

CHAPTER - 1

INTRODUCTION

More than 3300 years back a poet¹ had said, “*Mother and that father are enemies, who do not give education to their children.*” In the recent past Nelson Mandela² had proclaimed, “*Education is the most powerful weapon which you can use to change the world.*”

“*What must be think then, of that barbarous education which sacrifices the present to an uncertain future, which loads a child with chains of every sort and begins by making him miserable in order to prepare for him long in advance, some pretended happiness, which it is probable, he will never enjoy.*” --- (Jean Jacques Rousseau)

“***Vidya Dadati Viniyam, Viniyaad Yaad Patrataam. Patratwaad Dhanamaapnoti Dhanaad Dharmah Tato Sukham***”- “Education makes man courteous, and polite, from courtesy one gets competency and ability, from competency, money comes, from money, a person can perform his duties and can do righteous things, from right actions a person can live happily.”

Right to education is indeed considered as an essential human right from times immemorial. In fact it has been observed ‘***Vidya Vinaha Pashu***’. i.e., a person without education is no better than an animal. The important of education has been strongly emphasized by great scholars in all languages. A person without education is compared to a man without eye sight.

¹Baddena, *NeetiSaara or Neeti Sastra*, (Wikipedia The Free Encyclopedia).Baddena a Telugu poet (1220-1280 AD) was the composer of the most famous “SumathiSatakam” as well as “Neeti Sastra,” during the thirteenth century, *available at: https://en.wikipedia.org/wiki/Neeti_Sastra*

²Nelson Mandela quotes, South African Statesman First Democratically Elected State President of South Africa (1994), 1993 Nobel Prize for Peace, (b.1918) *available at: https://en.wikiquote.org/wiki/Talk:Nelson_Mandela* (Visited on Dec. 05, 2015). See also, Ann Kannings, “Nelson Mandela His Words,” *Lulu Press, Inc.*, (22-Jan-2014).

Education is a dynamic process that starts from birth. It is the most important element for growth and prosperity of a nation.³ Education in its real sense is the pursuit of truth. It is an endless journey through knowledge and enlightenment. Such a journey opens up new vistas of development of humanism.⁴ Education is a process of character building, strengthening mind and expansion of intellect. Education has great instrumental value in the process of social, economic growth and sustainable human development.

Education is considered essential for a man to live with human dignity.⁵ Every human infant comes into the world lacking of the facilities characteristic of fully-developed human beings. This does not mean simply the ability to see clearly, to move around, to feed oneself, etc.; above all, it means he is devoid of reasoning power - the power that differ man from animals. But the crucial difference between the baby and other animals is that these powers, in particular the ability to reason, are potentially within him. The process of growing up is the process of the development of the child's faculties.⁶

Education is the inner development of the child. Therefore it should not be imposed from outside. The principles of education should be discovered through observation and experiment in the field of education. The success of the teacher depends upon teaching according to the interests of the child. Childhood is the most important period in a person's education. Education is the birth right of every individual. It aims at the all-round development of his capacities and abilities. The teacher should not only know various subjects but should also be conversant with best teaching methods.

Education is a constant process of development of innate powers of man which are natural, harmonious and progressive. It is said that in the 21th Centaury, a "nation's

³A.P.J. Abdul Kalam, *The Pursuit Of Truth - President A.P.J. Abdul Kalam's Address To The Nation On The Eve Of 58th Independence Day In NCMP-DMPR - Facilities* (MPISG. New Delhi, Archi Textures Imprints, 2004), available at: <http://architexturez.net/doc/az-cf-21863>

⁴A.P.J. Abdul Kalam and Y.S. Rajan, *Beyond 2020: A Vision for Tomorrows India* (Penguin Books Ltd, 2014)., and S. Vijay Kumar "Dr. A.P.J. Abdul Kalam's Vision For The Nation" *The Hindu*, Sep. 5, 2013, available at:<http://www.thehindu.com>, see also,*Ibid*.

⁵*Francis Coralie v.Union Territory of Delhi*, AIR 1981 SC746

⁶Murray N. Rothbard, *Education: Free & Compulsory* (Ludwig Von Mises Institute, Auburn, Alabama, 1999)

ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future,” accordingly 21st Century is termed as the century of knowledge.⁷

Education was the subject to which Plato (427 B.C. - 347 B.C.) attached the greatest importance. In the ‘republic’⁸ he reckons it with war, the conduct of campaigns and the administration of states as amongst ‘the grandest and most beautiful’ subject, and the ‘laws’⁹ he repeats that it is ‘the first and fairest thing that he the best of men can ever have.’ Education is the capacity to feel pleasure and pain at the right moment. Though Plato’s “The Republic” is credited with having popularized the concept of compulsory education in Western intellectual thought, every parent in ‘Judea’ since ancient times was required to teach their children at least informally. Over the centuries, as cities, towns and villages developed a class of teachers called ‘Rabbis evolved’.

The education system which was developed first in ancient India is identified as the ‘Vedic’ period. The importance of education was well recognized in India, ‘*Swadeshe pujyate raja, vidwan sarvatra pujyate*’ “A king is honored only in his kingdom, but one who is educated is honoured throughout the world.” The ultimate aim of education in ancient India was not knowledge, as preparation for life in this world or for beyond the life, but for complete realization of himself.

India is a land of scholars and intellectuals from ancient times - the Vedic and the Buddhist. Here, the history of education was very rich, interesting and organized. It is thought to be almost 5000 years old and began with the Vedic period.

The world’s first University was established in ‘*Takshila*’ in 700 B.C. and the University of ‘*Nalanda*’ was built in the 4th century BC, a great achievement and

⁷ Johann Heinrich Pestalozzi, 02, January 1746 – 17, February 1827 (Switzerland), He was a Swiss pedagogue and educational reformer, *available at:* http://en.m.wikipedia.org_ (visited on March 07, 2016)

⁸R.L. Nettleship, *Theory of Education in Plato’s Republic* (Clarendon Press, Humphery Milford, 1935). F.M. Conford, *Plato’s Theory Of Knowledge: The Theaetetus and the Sophist of Plato* (Routledge & Kegan Paul, Publishers London, 1935).

⁹ A.E. Taylor, *The Laws Of Plato* (Dent & Sons Publishers, London, 1934).

contribution of ancient India in the field of education. Right to education issue has been debated in India for more than a century.

The Vedic school survived through '*guru shisya parampara*' only in the remote villages, and established a teacher centric system in which the pupil was subjected to a strict discipline and was under certain obligations towards his teacher. Secular Buddhist institutions cropped up along with monasteries. These institutions imparted practical education like medicine, science and technology in ancient and medieval India covered all the major branches of human knowledge and activities. Indian scholars like *Charaka* and *Susruta*, *Aryabhata*, *Bhaskaracharya*, *Chanakya*, *Patanjali* and *Vatsayayna* and numerous others made seminal contribution to world knowledge in such diverse fields as mathematics, astronomy, physics, chemistry, medical science and surgery, fine arts, etc. The Indian education system helped in preserving ancient culture and promoting cultural unity and infused a sense of responsibility and social values. The ancient Indian education system has been a source of inspiration to all educational systems of the world, particularly in Asia and Europe.

Since ancient time, education is viewed as the transmission of values and accumulated knowledge of society. Success of any country depends on the qualities of the students. India has glorious tradition of teaching and learning, where education was pursued for sake of knowledge and '*Mukti*' and for materialistic benefits. Knowledge is regarded as highest virtue of man. Plato emphasised that no amount of factual information would make ordinary man into educated man unless something is awakened in him. Education is treated as both training of mind and soul. Education was for '*Mukti*' and self-realization. Social service was the greatest idea of scholar.¹⁰ A scholar drew satisfaction in social which gave him the joy of achievement and excellence. There was no special arrangement for salaries of teachers. They normally maintained on their personal earnings or on '*Gurudakshina*'. King provided land for '*Gurukul Ashrams*' but

¹⁰Dr. S.K. Singh, "Quality Education and the Human Development" Vol. 2, Issue 1&2, *Vidhigya - The Journal of LehalAwereness*, 2 (Jan.-Dec., 2007).

there was no interference from king. The teachers had full freedom and enjoy highest respect in the society, which was the greatest motivation and incentive for them. Education was never subordinate to political power.¹¹ Thus education in ancient times emphasised to impart value to students. Teaching was personalised and the students used to be in close association with teacher. They used to imbibe the values of teacher and treat him as a role model. Teaching was regarded in higher esteem.¹²

According to Swami Vivekananda, “Education is not the amount of information that we put into your brain and runs riot there, undigested, all your life. We must have life-building, man-making, character-making assimilation of ideas. If you have assimilated five ideas and made them your life and character, you have more education than any man who has got by heart a whole library..... If education is identical with information, the libraries are the greatest sages of the world and encyclopedia are the greatest Rishis.”

Education means, “the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capacities, attitude, limited to any specific activities.”

The word ‘education’ has been derived from the Latin word ‘Educo’ which means to educate: to bring up or to raise whatever be the origin of the word education, the concept is related closely to modification of natural development, modification occurs through the personal experience of the person who is conscious about the propose of changing the natural development to the child.

The most commonly used Indian word ‘shiksha’ is derived from the Sanskrit verbal root ‘shas’ which means ‘to discipline’, ‘to control’, ‘to instruct’ and ‘to teach’.

¹¹ C.P.S. Chauhan, *Higher Education in India: Achievements, Failures and Strategies* (South Asia Books, November, 1990)

¹² P. Sivaswaroop, “Resilience of Ethics and Values in Higher Education: Pre-Requisite for Providing Value Orientation” 43(2) *University News*, 13-16 (2005)

Likewise inter alia the word 'vidya' is derived from Sanskrit verbal root 'vid' which means 'to know'. 'Vidya' is thus the subject matter of knowledge. This shows that disciplining the mind and imparting knowledge were the foremost considerations in India.

