gender disparity of 0.84, meaning a 16% lower rate for girls.
7. That the Majumdar Committee concluded in 1999 that the universalisation of elementary education for children aged six to fourteen years would require an additional expenditure of Rs 140,000,000,000 per year for ten years; on the assumption of annual GDP growth of 5 percent, this amounts to an additional 0.7 percent of GDP dedicated to education per year, raising education expenditure to approximately 5 percent of GDP.
8. That the Government of India can not spend more than 3% of its budget, at any time, on education; as a result education remains under-funded and cash starved.
9. That the Government of India is also running programme under “Sarv Shiksha Abhiyaan” and “Mid-Day Meals Scheme” to provide education to underprivileged children. The State spends hundreds of Crores of rupees on these schemes for under-privileged students.
10. That most private education institutions in India are registered as non-profit and charitable entity; availing various grants, subsidies and tax concessions. Lands are allotted to them at highly subsidised rates so that some students from financially challenged families can be taught by these private educational institutional, thereby reducing the burden on the State.

11. That Rule 18 of "Allotment of Land to Educational Institutions (Schools), etc. on Lease-hold Basis in Chandigarh Scheme, 1996" reads that;

(18.) The Educational Societies/Institutions (Schools)/Trusts shall be required :-

(i) to have 25% nominees of the Chandigarh Administration and the total number of members of Management Committee shall not be more than 16.

(ii) to reserve 15% or more seats as may be determined by the Chandigarh Administration from time to time, in the schools for students belonging to economically weaker sections of the Society and the fee charged from those students shall be nominal preferably the same as is charged from the students of the Government institutions.

(iii) follow instructions/guidelines/directions issued by the Chandigarh Administration from time to time regarding fee structure reservations and Admission procedure etc.

12. That Chandigarh Administration, in specific, have made it a necessary condition that all educational institutions have to provide free education to at-least 15% of the total students from the economically weaker students (EWS). Under the "Capital of Punjab (Development and Regulation) Act 1952" Chandigarh Administration has also made

“Allotment of Land to Education Institutional (Schools) Etc. on Lease Hold basis Scheme 1996,” which provides for this necessary condition. In the said rules, one of the necessary requirements while allotting educational sites to institutions is the necessity to provide 15 percent seats to under-privileged students. As per clause 18 of “The Allotment of Land to Educational Institutions (Schools), Etc. on Lease-hold Basis in Chandigarh, Scheme, 1996.” The same is also mentioned in the condition of allotment of school/educational institutes’ sites to various trusts/societies/etc. it is specifically mentioned that it was mandatory for the school to reserve and fill 15 percent seats in their institutions from the students belonging to economically weaker section. The 15 percent students who are enrolled have to be taught in the same school and with other students who are paying the full fee.

### **CAUSE OF ACTION**

13. That by law and as provided under “The Allotment of Land to Educational Institutions (Schools), Etc. on Lease-hold Basis in Chandigarh, Scheme, 1996” it is necessary and obligatory on all private educational institutions, who are operating under non-profit mode and availed of concessional land or tax benefits or other grants, to fill the 15 percent seats.
14. That despite the clear direction and the necessary guidelines in place, this is not being done, and the private schools are not providing 15% to students from EWS. Administration has also not ensured that the provision related to the necessary compliance to the 15%

reservation clause is adhered to all schools. Those who hob-nob with senior IAS/IPS officers and other big-wigs in the Administration are given special treatment and their violations are ignored. Not only this; the figures of providing the seats to students belonging to EWS are also manipulated with the connivance of officials. It is pertinent to mention that as per Para 18(1) of the scheme all the Educational Societies/Institutions (Schools)/Trusts shall be required to have 25% nominees of the Chandigarh Administration. However despite there being 25% direct nomination and control over the educational institutions by Chandigarh Administration, still the violations continues, apparently, in connivance with the officials of Chandigarh Administration.

15. That to quote an example of one such manipulation, the matter of "Strawberry School" in Sector 26 stands out. Not only did the owners/trustees/directors of this school/trust mislead and cheat the public with the help/misleading a few senior functionaries of the Chandigarh Administration but also that they treated economically deprived students as pariah, even though they got the land in the name of these children. According to the statement of Chandigarh Administration which is annexed as "Annexure P-2," it has been reported that the said school is providing 32 percent seats to EWS. However, this is absolutely incorrect and false as out of these, so claimed 181 students, only about a dozen actually study in the said school. The statement that 32% of the students taught by Strawberry School belong to EWS is incorrect. Administration knowing pretty well

that the statement is false still preferred not just to keep quite, but, rather went ahead to highlight the promoters of the said school as heroes and reward them. The only qualification the directors had is that they knew the who's who of the city, including the senior IAS/IPS officers of the city. In this particular case, the school claims to have adopted 160 students in "Bapu Dham" colony and "Indira Colony," and claim to be teaching them. The real fact is that though the school identified large number (160) students/children in need of education, still it preferred to keep them away from their school. All of these 160 students have been treated miserably. All of them are of different age-groups, but, still they all are herded in one room for a few hours during the evening. Only one teacher gives them common sermons; and that's all. The officials of Administration are well aware of these facts; still the official report gives this school clean chit. Clearly the "Strawberry School" promoters have done this so that the high commercial value and the high fee charged by them are not affected. The said non-profit trust have not only disregarded the rules but shown utter contempt and loathsomeness to these children coming from economically weaker section of the society. The school is supposed to teach students in the same school and not count students coming in the evening in some remote location in a slum area or village. It is pertinent to mention that another school run by the same set of promoters in Sector 24 called "Strawberry field" has also admitted just 1 out of the total 293 students from EWS.

16. That the partial information provided by Chandigarh Administration (Annexure P-2) shows that nearly 40 to 50 private schools have not provided 15% seats to students of EWS since its inception. Even though the list provided is incomplete, but still, it shows that the necessary condition of providing seats to economically challenged people is blatantly violated by one and all. The pattern observed is that the higher the fee a school charges from students, the less are the number of students from EWS these schools enrol. For example, St. Soldier School have admitted just (7 students out of 1189) 0.5%, Manav Mangal School (3 out of 1476) 0.2%, Ajit Karam Singh International School (94 out of 1871) 5%, Moti Ram Arya (8 out of 1116), 0.71%, DAV Public School, (23 out of 1331), 1.7%, Sri Guru Harkrishan Model School (35 of 1136), 3%, Strawberry Field -24 (1 out of 293) 0.34 %, S. D. Public School – 32 (64 of 1677), 4.2%; etc.

17. That the facts relating to non-compliance of this provision has been reported in the newspapers repeatedly many times over the years in many newspapers, however no notice of it is ever taken by the Government. The petitioner also made a written complaint and representation to Chandigarh Administration (Annexure P-3), still no action has been taken and no reply has been received. The academic year is to start in a few days from now, and if this situation continues, the illegality would be carried on this year too. Not only this, instead of taking action, Chandigarh Administration rewarded the educational institutions by increasing their FAR vide order dated 4.3.2010

(Endorsement No.11/2/70-UTFI(4)/2010/1920, dated: 12.3.2010)

Annexed as Annexure P-4.

18. That when the State and public is providing land, resources, grants, tax concession to these Private schools so as to increase the education level of all sections of the society equally; the private educational institutions are behaving operating like full fledged business and commercial organisations and even acting beyond the provisions of the law and the constitutional spirit. Even the necessary 15% free-of-cost seats, as provided under the condition of allotment, are not being complied with.

#### **LAW POINTS**

19. That the law points involved in this Writ petition are as follows:-

- i. Whether educational institutions, especially those availing tax-concession, grants and concessional/free land are obliged and bound to provide at-least 15 percent seats to children from economically weaker section of the society?
- ii. Whether the money and interest collected by these educational institutions from a large percentage of regular students; when such seats were to be given to students from EWS; should be recovered with interest?
- iii. Whether the plots and building of such schools should be resumed/ taken-over by the Government and transferred

to other NGO/ civil society groups or the education department of the Government?