It is evident that imparting elementary and basic education is a constitutional obligation on the State as well as societies running educational institutions. When we talk of education, it means not only learning how to write and read alphabets or get mere information but it means to acquire knowledge and wisdom so that he may lead a better life and become a better citizen to serve the nation in a better way.¹³

The policy framework behind education in India is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

Every generation looks up to the next generation with the hope that they shall build up a nation better than the present. Therefore, education which empowers the future generation should always be the main concern for any nation.¹⁴ Without education a citizen may never come to know of his other rights. Since there is no corresponding constitutional right to higher education the fundamental stress has to be on primary and elementary education, so that a proper foundation for higher education can be effectively laid.

Hence, we see that education is an issue, which has been treated at length in our Constitution. It is a well-accepted fact that democracy cannot be flawless; but, we can

¹³*BhartiyaSevaSamaj Trust ... v. Yogeshbhai Ambalal Patel & Anr*, (2012) 9 SCC 310

¹⁴*Ibid.*

strive to minimize these flaws with proper education. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.

The significant of education was very well explained by Chief Justice ‘Earl Warren’ of U.S. Supreme Court¹⁵ in following words – “It is the very foundation of good citizenship. It is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms”.

Education in the western world, prior to the age of enlightenment in Europe, was considered primarily the responsibility of parents and Church, education as a matter of ‘public concern’ is the product of the modern secular State. With the French and American Revolution education was established also as a public function. It was thought that the State, by assuming a more active role in the sphere of education, could help to make education available and accessible to all. Education had thus far been primarily available to the upper social classes and public education was perceived as a means of realising the egalitarian ideals underlining both revolutions.

However, neither the American Declaration of Independence (1776) nor the French Declaration of the Rights of Man (1789) protected the right to education as the liberal concepts of human rights in the nineteenth century envisaged that parents retained the primary duty for providing education to their children. It was the State’s obligation to ensure that parents complied with this duty, and many States enacted legislation making school attendance compulsory. Furthermore child labour laws were - enacted to limit the

¹⁵*Brown v. Board of Education of Topeka*, US Supreme Court Report 98 Law. Ed. 347 U.S. 483, 873 (1954)

number of hours per day children could be employed, to ensure children would attend school. States also became involved in the legal regulation of curricula and established minimum educational standards. The rise of socialism and liberalism in the 19th Century led nation States to promote education as a matter of citizen's right and incorporate it in their Constitutions and legislations. For example, the Constitution of the German Empire of 1849 had provisions relating to educational rights, and the 1870 Education Act of England and Wales established a system of public education in the country.

The first impression of International concern over the “situation of children” came in 1923 when the Council of the newly-established non-governmental organization “Save the Children International Union” adopted a five-point declaration on the rights of the child. The Declaration of the Rights of the Child (**Geneva Declaration**), 1924 adopted by the fifth assembly of the League of Nations, can be seen as the first international instrument dealing with children's rights.¹⁶ Principle 5 of the **Geneva Declaration, 1924** states “the child must be brought up in the consciousness that its talents must be devoted to the service of fellow men”. The Geneva Declaration, 1924 is important as it highlights the social and economic entitlements of children and establishes internationally the concept of the rights of the child, thereby laying the foundation for setting future international standards in the field of children's rights. The Geneva Declaration was endorsed the following year, 1924, by the fifth Assembly of the League of Nations. In 1948, the General Assembly of the United Nations approved an expanded version of that text and, in 1959, went on to adopt a new Declaration for Child welfare and protection. The Convention on the Rights of the Child, 1989 marked the culmination of the efforts to bring the international community to recognize the needs of children.

Though, with the establishment of UNESCO in 1945 (India joined the membership in 4 November 1946) a much wider approach was taken. United Nations, on 10th December, 1948 adopted Universal Declaration of Human Rights (UDHR), in the

¹⁶Geneva Declaration of the Rights of the Child 1924 – UN Documents: Gathering a body of global agreements, Adopted 26 September, 1924, League of Nations, *available at*: <http://www.undocuments.net>

Preamble of which, the General Assembly proclaims the Declaration as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society. Therefore, the right to education has been universally recognised since the Universal Declaration of Human Rights in 1948 and has since then been secure in various international conventions, national organisations and development plans. However, the large majority of countries have signed up an ratified, international conventions like the United Nations Convention on the Rights of the Child, 1989 a few have integrated these rights into their national organisations or provided the legislative and administrative frameworks to ensure that these rights are appreciated in practice.

Education is defined as a right in itself, but the text of the Universal Declaration of Human Rights also implies that education is a means to an end, rather than an end in itself. Education is seen as the process through which all citizens can become aware of their rights and responsibilities, so that peace as well as prosperity can be secured for all nations and people.

The Universal Declaration of Human Rights established right to education in its Article 26(1) everyone has the 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) states, 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 the maintenance of peace. Further, Article 26(3) Parents have the prior right to choose the kind of education that shall be given to their children.

Principle 7 of the UN Declaration of Rights Child, 1959 provides that, the child is entitled to receive education, which shall be free and compulsory, at least in the

elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavor to promote the enjoyment of this right.

The main UN treaty on International Covenant on Economic, Social and Cultural Rights¹⁷ (ICESCR) 1966 covers the right to education comprehensively, specially Article 13 and 14, as they set out the aim of education systems and the content of education. Article 13(1) provides that the States parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 13(2) of the ICESCR provides that the States parties to the present Covenant recognize that, with a view to achieving the full realization of the right to education (a) Primary education shall be compulsory and available free to all; (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education; (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every

¹⁷International Covenant on Economic, Social and Cultural Rights 1966. It adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with Article 27. India is signatory to the UDHR and has acceded to the ICCPR and ICESCR on 10th April, 1979, *available at:* <http://www.ohchr.org>

appropriate means, and in particular by the progressive introduction of free education; (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education; (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. Further, Article 14 provides, each State party to the present Covenant which, at the time of becoming a party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all. Thus, Article 13(2) provided the right to receive education and says that education in all its forms and at all levels shall exhibit the following inter-related 4A's essential framework these are:

Availability - operative educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon many factors, including the developmental context within which they operate as building infrastructures, sanitation, drinking water, trained teachers and library facilities, etc..

Accessibility - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions - (i) Non-discrimination (ii) Physical accessibility (iii) Economic accessibility.

Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable as relevant, culturally appropriate and of good quality education to students.

Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

The most important international document of the United Nations Convention on the Rights of the Child (CRC), 1989 the recent major human rights instrument, is based on a commitment to a solidarity effort on behalf of the children of the world.¹⁸ Approximately every country in the world has ratified this Convention. The Government of India has ratified this Convention on 12 November 1992 and accede the Convention on 11 December 1992.¹⁹

Article 28 (1) provides that, States parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular – (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. Further Article 29 specifies that the education of the child shall be directed to development of mental and physical abilities and overall all-round development.

¹⁸ The Convention adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with Article 49. It has also been incorporated into various regional treaties. Many countries have also made provisions for the right to education in their national constitutions. *available at:* <http://www.ohchr.org>

¹⁹ Core International Human Rights Treaties, Optional Protocols & Core ILO Conventions Ratified by India, *A Handbook on International Human Right Convention* 22 (National Human Rights Commission, New Delhi), *available at:* <http://www.nhrc.nic.in>

The World Conference on Education for All (EFA)²⁰ declared that the effective provision of basic education for all depends on political commitment and political will backed by appropriate and supportive fiscal, economic, trade, labour, employment and health politics. The main points of this conference related to basic learning needs. Clause (1) of Article (1) states that, every person - child, youth, and adult - shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.

The Millennium Declaration, 2000 is a sort of global New Year's Resolution, moved by a vision of a world in which the founding principles and Charter of the United Nations would become a reality. The Millennium Development Goals (MDGs) do mention primary and secondary education in MDG-2 and MDG-3, but do not acknowledge that every child already has a legal entitlement that goes well beyond access and completion of schooling. The MDG-2 provides, achieve universal primary education - Quality education is a right, must be free and compulsory at least at the primary level, and a major post on the national budgets. MDG Target-2A, mandated, "Ensure that, by 2015, children everywhere, boys and girls alike; will be able to complete a full course of primary schooling". Further, the MDG-3 provides, promotes gender equality and empowers women - Education is essential to eliminate discrimination and transform social attitudes and power relations. MDG Target-3A, mandates "Elimination gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015."

²⁰ The World Declaration On Education For All: Meeting Basic Learning Needs, Coordinators' Notebook No. 14, 1993/94. In 1990 an important conference, the conference brought together some 1500 participants from 155 Nations, 33 inter-governmental bodies, 125 NGOs, Institutes and Foundations agreed the World Conference on Education for All, in Jomtien, Thailand. *available at:* <http://www.unesco.org/new/en/education/.../education-for-all/.../jomtien-1990>

The World Education forum (Incheon Declaration), 2015 UNESCO together with UNICEF, the World Bank, United Nations Population Fund (UNFPA), United Nations Development Programme (UNDP), UN Women and *United Nations High Commissioner for Refugees* (UNHCR) organized the World Education Forum²¹(WEF) 2015 in Incheon, Republic of Korea, from 19-22 May 2015, hosted by the Republic of Korea. Over 1,600 participants from 160 Countries, including over 120 Ministers, heads and members of delegations, heads of agencies and officials of multilateral and bilateral organizations, and representatives of civil society, the teaching profession, youth and the private sector, adopted the Incheon Declaration²² for Education 2030, which sets out a new vision for education for the next fifteen years. Towards 2030: A New Vision for Education of Incheon Declaration for Education 2030 has seven visions, and Transforming our World: 2030 Agenda for Sustainable Development Declaration accepted.

The Preamble of Transforming our World - the 2030 Agenda for Sustainable Development Declaration states that, This Agenda is a plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. We recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development.