- iv. Whether non-implementation of the legislation is also a negligence of duty by the Education Secretary and other Government officials who are supposed to perform necessary oversight functions?
- v. Whether educational institutions who have violated the conditions and/or filed wrong facts and declared wrong figures also criminally liable for cheating, breach of trust and misappropriation of funds.
- vi. Whether it is the duty of the state to ensure free and quality education to children, especially when provision for the same has been made?
- vii. Whether the Government/Administration be absolved of the liability and responsibility while being holding 25% of seats as board/trust members/directors/ trustee as part of the management of each and every educational institution in Chandigarh.

20. That annexure P1 is a copy of the bye-laws, P-2 is the list of schools and the status report on 15% quota for the EWS; and P-3 is the representation sent to the Administrator and other officials of Chandigarh Administration; P-4 is the order of Chandigarh

Administration. Exemption may be granted from filing of the certified copies of these documents.

21. That the petitioner has not filed any such or similar Writ petition in this Hon'ble Court or Supreme Court of India.

22. That the matter is of vital general importance affecting the general public and requires intervention of this Hon'ble Court.

23. That the petitioner has no other remedy of appeal or revision under the Rules or any other statutory remedy except approaching this Hon'ble Court under Article 226/227 of the Constitution of India.

#### **RELIEF SOUGHT**

24. It is, therefore, respectfully prayed;

Writ or direction in the nature of Writ of Mandamus or any other appropriate Writ be issued;

I. directing the respondents to ensure that all the educational institution provide absolutely free (and same quality of) education to at-least a minimum of 15% students belonging to economically deprived segment of the society.

a. Ensuring that in compliance to providing free education, it shall also include 100% concession from payment of any sundry allowances, building

funds, tour-picnic funds, etc. or any additional fund, by what ever name charged.

- b. Ensuring that in compliance to providing free education, such students are also provided free books, reading material and necessary resources to carry on the education.
  - c. Ensuring that in compliance to providing free education, such students are also provided free transportation if their place of residence is away from the educational institution.
  - d. Ensuring that in compliance to providing free education, such students are provided the same quality of education during the regular hours along with the other regular students. If the educational institutional also runs additional/evening classes and other branches; the minimum balance of providing 15% free seats be maintained at all branches and classes at different timings be maintaining separately, independent of each other; such equal proportion/ratio be also kept in all the different age groups and/or the academic year of study.
- II. directing the respondents to recover the complete fee and sundry charges and the profit/ surplus/ additional

resources made by the educational institutions by evading to provide the minimum required 15% free seats to EWS students for all years of default since the inception of the educational institution; and to deposit the said fund in a separate account to be used for educational purpose and fund the existing Government schools.

- III. directing the respondents to resume the sites of those schools who continue to default on their legal obligation of providing the necessary 15% free seats to students belonging to EWS of the society and/or those who fail to refund and hand-over the amount collected by regular students towards fee and other funds, over the years, from 15% or such percent of shortfall of EWS students in their educational institutions, which they otherwise were supposed to enroll.
- IV. directing the respondents to advertise in the beginning of academic year, the number of seats in every educational school in the EWS category and ensuring that the Government pro-actively reach the under-privileged by all means, including by distributing admission-coupons (by what-ever name called) through civil society/NGO's and social workers to families enrolled in other EWS schemes, etc.

- a. Ensuring thereby that in case of any shortfall in admission in any school of the mandatory 15% students from the EWS section of the society, equal number of students, otherwise belonging to EWS section are transferred from the nearest Government school to the private educational institution, so as to ensure that the necessary condition is maintained at all times.
- V. directing the respondents to form a permanent and full time body and a fool-proof mechanism to supervise and oversee the functioning of the private school; And,
- VI. Any other order, this Hon'ble Court deems fit and proper in the circumstances of this case be also made.
- VII. Exemption be granted to place on record the printed photographs and annexure P-1 to P-4 in its present form, which are true copies of the original.
- VIII. The present writ may kindly be allowed with costs.

Place: Chandigarh

Date:- March 16, 2010

(Hemant Goswami)

PETITIONER