The declaration announced 17 Sustainable Development New Goals with 169 associated Targets which are integrated and indivisible. The Sustainable Development Goal-4 is the most important goal among all of above goals and covers inclusive and equitable quality education and promotes lifelong learning opportunities for all. Education transforms lives and is at the heart of UNESCO's mission to build peace, eradicate poverty and drive sustainable development. Education is a human right for all throughout life and that access must be matched by quality. It has been entrusted to lead the Global Education 2030 Agenda through Sustainable Development Goal-4. UNESCO

²¹ World Education Forum 2015, 19-22 May 2015, Incheon, Republic of Korea, *available at:* <https://en.unesco.org>

²² Incheon Declaration and Framework for Action for the Implementation for Sustainable Development Goal 4 (Publication UNESCO), *available at:* <https://en.unesco.org>

provides global and regional leadership in education, strengthens education systems worldwide and responds to contemporary global challenges through education with gender equality an underlying principle. The Goal-4 “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.”²³

The Indian concept of right to education developed during the freedom movement with the demand for self-governance and total independence from the colonial rule, culminated into Part III of the Indian Constitution on ‘Fundamental Rights’. These Fundamental Rights are close to those embodied in the United Nations Universal Declaration on Human Rights, 1948. The most important fundamental right impacting on the life of common people in India happens to be Article 21 of the Constitution, which guarantees ‘right to life and personal liberty’, declares “No person shall be deprived of his life or personal liberty except according to procedure established by law”. This right is similar to the French Declaration of the Rights of Man, which draws from the principle that the people’s life chances should not be restricted by irrelevant considerations. Education is key to assuring ‘people’s life chances’.

A significant part of the memorandum presented by Mahatma Jotirao Phule to the Indian Education Commission as Hunter Commission, 1882, dwelt upon how the British Government's funding of education tended to benefit ‘Brahmins and the higher classes’ while leaving ‘the masses wallowing in ignorance and poverty.’ Another attempt to get elementary education recognised when G. K. Gokhale introduced a Bill under the Indian Council Act of 1909, to make primary education compulsory, and deserving of State funding.

The first step towards right to education was taken right after Independence in 1950 when the Constitution (Art. 45) by way of a directive principle promised free and compulsory education within 10 years (by 1960). Several provisions relating to

²³ Draft Outcome Document of the United Nations Summit for the Adoption of the Post-2015 Development Agenda, Sixty-ninth session, Agenda items 13 (a) and 115 (A/69/L.85), Distr.: Limited 12 August 2015, Draft Resolution submitted by the President of the General Assembly (United Nations), Sustainable Development Goal 4

Fundamental Rights in the Constitution impact on education of these, the most important is the Right to Education. The Right to Education was originally included as a non-justiciable Right under the Directive Principles of State Policy. In the Constitution as originally adopted by the Constituent Assembly in November, 1949, Article 45 stated that: “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.”²⁴ Further, Article 41 mandated the State, among other things, to make effective provision for securing the right to education “within the limits of its economic capacity and development.”

The Supreme Court of India rightly observed in its first case, **University of Delhi and Anr. v. Ram Nath**,²⁵(1963) that, “education is enlightenment. It is the one that lends dignity to a man. Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development”.

State of Andhra Pradesh and Anr. v. Lavu Narendranath and Ors.²⁶ (1971), in this case the question was that the notification of entrance test of four medical college of Andhra State on 23 July 1970 is justified by law. The Supreme Court observed that such test affected the personal liberty of the candidates. Court held that the right to education meant the liberty to apply for education, therefore right to education as a fundamental right under in Article 21 of the Indian Constitution.

Anand Vardhan Chandel v. University of Delhi,²⁷(1978),this was the first case where the Courts demonstrated the new trend of interpreting the right to education as a fundamental right. Justice, V.S. Deshpande of the Delhi High Court observed that Fundamental right (also called human rights or basic rights) are of two kinds: (1) the classical rights, and (2) the economic (and social) rights. The law has now settled that the

²⁴The Constitution of India, art. 45 (As it was before Eighty-sixth Amendment) Act, 2002.

²⁵AIR 1963 SC 1873, (Supreme Court on Apr.-01-1963, Justice, K.C. Das Gupta; Justice, K.N. Wanchoo and; Justice, P.B. Gajendragadkar)

²⁶AIR1971SC2560

²⁷ AIR 1978 Del 308, (Delhi High Court on May-05-1978), *available at*:<http://www.thelaws.com>

expression 'life and personal liberty' in Article 21 of the Constitution includes a variety of rights, though they are necessary for the full development of personality of the individual and can be included in the various aspects of the liberty of individual. The right to education is, therefore, also included in Article 21 of the Indian Constitution.

Francis Coralie Mullin v. the Administrator, Union Territory of Delhi and Others,²⁸(1981), in this case Supreme Court held that, the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it viz., the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and commingling with fellow human beings. Therefore, right to live with human dignity is under Article 21 of the Constitution.

Bandhua Mukti Morcha v. Union of India and Ors.²⁹(1984),in this case Court held that, the 'right to live' with 'human dignity' enshrined in Article 21 derives its life breath the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, unities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Furtherer, Court held that, the right to life guaranteed by Article 21 does take in 'educational facilities'. Having regard to the fundamental significance of education to the life of, an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions. That right to education is implicit in

²⁸AIR 1981 SC 746, (Supreme Court on Jan.-13-1981)

²⁹AIR 1984 802, (Supreme Court on Dec.-16-1983)

and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world.

In **Miss. Mohini Jain v. State of Karnataka and Others**³⁰ (1992), Supreme Court held that ‘right to education’ is fundamental right and flows directly from ‘right to life’ under Article 21 of the Indian Constitution. The ‘right to life’ under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. Thus, virtually elevating the right to education to the status of a fundamental right. This was made explicit in **Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others**³¹ (1993), In this case Supreme Court held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 of the Constitution. Right to education is a fundamental right under Article 21, it is freely available only to children until they complete the age of 14 years. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.”

Thereafter, Constitution (Eighty-sixth Amendment)³² Act, 2002, subsequent to considerable internal and external pressure, explicitly declared as a fundamental right by inserting a newly Article 21-A. The Amendment Act has provided three insertions in the Constitution of Indian, Article 21-A mandates, “The State shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may, by law, determine.”³³ Article 45 provides, “The State endeavour to provide early childhood care and education for all children until they complete the age of six

³⁰AIR 1992 SC1 858

³¹ AIR1993SC2178

³²The Constitution (Eighty-Six Amendment) Act, 2002 (Act No. 65 of 2002). The bill was passed and received the assent of the President on 12-12-2002 and Act was published in the Gazette of India (Extraordinary) Part II. Sec. 1, on dated 13-12-2002.

³³Ins. By the Constitution (Eighty-six Amendment) Act, 2002, Sec. 2

years.”³⁴Article 51-A provides It shall be the duty of every citizen of India --- In Article 51-A, after clause (j), the following clause (k) has been inserted:“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.”³⁵

The consequential legislation envisaged giving effect to Article 21-A was The Right of Children to Free and Compulsory Education (RTE) Act, 2009 giving every child the right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. With this, education has been moved to a rights based framework with the Central and State Governments having a legal obligation to implement this fundamental child right. The Preamble of RTE Act, 2009 inter alia to provide free and compulsory education to all children of the age of 6 to 14 years. The RTE Act has been enacted to give effect to Article 21-A of the Constitution. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which came into force 1 April, 2010 in whole India except the State of Jammu and Kashmir. From this day India joined a group of 135th Countries in the world who declared education as a fundamental right of every child.

In **Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr.**³⁶ (2012), Supreme Court upheld the Constitutional validity of the Right of Children to Free and Compulsory Education (RTE) Act, 2009.**Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel & Anr.**³⁷(2012),Supreme Court has mandate earlier order of **Miss. Mohini Jain’s case** (1992), held that, right to education is a fundamental rights under Part III shall remain beyond the reach of the large majority which are illiterate. The State is under an obligation to make an endeavour to provide educational facilities at all levels to its citizens. The right to education is concomitant to the fundamental rights enshrined under Part III of the Constitution to provide educational institutions at all levels

³⁴Subs. By the Constitution (Eighty-six Amendment) Act, 2002, Sec. 3

³⁵ Ins. by the Constitution (Eighty-six Amendment) Act, 2002, Sec. 4

³⁶2012(6) SCC 1, (Supreme Court on Apr.-12-2012).

³⁷(2012) 9 SCC 310, Supreme Court on Sep.-14-2012.

for the benefit of the citizens. In **Environment and Consumer Protection Foundation v. Delhi Administration and Ors.**³⁸ (2013), Supreme Court directed the Central Government, appropriate Government and other competent authorities functioning under the RTE Act, 2009 to issue proper directions/guidelines for its full implementation within a period of six months from the date of the pronouncement of that judgment. This Court also directed all the State Governments to constitute State Advisory Council within three months from the date of that judgment.

Further, **National Legal Ser. Auth. v. Union of India & Ors.**³⁹ (2014), Supreme Court directed to the Centre and all the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extends all kinds of reservation in cases of admission in educational institutions and for public appointments. **Pramati Educational & Cultural Trustandors v. Union of India & Ors.**⁴⁰ (2014), Supreme Court held that, Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are Constitutionally valid. Supreme Court also hold that the Right of Children to Free and Compulsory Education (RTE) Act, 2009 is not ultra vires Article 19(1)(g) of the Constitution. Further, the Court held that the RTE Act, 2009 insofar as it applies to minority schools, aided or un-aided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Further, Supreme Court maintained the all facts of the “**Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr.** (2012)”. **Shiv Kumar Pathak and Ors. v. State of U.P. and Ors.**⁴¹ (2015), In this case Court observed and directed, the Chief Secretary, U.P. Government to ensure that the children/wards of Government servants, semi-Government servants, local bodies, representatives of people, judiciary and all such persons who receive any perk, benefit or salary etc. from State exchequer or public fund,

³⁸Writ Petition (Civil) No. 631 of 2004, Supreme Court On Oct.-03-2012.

³⁹Writ Petition (Civil) No. 400 of 2012, Supreme Court, On Apr.-14-2014.

⁴⁰Writ Petition (C) No.416 of 2012, Supreme Court on May.-06-2014.

⁴¹Writ A. No. - 57476 of 2013, Decided On Aug.-18-2015, Allahabad High Court.

send their child/children/wards who are in age of receiving primary education, to Primary Schools run by Board. He shall also ensure to make penal provisions for those who violate this condition; for example, if a child is sent to a Primary School not maintained by Board, the amount of fee etc. paid in such privately managed Primary School, an equal amount shall be deposited in the Government funds, every month.

Vikhe Patil Foundation, Vikhe Patil Memorial School Pune, Through its Trustee & Secretary Dr. Manoj Narwade & Ors. v. UOI and Ors. (2015):⁴²The Court held and declared that the compulsory admission of minimum 25% in class I and/or pre-school at both entry levels for the children belonging to specific class/group/section is within the framework of the RTE Act/Rules. The simultaneous two or both entry levels are also permissible. Further, **Vikas Sankhala and Ors. v. Vikas Kumar Agarwal and Ors. Etc.**⁴³ (2016): Supreme Court held, Teacher Eligibility Test (TET) is essential for educational and other qualifications that are needed for appointment of the teaching staff. It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category.

1.1. Statement of Problem:

Education has continued to evolve, diversify and extend its reach and coverage since the dawn of human history. Every country develops its system of education to express and promote its unique socio-cultural identity and also to meet the challenges of the times. There are moments in history when a new direction has to be given to an age-old process. The country has reached a stage in its economic and technical development when a major effort must be made to derive the maximum benefit from the assets already created and to ensure that the fruits of change reach all sections. Education is the artery to that goal.

⁴² Writ Petition No. 4457 of 2015, Decided on Aug-14-2015, Mumbai High Court

⁴³ Civil Appeal No. 3545-3549 of 2016 (Supreme Court on Oct.-18-2016)

With this aim in view, the Government of India has taken several steps to eradicate illiteracy, improvement of the quality of education and to get the children back to school those left the school for one or the other reasons. Illiteracy causes serious problem in a society. In a country like India, literacy is the main foundation for social and economic growth. During the freedom struggle, several leaders like, *Gopal Krishna Gokhale*, *Rajaram Mohan Roy*, *Dr. B.R. Ambedkar*, and *Mahatma Gandhi*, etc. worked for better education for the people of our country, particularly women. Despite their efforts, India's literacy rate at the time of independence was 12%. Subsequent developments in education sector have to be seen in the context of centuries of apathy and neglect.

Near about seven decades after independence while much has been achieved, many would genuinely feel that India has not taken its rightful place in the comity of nations. At independence, India had sound institutional infrastructure and an administrative system that was the envy of the developing world; even taking into account the major achievement in standing out as a stable democracy, India seems to have lost its preeminent position mainly because of poor education standards, which are both the cause and the effect of the current situation.

When the British rule ended in 1947, the literacy rate was just 12%. Over the years, India has changed socially, economically, and globally. After the fifteenth official census, literacy rate in India, during 2011 was found to be 74.04% with male literacy at 82.14% and female literacy at 65.46% just change only 8.66% over the sixty years. The target of eleventh five year plan (2007-12) was to achieve 80% literacy rate. The twelfth five year plan (2012-17) is near to an end, but India has failed to achieve the target set by eleventh five year plan (2007-12). India has not been able to reach the world literacy rate of 84% so far.

Near about 65% of Indian population recent, is less than 35 years old. A huge demographic dividend will be available, if India face-lifts the education sector. Not doing

so will have serious consequences for the country. Many studies have shown that if a child is provided good quality education and health care in the early years of schooling, it enhances his/her ability to lead a more meaningful and productive life. Children in India have the necessary intelligence and potential; what they need are opportunities to access quality education.

It is still a matter of concern that still so many people in India cannot even read and write. Now, if we consider female literacy rate in India, then it is lower than the male literacy rate, as many parents do not allow their female children to go to schools. Because, many people, especially in rural areas believe that educating a male child is better than educating a girl child.

Mahatma Gandhi said that, Education mean an all-round drawing out of the best in man - body, mind and spirit. Literacy rates nothing but the numbers of persons who are able to carry out “3R’s” i.e. reading, writing and arithmetic – these words pronunciation have start with alphabet ‘R’. In other word, if person can read simple sentences. Write his name and signature and do basic arithmetic, then he or she is termed as literate. Literacy is the first rung of education ladder and for long it has been considered a pre-requisite for development. The effect of literacy is very similar in developing and developed countries. Illiterate people are generally trapped in a cycle of poverty with limited opportunities for employment or income generation and higher chances of poor health and adverse circumstances.

Illiteracy is one of the major problems faced by the all developing nations. In Africa and South East Asia, it has been identified as a major cause of socio economic and ethical conflicts that frequently surfaced in the region. Therefore, literacy has now become part of the Human Right dialogue. Now most of the nations of the world have also accepted their obligation to provide at least free elementary education to their children.

Education is thus, viewed as an integral part of national development and held as an instrument by which the skills and productive capacities are developed and endowed. Literacy forms the cornerstone for making the provision of equality of opportunity a reality. The right to education will be meaningful only and only if all the levels of education reach to all sections of people, otherwise it will fail to achieve the target set out by our founding Fathers, who intended to make the Indian society an egalitarian society.⁴⁴

In the last forty-eight years, National Policies on Education adopted in, 1968, and 1986 as modified-1992 the educational scenario has seen major changes and new concepts such as rights-based approach to elementary education, student entitlement, shift in emphasis from literacy and basic education to secondary, higher, technical and professional education, the endeavour to extend universalization to secondary education, reshape the higher education scenario.

Although we have so many International Covenants, National Constitutional provisions, National Educational Policies and Programmes providing for the right to free and compulsory education for every child. But still there is a huge gap between promise and performance, law and action and between global and national standards so far as educational standard of children is concerned. There can be no doubt that children are amongst most vulnerable and powerless members of our society. Education is the process of learning and knowing, which is not restricted to our school text-books.

- India is the 7th largest country and its population stands 2nd in the world after China.⁴⁵ The basic indicator of educational standards in any country is the rate of literacy of a particular country. In a developing country like India, a vast majority of the population is illiterate and living far below the poverty line. Illiteracy causes serious problem in a society. India has not been able to reach the world literacy

⁴⁴*Maharshi Mahesh Jogi.. v. State Of M.P. & Ors.*, Decided on Jul.03-2013 Civil Appeal No.6736 of 2004

⁴⁵ Literacy in India available at: <http://www.census2011.co.in/literacy.php>

rate of 84% so far. With the illiteracy rate of 26%, India is the country with the largest number of illiterates in the world.

- When the British rule ended in India in 1947 the literacy rate was just 12%.⁴⁶ As per census 2011, the literacy ratio of India is 74.04% with male literacy at 82.14% and female literacy at 65.46% over the sixty years. However this seems like a very great achievement, it is still a matter of concern that still so many people in India cannot even read and write.⁴⁷ Whenever, the target of 11th five year plan (2007-12) was to achieve 80% literacy rate.⁴⁸ Thus India has failed to achieve the goal (2007-12).
- Parliament has made the Right of Children to Free and Compulsory Education Act, 2009⁴⁹, provides that every child between the age of 6 - 14 years should get free and compulsory education, but people are not aware that children have right to free and compulsory education according to the law.
- The Constitution (Eighty-sixth Amendment) Act, 2002⁵⁰ inserted a new Article 21-A in the part III of the Constitution, which provide free and compulsory education to all children of the age of six to fourteen years,⁵¹ but thereafter the obligation of the State to provide education is subject to the limit of its economic capacity.
- The problem can be trace Article 51-A(k) of the Constitution provides that, It shall be the duty of every citizen of India --- In Article 51-A, after clause (j), the following clause (k) has been inserted - Who is a parent or guardian to provide

⁴⁶*Ibid.*

⁴⁷*Ibid.*

⁴⁸Government of India, *Report To The People On Education, 2010-11* (Ministry of Human Resource Development, New Delhi, March 2012)

⁴⁹The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009). This Act received the assent of the President on The 26th August 2009 and Act Published in the Gazette of India (Extraordinary) Part II Section 1 dated 27th August 2009, Pp. 1-13, Ministry of Law and Justice (Legislative Department). The Act came into force on 01 April, 2010 as a fundamental right in India.

⁵⁰The following Act of Parliament received the assent of the President on the 12th December 2002 and Act Published in the Gazette of India (Extraordinary) Part II Section 1 dated 13th December 2002, Ministry of Law and Justice (Legislative Department).

⁵¹ Article 21-A has been inserted by the Constitution (86th Amendment Act 2002), after the *Unnikrishanan J. P. and others v. State of Andhra Pradesh and others*, AIR1993SC2178.

opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”⁵² Thus, Article 51-A(k) apply only for ‘male children’ not for ‘female children’, because the word ‘her’ is missing from this Article.

- India has accepted the International definition of a child as someone under the age of 18 years. Whereas Article 21-A of the Constitution and RTE Act 2009 covers only children in the age of 6 to 14 years to provide free and compulsory education, clearly excluding and ignoring the child of the 0 - 6 and 14 - 18 years. It is directly violation of the international convention and human rights also.
- Early childhood care and education to children below the age of six years⁵³ has been included in the Article 45 of directive principles of state policy, which is not enforceable. The age group of 0 - 6 years should be a part of fundamental right because it influences the most vital period of the child’s development. Without early childhood care and education, the effort to provide free and compulsory education to children in the age of 6 to 14 years cannot be successful.
- The RTE Act, 2009 came into force on 1 April 2010. The Act mandated two categories of goals to be achieved, related infrastructure of schools and teachers. The target related to the infrastructure of the schools are to be achieved within a period of three years from the implementation of RTE Act, i.e. by March 31, 2013 and targets related to the teachers within five years i.e. by March 31, 2015. The problem is that unqualified and untrained teachers continue to teach after the deadline. However, it is very sad that the right to education has failed to achieve the target set by the RTE Act.
- Right to free and compulsory education is a fundamental right for every child between the ages of 6 - 14 years has become selective rather than promoting universal elementary education. But the poor implementation of various provisions

⁵² Ins. by the Constitution (Eighty-six Amendment) Act, 2002, Sec. 4

⁵³ Article 45 has been inserted by the Constitution (86th Amendment Act 2002) Sec. 3 provides that, The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

under the Act has made it an inadequate law. How could one expect quality education in primary and upper primary schools when no child shall be held back in any class?

- Act covers only eight years completing elementary education of children between the age of 6-14 years, Whereas National Policy on Education⁵⁴ 1986 and judgement of *Unnikrishanan, J. P.*⁵⁵ provides similar direction for children of right to education up to the age of 14 years.
- The Act does not include children below 6 years and over 14 years of age. The norms and standards provided are inadequate for a national system of public education with an assurance of universal quality, let alone constituting a Common School System, as promised in successive educational policies of 1968 and 1986.

1.2. Hypothesis of Research:

Although many hypotheses could be framed in respect of right to education but keeping in view the Right of Children to Free and Compulsory Education Act, 2009, the legal, human rights and fundamental rights based hypotheses have been framed as follows:

- The existing law regarding development of children through education is not adequate.
- There is no proper implementation of the existing law.
- Right to education does not provide satisfactory and qualitative education.
- Campaign to provide excellence in education has been continuously facing various hurdles and hinderances such as financial facility.
- Article 21-A of Constitution has declared right to free and compulsory education to all children as a fundamental right, but thereafter the obligation of the State to provide education is subject to the limit of its economic capacity.

⁵⁴ Government of India, *National Policy on Education, 1986 (As Modified In 1992)* (Government of India, Ministry of Human Resource Development, New Delhi, 1998), Clause 5.5

⁵⁵ AIR1993SC2178; (1993)1SCC645

- The International documents have direct bearing on the issue of right to education which is now being determined in the judicial foray and legislative arena.

1.3. Objectives of Research:

Although, the research study includes various minor objectives within doctrinal, analytical and descriptive understanding and findings but some objectives of this research study have been taken. The objectives of research study are as given below:

- To trace the importance, concept and historical development of right to education.
- To study the international provisions regarding the development of right to education of children.
- To evaluate the Constitutional and other legal provisions which are related with right to education of children.
- To appraise the concerned judicial decisions.
- To study the government national policies for development of right to education of children.
- To suggest amendments in the Constitutional provisions and the Right of Children to Free and Compulsory Education Act, 2009.
- To suggest some major steps for the effective protection and development of right to education of children.

1.4. Research Methodology:

The research study is based on the doctrinal, analytical and descriptive methods. Besides these methods, some other methods have also been applied according to the need of study. The analytical process is applied for discussing legal provisions and policies. Where the things are of introductory and observational nature, the method applied is descriptive. The information has been gathered using secondary sources of data. In this context various legal provisions, national and international documents, reports, articles, journals, judicial decisions, books, internet magazines, mass-media reports and other

similar sources of data related to the need of study have been analysed. The study has undertaken examining the extent to which the provisions of the RTE Act are being implemented across the country.

1.5. Aim and Significance of the Study:

The aim of this study is to provide comprehensive knowledge of right to education, because most of people do not have sufficient knowledge about right to education of children, and to find out the areas where the the Right of Children to Free and Compulsory Education Act, 2009 needs to provide more support to ensure its legal commitments to education for all children in India. Apart from this, the aim of this study is to present the emerging shortcomings in implementation of the Act and provide recommendations to the Central government for improving implementation and monitoring of the Act.

The study will be useful in granting and facilitating the right to education for children in India, in the perspective of human right scenario. The study is significant for all regions in India and has a great importance for researchers, various institutional libraries, and law policy makers. The study will also be relevant for developing tools for the educational development and to provide fulltime elementary, satisfactory and equitable quality education to all children.

1.6. Design of Chapters:

This study has been divided into seven chapters out of which, '**chapter1**' consists of the introduction of whole research study produced in all the chapters. The most significant part of this chapter is concerned with fundamental reasons of taking this problem as a research problem and necessary relation between this problem and right to free and compulsory education, legal aspects under fundamental rights perspective. This chapter covers statement of problem, hypothesis of research, objective of research, research methodology as well as significance of study. This chapter also covers the conceptual ideas and philosophy of education from ancient to modern era, various ideals

and different methods of imparting education of Vedic period, origin and importance of education in national and international perspective.

To begin with, '**chapter 2**' explores the dynamic concept of right to education, and changing scenario of education form ancient to modern period. This chapter also contains meaning of education, rights, free and compulsory education, schooling, aim and importance of education, meaning and legal definition of child. Apart from this researcher discusses historical development about the right to education and explains the political strategies and commitment to realisation of Right of Children to Free and Compulsory Education Act, 2009.

In '**chapter 3**' researcher has discussed several international declaration, conventions, regional human right treaties and articles related to right to education in international perspective. Many writings and reports by United Nations bodies stress the importance of the fundamental right to education of children. This chapter also covers the first impression of international concern over the right to education of children to present context.

Researcher has divided '**chapter 4**' into two parts. In part, first of this chapter discusses the Constitutional provisions, Articles, constitutional amendments related to right to education of children. Researcher further lists out some important Articles related to education. In part first, researcher has discusses the position of the Indian Constitution before and after (Eighty-sixth Constitution) Amendment Act, 2002 and the idea of what Constitution makers intended to do. Apart from this part second, of this chapter gives an account of judicial efforts in the area of right to education and emerging issues related to right to education of children. This part discusses judicial decisions before the (Eighty-sixth Constitution) Amendment Act, 2002 and the situation after passing the (Eighty-sixth Constitution) Amendment Act, 2002 upholding the Constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009.

‘Chapter 5’ discusses recommendations of various Education Commissions e.g. Radhakrishnan Commission, Kothari Commission, in etc. Further, this chapter discusses National Policies on Education 1968, 1986 as modified in 1992, National Policy for Children 1974, National Charter for Children (2003), The National Policy for Children, 2013, various programme related to eradicating illiteracy, many five year development plans, and several government reports on right to education of children. This, chapter also discusses New National Policy on Education, 2015 and its report, 2016. Apart from this researcher discusses various deficiencies and challenges faced by our education system.

In **‘chapter 6’**, researcher discusses, salient provisions, and scope of RTE Act. Researcher also discusses the objects and goals, which are the most important part of this chapter, and analysis of the Right of Children to Free and Compulsory Education Act, 2009. Apart from this, critically examines all relevant provisions of the Right of Children to Free and Compulsory Education Act, 2009, further researcher has traced various serious lacunas of the Right of Children to Free and Compulsory Education Act, 2009, which shows that the Act is not complete or sufficient in terms of accomplishing its declared and most desirable goals.

Finally, **‘chapter 7’** covers all above chapters, reflecting upon the findings of the study. Further, this chapter critically highlights the various constitutional provisions related to right to education and serious lacunas of the Right of Children to Free and Compulsory Education Act, 2009 and gives various suggestions for plugging the loopholes of the Right of Children to Free and Compulsory Education Act, 2009, which will prove very useful in achieving the desirable goals of right to education of children.

CHAPTER – 2

CONCEPT, IMPORTANCE AND HISTORICAL DEVELOPMENT OF RIGHT TO EDUCATION

“Plants are shaped by cultivation and men by education...We are born weak, we need strength; We are born totally un-provided, we need aid; We are born stupid, we need judgement; Everything we do not have at our birth and which we need when we are grown is given us by education.”--- (Jean Jacques Rousseau)

All men are born free and equal, in dignity and in rights, and being endowed by nature with reason and integrity, they should conduct themselves as brothers one to another. The fulfillment of duty by each individual is a necessity to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights promote individual liberty, duties express the dignity of that liberty. Duties of a juridical nature assume others of a moral nature which support them in principle and constitute their basis, and since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.⁵⁶

The right to education incorporates responsibility to provide basic education for individuals, who have not completed primary education. In addition to these access to educational provisions, the right to education encompasses the obligation to rule out discrimination at all levels of the educational system, to set minimum standards and to improve quality of education.

Education is a fundamental human right and occupies a central place in human rights, as it is a right in itself and indispensable for the exercise of all other human rights. As an empowerment right, education is the primary vehicle by which marginalized

⁵⁶American Declaration of the Rights and Duties of Man, preamble, Approved by the Ninth International Conference of American States, Bogota, Colombia, 1948

children, young people and adults can lift themselves out of poverty and participate fully in communities and society.⁵⁷

The fundamental purpose of Education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter.⁵⁸

All children, young persons and adults have the human right to benefit from an education that will meet their basic learning needs. This includes ‘learning to know, to do, to live together and to be’, and seeks to tap and develop each individual’s talents, potential and personalities, so that they can ‘improve their lives and transform their societies’.⁵⁹ The right to education was, according to Manfred Nowak, first categorically upheld as a human right in the Constitution of Soviet Union in 1936. It guaranteed free and compulsory education through a system of scholarship and vocational training in state enterprises.⁶⁰

Education has several aspects within and beyond the Constitution as well as its contents and development in pre-independent period. The concept of education primarily intended the learning and imparting of knowledge. This issue may involve a variety of questions relating to the opportunities available liberty of the people to learn, their assess ability in their area and the Right to Education. It further involves several modes and methods of education centers, including the issues as to eligibility and availability of education to several classes of beneficiaries. When we talk about right to education it

⁵⁷ The World Education Forum 2015, *available at*: <http://en.unesco.org>

⁵⁸ *Ibid.*

⁵⁹ Stephen P. Marks, *The Right To Development: A Primer 77* (Centre for Development and Human Rights, Sage Publications, New Delhi, 2004). Education For All: Meeting Our Collective Commitments, Text Adopted By The World Education Forum (Dakar, Senegal, 26-28 Apr. 2000)

⁶⁰ Manfred Nowak, “The Right to Education” in AsbjornEide et.al. (eds.), *Economic, Social And Cultural Rights* (MartinusNijhoff Publishers, 1995), *Ibid.*, 77-78p.

becomes significant that what does it mean and how far it is desirable looking to the needs and resources of the country.⁶¹

Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to the humanity. Mankind has best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood - socially, economically, physically and mentally, the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry.⁶²

The founding fathers of the Constitution, therefore, have emphasised the importance of the role and the need of its best development. *Dr. B.R. Ambedker*, who was far ahead of his time in his wisdom, projected these rights in the Directive Principles including the children as beneficiaries. Their deprivation has deleterious effect on the efficacy of the democracy and the role of law.⁶³

Similarly, we must hold that 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 study in a quality school, and a quality school certainly should pose no threat to a child's safety.

⁶¹Pawan Kr. Mishra, "Constitutional Contours of Right to Education: An Implicit Fundamental Right" Vol. XXXVII (1&2) Indian Bar Review 53 (January-June, 2010).

⁶²*Bandhua Mukti Morcha Etc. v. Union of India and Others*, (1997)10 SCC 549 (Supreme Court, Feb.-21-1997).

⁶³*Ibid.*

We reached a similar conclusion, on the comprehensive guarantees implicit in the right to education.⁶⁴

2.1. The Changing Scenario of the Education in India:

2.1.1. Ancient Period:

Indian education had always been, since the Vedic age, of a classical and spiritual rather than of a practical nature. However, this description is mainly applicable to higher education which was generally literary, philosophical and religious. It was communicated through the sacred classical languages of the Hindus and the Muslims, namely Sanskrit, Arabic and Persian. The subjects taught were the scriptures, grammar, logic and the classics which included codes of law and such scientific works as had come down to them from early times.⁶⁵

India has a glorious tradition of education at all levels. India is a land of scholars and intellectual from ancient times - the Vedic and the Buddhist. Here, the history of education was very rich, interesting and organized. It is thought to be almost 5000 years old and began with the Vedic period. Education in India has a history stressing back to the ancient urban centres of learning at 'Takshashila' and 'Nalanda' to western education established by British Crown. Right to education issue has been debated in India for more than a century.

Brahmin gurus imparted education by means of begging and not through charging fees or funds from the students or their guardians. Later, temples were also centers of education. Religious education was compulsory but secular subjects were also taught. Students were required to be 'Brahmacharis' of celibates. The knowledge in these orders was often related to the tasks a section of the society had to perform. The priest class, the Brahmin, were imparting knowledge of religion, philosophy and other ancillary branches

⁶⁴(2009)6 SCC 398 (Supreme Court on Apr.-13-2009).

⁶⁵ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 7 (Orient Blackswan Private Limited, New Delhi, 4thedn., 2013).

while warrior class, the Kshatriya, were trained in the various aspect of warfare. The business class, the 'Vaishyas' was taught their trade and the working class of the 'Shudras' was generally deprived of education advantages. The book of laws, the 'Manusmrti' and the treatise on statecraft the 'Arthashastra' were among the influential works of this era which reflect the outlook and understanding of the world at the time.⁶⁶

Secular institutions cropped up along with Hindu Temples, Mutts and Buddhist monasteries. These institutions imparted practical education, e.g. medicine. A number of urban learning centers became increasingly visible from the period between 500 BCE to 400 CE. The important urban centers of learning were 'Takshashila'(in modern day Pakistan) and 'Nalanda' in Bihar, among others. These institutions systematically imported knowledge and attracted a number of foreign students to study topics such as Vedic and Buddhist literature, logic, grammar, etc. 'Chanakya', a Brahmin teacher, was among the most famous teachers of 'Takshashila', associated with founding of 'Mauryan Empire'.⁶⁷

Education among the Hindus had been the domination of the high, especially of the priestly castes. The learned 'Brahmins' gathered students from various parts of the country and in the homely atmosphere of their Tols and 'Chatuspathis' as these were known in Bengal and Bihar, imparted education. Life in those places was pure and simple. The teachers not only received no fees but provided free board and lodging for their students. The course of studies extended from 15 to 20 years and the hours of study were long and hard. There were also larger education establishments in the various religious centres, the most famous of which in the 'Ganges Valley' were Nadia, Tirhut (Tirabhukti or Mithila) and Benares. These were conducted by learned 'Brahmins', who

⁶⁶R.S.S. Nehru and N.V. Rao, *Elementary Education 2* (A.P.H. Publishing Corporation, New Delhi, 2014).

⁶⁷*Ibid.*

were liberally and supported by the rulers and the nobility and were men of high character and immense learning and lived a simple life.⁶⁸

The Muslim places for education called ‘Madrassas’ were less spiritual and were smaller in number than the Hindu places for education and were meant mainly for the training of law officers. Besides laws, instruction was also given in these institutions in scriptures, literature, grammar, penmanship, logic, rhetoric, natural philosophy and arithmetic and average duration of the study was 10 to 12 years.⁶⁹

Nevertheless, these institutions were not meant for education of an elementary kind. They were the highest seminaries of learning meant for the specialists. For primary education, there were in the villages ‘Pathshalas’ and ‘Maktabsh’ where the ‘Gurus’ and the ‘Maulavis’ imparted education of three “R” i.e. reading, writing, and arithmetic (pronunciation of these starts with alphabet “R”) to the boys of the locality. These schools were not paying concerns and had to depend on the generosity of the people. Instruction in these schools was given in the vernaculars. The aristocracy did not send their children to these schools but preferred to educate them at home. There was no school for the education of the girls though the ‘Zamindars’ often had their daughters educated at home. The majority of the Indians were un-willing to educate their girls on account of social prejudice and superstition, while the lower classes could not afford it.⁷⁰

2.1.2. Medieval Period:

By the time of the visit of the Islamic scholar Alberuoi (973-1048 CE), India already had a sophisticated system of mathematics and science in place, and had made a number of inventions and discoveries. With the arrival of the British Raj in India a class of Westernized elite was versed in the Western system of education which the British had

⁶⁸ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 7 (Orient Blackswan Private Limited, New Delhi, 4thedn., 2013).

⁶⁹ *Ibid.*

⁷⁰ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 7 (Orient Blackswan Private Limited, New Delhi, 4thedn., 2013).

introduced. This system soon became solidified in India as a number of primary, secondary, and tertiary centres for education cropped up during the colonial era.⁷¹

During the Reformation in 1524, Martin Luther advocated compulsory schooling so that all parishioners would be able to read the Bible themselves, and Strasbourg - then a free city of the Holy Roman Empire - passed accordant legislation in 1598. In Scotland, the Reformation prompted the establishment of the first national compulsory system of education. The Education Act of 1496 had obliged the children of noblemen and freeholders to attend school, but the School Establishment Act of 1616 commanded every parish with the means to establish a school paid for by parishioners. The Parliament of Scotland confirmed this with the Education Act of 1633 and created a local land-based tax to provide the required funding. The required majority support of parishioners, however, provided a tax evasion loophole which heralded the Education Act of 1646.⁷²

The turmoil of the age meant that in 1661 there was a temporary reversion to the less compulsory 1633 position. However, in 1696 a new Act re-established the compulsory provision of a school in every parish with a system of fines, sequestration, and direct government implementation as a means of enforcement where required. In Austria, mandatory primary education was introduced by Empress Maria Theresa in 1774. Prussia can claim the first modern compulsory system that was widely recognised and copied. It was introduced by decree of Frederick the Great in 1763-65 and was later expanded in the 19th century. This provided a working model for other States to copy; the clearest example of direct copying is probably Japan in the period of the Meiji Restoration. Prussia introduced this model of education so as to produce more obedient soldiers and serfs.⁷³

⁷¹B.R. Tyagi, *Right To Education: Justification, Definition And Guidelines*, 70 (Arise Publishers & Distributors, New Delhi, 2012)

⁷²R.P. Yadav, *Right To Education* 15 (Mittal Publications, New Delhi, 2014)

⁷³*Ibid.*

2.1.3. Modern Period:

It was the classical aspect of Indian education that first attracted the attention of a few high officials of the East India Company after the Company had stood forth as the 'Dewan' in 1765 in the Bengal Presidency. Few officials had spent most of their career in India; Warren Hastings was one of them who foremost came to India in the service of the East India Company as a Writer in 1751 and by rose to be the Governor of Fort-William in Bangal. Warren Hastings developed a great love for Indo-Persian Culture. Another high official of the East India Company who was greatly attracted to higher learning in India was Willium Jons.⁷⁴ Whenever, the British rule was main thrust for supplying clerk to run the administration and not to create any intellectual tradition in any field. Job in administration has become a dominant social value than studentship. East India Company did not provide any education to Indians for more than two centuries.⁷⁵

In 1813, they felt the responsibility of education for Indians. There were different groups supporting either elite education or mass education. There were two strongly opposing groups one for western education and other for oriental education.⁷⁶ Some of the Britishers encouraged Sanskrit and Arabic Colleges whereas some Indians favoured western education and stated that it would be best suitable for keeping the country in darkness. He wanted the future generation of India to march ahead on the path of progress along with western countries.⁷⁷

When we saw nature and extent of existing elementary education system in late 18th and early 19th century, then a series of surveys carried out in elementary education by the East India Company officials between 1822 and 1838 we can fairly assume that elementary education was quite popular in the villages of British India. William Ward, a

⁷⁴ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 9-10 (Orient Blackswan Private Limited, New Delhi, 4th edn., 2013).

⁷⁵ Dr. S.K. Singh, "Quality Education and the Human Development" Vol. 2, Issue 1&2, *Vidhigya - The Journal of LehalAwereness*, 3 (Jan.-Dec., 2007).

⁷⁶ HetukarJha, *Colonial Context of Higher Education in India*, 25 (Manohar Publishers & Distributors, New Delhi, 1985).

⁷⁷ Dr. S.K. Singh, "Quality Education and the Human Development" Vol. 2, Issue 1&2, *Vidhigya - The Journal of LehalAwereness*, 3 (Jan.-Dec., 2007).

Baptist Missionary based at Serampore, observed in his “A View of the History of the Religion and Mythology of the Hindus” that ‘almost all villages possessed schools for teaching, reading, writing and elementary arithmetic.’ Malcolm noted in his “Memories of Central India” that every village with about a hundred houses had a school master who taught ‘the children of the ‘banians’ or shopkeepers and those of such cultivators, as choose.’⁷⁸

Village schools served a very useful purpose; they fulfilled the needs and requirements of the villagers, the petty ‘Zamutudar, bania’ and the well-to-do farmer. The curriculum consisted of reading, writing and arithmetic (both written and oral). There were no printed books and the locally made slates and pencils were the only equipment the children needed. The hours of instruction and the days of working were adjusted to local requirements. There was no regular period of admission a child could join the school at any time and leave it when he had acquired all that he desired to know. Such schools which were often without any buildings of their own were held sometimes in the home of a teacher or a patron, in a ‘Masjid’ or a ‘Mandir’, and not infrequently under the shade of trees. The number of children could vary from 1 to 20 but in larger schools the senior students were appointed to teach the junior student. This system attracted the attention of the Madras Chaplain, Dr. A. Bell, who introduced it in England as a cheap and efficient method of educating the poor and later it came to be known as the Monitorial or Madras System in England. The teachers for these schools, like their students, came from all classes including the depressed classes as Adam Smith’s analysis of castes shows and were paid either in cash or in kind according to the ability of the parents of the students. Nevertheless, these schools which had shown wonderful adaptability to local environment and existed for centuries through a variety of economic conditions or political changes showed signs of decay at the coming of the British Raj. One factor which contributed to it was the gradual destruction of village crafts and industries and the growing destitution of the people following a series of economic

⁷⁸ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 8 (Orient Blackswan Private Limited, New Delhi, 4thedn., 2013).

reforms including the Permanent Settlement in the Bengal Presidency in the late 18th century.⁷⁹

Compulsory school attendance on this model gradually spread to other countries, reaching the American State of Massachusetts in 1852, and spreading to other states until, in 1917, Mississippi was the last state to enact a compulsory attendance law. Massachusetts had originally enacted the first compulsory education law in the American colonies in 1647. In 1852, the Massachusetts General Court passed a law requiring every town to create and operate a grammar school. Fines were imposed on parents who did not send their children to school and the government took the power to take children away from their parents and apprentice them to others if government officials decided that the parents were "unfit to have the children educated properly."⁸⁰

Compulsory education had not been part of early American society; which relied instead on church-run private schools that mostly charged tuition. The spread of compulsory attendance in the Massachusetts tradition throughout America, especially for Native Americans, has been credited to General Richard Henry Pratt, used techniques developed on Native Americans in a prisoner of war camp in Fort Marion, Augustine, Florida, to force demographic minorities across America into government schools. His prototype was the Carlisle Indian Industrial School in Pennsylvania. One of the last areas in Europe to adopt a compulsory system was England and Wales, where the Elementary Education Act of 1870 paved the way by establishing school boards to set up schools in any places that did not have adequate provision. Attendance was made compulsory until age 10 in 1880.⁸¹

Macaulay (1835) strongly supported English education and stated, “we are forced to pay for our Arabic and Sanskrit students, while those who learn English are willing to pay us.” Britishers wanted to form a class of persons, who were Indian in blood and

⁷⁹ *Id.*, at 9

⁸⁰ R.P. Yadav, *Right To Education* 15-16 (Mittal Publications, New Delhi, 2014)

⁸¹ R.P. Yadav, *Right To Education* 16 (Mittal Publications, New Delhi, 2014)

colour, but English in taste and opinion, who could work as interpreters between Britishers and Indians. Thus the Britishers introduced English education for preparing better civil servants. But in practice, this minor group of English learnt people developed a superiority complex and isolated themselves from masses.⁸²

The British replaced Persian with English in 1835 which not only became the language of their administration but also the medium of instruction in schools, colleges and universities set up by them. Since most of these institutions were situated in the provincial capitals and the cities, they remained mostly out of reach for the majority of the population in British India. As far as the Muslims were concerned, most of them boycotted English education as they considered it to be below their dignity to learn the language of usurpers. The British rulers never cared to take education to the common people and it was only when the English educated became harsh critics of the British Raj that they diverted their attention from higher education to elementary education from 1880 onwards. From 1921 onwards, the British Raj also attached night schools to select primary schools for day workers but their number was very small and did not have much effect on the spread of literacy in the country. As a matter of fact, the literacy among the people in British India was limited to the few fortunate groups of people who had been able to take advantage of the new education in the metropolitan cities and the provincial capitals and to a still fewer groups among them who had been able to keep alive a knowledge in Arabic, Persian and Sanskrit as well as to the few people in the remote villages who were fortunate to have a local 'guru' to teach them the art of reading and writing in the local vernaculars, and the art of counting figures to men their daily needs.⁸³

This concentration of education among a few people to in British India had been severely condemned by many of our national leaders and philosophers including Vivekananda, who first propounded the Vedic religion at the World Conference on

⁸²Dr. S.K. Singh, "Quality Education and the Human Development" Vol. 2, Issue 1&2, *Vidhigya - The Journal of LehalAwereness*, 3 (Jan.-Dec., 2007).

⁸³Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 290 (Orient Blackswan Private Limited, New Delhi, 4thedn., 2013).

religion in Chicago in 1893. After deploring the ruin of the country through the monopoly of education by a handful of people, he had stressed the need for spreading education among all classes of the people in the society, and observed, “Education is not the amount of information that is put in the brain and runs riot there, undigested all your life. We must have life-building, man-making, character-making assimilation of ideas. If you have assimilated fine ideas and made them your life and character, you have more information than a man who has got by heart a whole library”.⁸⁴

Following independence in 1947, first education minister Maulana Azad, envisaged strong central government control over education throughout the country, with a uniform educational system. However, given the cultural and linguistic diversity of India, it was only the higher education dealing with science and technology that came under the jurisdiction of the central government. The government also held powers to make national policies for educational development and could regulate selected aspects of education throughout India.⁸⁵

2.2. The Right to Education:

Education is the manifestation of perfection already in man.⁸⁶ Education is enlightenment. It is the one that lends dignity to a man. Education seeks to build up the personality of the pupil by assigning his physical, intellectual, moral and emotional development.⁸⁷ Education is keystone for self-sustaining and livelihood and the education is life insurance for all children.

The right to education is a human right. A right is something, which one is entitled to and which one can claim. Having a right means that someone else has an obligation. If someone has the right to free education, then the government or school cannot demand

⁸⁴*Id.*, at 291

⁸⁵B.R. Tyagi, *Right To Education: Justification, Definition And Guidelines*, 70 (Arise Publishers & Distributors, New Delhi, 2012)

⁸⁶ R.N. Sharma, *Great Educators Of The World* 252 (Shubhi Publication, Gurgaon, Haryana, India, 2013).

⁸⁷*University of Delhi and Anr.v. Ram Nath*, AIR 1963 SC 1873, (SC on dated Apr.-01-1963, Justice, K.C. Das Gupta, K.N. Wanchoo, and P.B. Gajendragadkar), This word observed by Justice, P.B. Gajendranath.

one to pay to access education. The right to education is also an enabling right. Education “creates the ‘voice’ through which right can be claimed and protected.”⁸⁸ Without education people lack the capacity to “achieve valuable functioning as part of the living”.⁸⁹ If people have access to education they can develop the skills, capacity and confidence to secure other rights. Education gives people the ability to access information detailing the range of right that they hold, and government’s obligations. It supports people to develop the communication skills to demand these rights, the confidence to speak in a variety of forum, and the ability to negotiate with a wide range of government officials and power holders.⁹⁰

The right to education obligates governments to ensure the satisfaction of basic learning needs for all. The World Declaration on Education for All 1990 finds that: “These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions and continue learning.”⁹¹

Every person has the right to education, morality and human solidarity. Likewise every person has the right to education that will prepare him to attain a decent life, to raise his standard of living, and to be a useful member of society. The right to education includes the right to equality of opportunity in every case, in accordance with natural talents, merit and the desire to utilize the resources that the state or the community is in a position to provide. Every person has the right to receive, free, at least a primary

⁸⁸ Kelvin Watkins, *The Oxfem Education Education Report* (Oxfem GB In Association With Oxfem International In 2000, 1stedn., 2000).

⁸⁹ Amartya Sen, “Capability and Well-Being” in Martha Nussbaum and Amartya Sen (eds.), *The Quality of life* (Clarendon Press; New York: Oxford University Press, 1993).

⁹⁰ Amartya Sen, “Capability and Well-Being” in Daniel M. Hausman (eds.), *The Philosophy of Economics An Anthology* 370 (Cambridge University Press, 3rdedn., 2008).

⁹¹ World Declaration on Education for All Meeting Basic Learning Needs: A Vision For The 1990’s, Jomtein Thailand, 5-9 March 1990.

education.⁹² It is the duty of every person to aid, support, educate and protect his minor children, and it is the duty of children to honor their parents always and to aid, support and protect them when they need it,⁹³ and also the duty of every child to acquire at least an elementary education.⁹⁴

2.3. Meaning of Rights:

Right is an interest recognized and protected by law. ‘Rights’ are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture and the history of social conflicts can be found in the history of each right and its development. The specific enumeration of rights has differed greatly in different periods of history. In many cases, the system of rights promulgated by one group has come into sharp and bitter conflict with that of other groups.

Legal rights are, clearly, rights which exist under the rules of legal systems or by virtue of decisions of suitably authoritative bodies within them.⁹⁵ According to positivists, legal rights are essentially those interests which have been legally recognized and protected. John Austin made a distinction between legal rights and other types of rights such as Natural rights or Moral rights. By legal rights, he meant rights which are creatures of law, strictly or simply so called. He said that other kind of rights are not armed with legal sanction and cannot be enforced judicially. On the other hand, Salmond

⁹²American Declaration of the Rights and Duties of Man, Article XII, Approved by the Ninth International Conference of American States, Bogota, Colombia, 1948.

⁹³*Ibid*, Article XXX.

⁹⁴*Ibid*, Article XXXI.

⁹⁵ Available at: <http://plato.stanford.edu/entries/legal-rights>

said that a legal right is an interest recognized and protected by rule of law and violation of such an interest would be a legal wrong.⁹⁶

According to Black's law dictionary the meaning of rights is "lawfully guaranteed powers a legal entity acquires from winning a court decision. Realization or defence of just and lawful claims or interests against 'The whole world' is the basis. Whether or not the existence such rights are publicly known, legal rights as laws impact every citizen."⁹⁷

'I have a right' or 'we have a right' is a very special claim. It implies that the thing to which there is a right has priority over others entitlements, or perhaps even a nation's interest. However, the question is what are rights, especially human rights and where do they come from? There are at least three levels, where human rights are protected: the international level and regional level, national level. They have become increasingly intertwined.⁹⁸

Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology.⁹⁹ The 'ubi jus ibi remedium' an ancient legal maxim says that where is right there is remedy. Lawyers have not pronounced the reason why this correlativity is so significant. Perhaps to them, it has been apparent.¹⁰⁰ There are various rights and at the same time moral and values that need not be stated in terms of rights. Jurisprudence is concerned only with such rights are enforced by law.¹⁰¹

Rights are important for stability, for if they are not protected people will resort to rebellion against tyranny and oppression. In any increasingly interdependent world, the relations among states must also be based on respect for human rights - and for this a

⁹⁶SuyashVerma, Saurabh Kumar, *et. al.*, *Jurisprudence Notes- Legal Concepts (Rights and Duties, Ownership and Possession*, available at: <http://www.desikanoon.co.in/2012/08/jurisprudence-notes-legal-concepts.html>

⁹⁷The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed., available at: <http://thelawdictionary.org/legal-rights>

⁹⁸YashGhai& Jill Cottrell, *The Millennium Declaration, Rights and Constitutions*, 10 (Oxford University Press, New Delhi, 2011).

⁹⁹Naushad Husain, "The Right to Education – A Conceptual Framework" in Naushad Husain (ed.), *Right To Education – Retrospect and Prospects* 58 (Shipra Publications, Delhi, 2014).

¹⁰⁰ Michael Freeman, *Moral Status of Children - Essays on the Rights of the Child*, 23 (MartinusNiihoff Publishers, London, 1977).

¹⁰¹ Sir Thomas Erskine, *The Elements of Jurisprudence*, 83 (Universal Law Publishing Co., New Delhi, 2001)

common understanding of rights needs to be established. The reasons for a compact on human rights were, therefore, pragmatic. Nevertheless, a moral element was introduced in the form of the concept of human dignity.¹⁰²

Human dignity encapsulates various ideas distinguishing the human person from other creatures, linking, for believers, the human person to God, or emphasizing the essence of the human person who seeks acknowledgement and self-respect, and is indirectly related to community and human solidarity. Every society has a concept of human or individual dignity, so that it has a sort of universal endorsement, and promotes universal acceptance and inter-cultural dialogue. Inspired, no doubt, by the prominence given to human dignity in the Universal Declaration of Human Rights, 1948 many other instruments, national as well as international, refer to human dignity. Dignity can be used to help interpret a specific human right. It may sometimes be used to limit the restrictions that can be placed on human rights. It can sometimes be used as a way to bring a rule of international norm into national law, occasionally with adjustment to local circumstances. Human dignity may even, though rarely, be used to develop a new right.¹⁰³

2.4. Meaning of Education:

According to an old Sanskrit adage states - "That is Education which leads to liberation - liberation from ignorance which shrouds the mind; liberation from superstition which paralyses effort, liberation is prejudices which blind the Vision of the Truth."¹⁰⁴

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a

¹⁰² Sir Thomas Erskine, *The Elements of Jurisprudence*, 12 (Universal Law Publishing Co., New Delhi, 2001)

¹⁰³ Christopher Mcmrudden's, "Human Dignity and Justifiability of Human Rights" Vol. 19 Issue 4, *European Journal of International Law*, 655 (2008) available at: <http://ejil.oxfordjournals.org>

¹⁰⁴ Bhartruhari, NeethiShatakam (First Century B.C.), as cited in *Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others*, AIR 1993 SC 2178

vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make. But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.¹⁰⁵

Educational development is a growing and vibrant field, defined as - a “key lever for ensuring institutional quality and supporting institutional change”.¹⁰⁶ The meaning of educational development is “an area of study that aims to give pupils an understanding of their involvement in world affairs”.¹⁰⁷ The word ‘development’ means ‘growth’ defined in Cambridge Dictionary as “the process in which someone or something grows changes and becomes more advanced”.

Further, inter alia education is both the development of the mind and personality of the individual and his development as a useful member of the society. If education had consisted only of the former, then there would have been no need for Schools, Colleges and Universities. Every person would educate himself by self-study or correspondence with educating bodies. But this would not fulfil the other equally important aspect of education, namely, the social one. The primary social function of education is to prepare the individual to participate in the democratic process which is the very life of the nation.¹⁰⁸

The Constitution of India likewise provides meaning to the word ‘education’ beyond its dictionary meaning. Parents should not be compelled to send their children to

¹⁰⁵ United Nations Committee on Economic, Social and Cultural Rights, G.C. No. 13 (1999), The Right to Education (Article 14), 21st Session, Nov.15 - Dec.-3-1999, E/C.12/1999/10, Dec.-8-1999, *available at*: <http://www.right-to-education.org>

¹⁰⁶ M.D. Scorinelli, and A.E. Austin, et. at., *Creating The Future Of Faculty Development: Learning From The Past, Understanding The Present* (Jossey Bass Publishers, San Francisco, 2005)

¹⁰⁷ Collins English dictionary – complete and unbridged (harper Collins publishers, 12th edn. 2014), *available at*: <http://www.thefreedictionary.com/brit>

¹⁰⁸ *AnandVardhanChandel v. University of Delhi*, AIR 1978 Del 308, Supreme Court, May-5-1978.

dangerous schools, nor should children suffer compulsory education in unsound buildings.¹⁰⁹

The word ‘education’ means the act or process of acquiring knowledge, especially systematically during childhood and adolescence. The meaning of ‘education’ defined in Cambridge dictionary as “education is the process of teaching or learning, especially in a school or college, or the knowledge that children get from home.”¹¹⁰ Chamber dictionary inter alia defined “education is bringing up or training; strengthening of the power of body or mind culture.”¹¹¹

Etymologically, the word ‘education’ has been derived from different ‘Latin’ words, i.e.

- ‘Educare’ which means ‘to bring out or to nourish’.
- ‘Educere’ which means ‘to lead out or to draw out’.
- ‘Educatum’ which means ‘act of teaching or training’.
- ‘Educatus’ which means ‘to bring up, rear, educate’.
- ‘Educatio’ which means ‘a breeding, a bringing up, a rearing’.

‘Education’ narrowly refers to formal institutional instructions. Generally, international instruments use the term education in a narrow sense. Education has defined the term “education” to mean “all types and levels of formal education, including access to education, the standard and quality of education, and the conditions under which it is given.”¹¹²

¹⁰⁹ *Bandhua Mukti Morcha Etc. v. Union of India and Ors*, (2009)6 SCC 398. See also, *Avinash Mehrotra v. Union of India and Others*, (2009)6 SCC 398.

¹¹⁰ Cambridge Dictionary, available at: <http://dictionary.cambridge.org/dictionary/english/education>

¹¹¹ *P.A. Inamdar and others v. State of Maharashtra and others*, (2005) 6 SCC

¹¹² Article 1(2) of the UNESCO’s Convention against Discrimination in Education (1960) The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 14 November to 15 December 1960, at its eleventh session, Recalling that the Universal Declaration of Human Rights asserts the principle of non-discrimination and proclaims that every person has the right to education, Adopts this Convention on the fourteenth day of December 1960, entered into force on 22 May 1962.

In a broader sense, education may describe “all activities by which a human group transmits to its descendants a body of knowledge and skills and a moral code which enable the group to subsist.” The wider meaning of education has been recognized in Article 1(a) of UNESCO’s 1974 Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms. The Article states that education implies: “the entire process of social life by means of which individuals and social groups learn to develop consciously within, and for the benefit of, the national and international communities, the whole of their personal capabilities, attitudes, aptitudes and knowledge.”

Education in the broadest sense of the term is meant to aid the human being in his/her pursuit of wholeness. Wholeness implies the harmonious development of all the potentialities God has given to a human person. True education is the harmonious development of the physical, mental, moral (spiritual), and social faculties, the four dimensions of life, for a life of dedicated service.¹¹³

There is no absolute agreement as to how to define the right to education, but the aims and objectives of education, as defined in the international covenants and treaties and Supreme Court judgments, includes as below following:

- Education is special manifestation of man;
- The development of human personality, a sense of dignity of individual talent, mental and physical ability;
- Education is the treasure which can be preserved without the fear of loss;
- Enable people to participate effectively in a free society;
- The promotion of understanding, tolerance, friendship among all groups, and to maintain peace;
- Education secure honour at the hands of the State, not money;
- A man without education is equal to animal.¹¹⁴

¹¹³Meaning, Nature and Aims of Education, *available at*: <https://johnparankimalil.wordpress.com>

¹¹⁴*Ashok Kumar Thakur v. Union of India and Ors*, [2008] INSC 615 (Supreme Court, 10 April 2008).

2.5. Importance of Education:

Education is enlightenment. It is the one that lends dignity to a man. Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development.” Education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words.¹¹⁵ Education plays a cardinal role in transforming a society into a civilized nation. It accelerates the progress of the country in every sphere of national activity. No section of the citizens can be ignored or left behind because it would hamper the progress of the country as a whole. It is the duty of the State to do all it could, to educate every section of citizens who need a helping hand in marching ahead along with others.¹¹⁶ Therefore, education is national wealth essential for the nation’s progress and prosperity.

It is needless to state that education, a fundamental right, has been explained as an essential part in every one’s life. In order to understand its consequential effects on the society at large, the Father of the Nation, Mahatma Gandhi, while referring to education has stated, “live as if you were to die tomorrow. Learn as if you were to live forever”. Later reinforced by Nelson Mandela “Education is the most powerful weapon which you can use to change the world”. The process of learning, as has been highlighted by the father of the nation, emphasises the need for one to have an everlasting thirst for acquiring knowledge by getting himself educated.¹¹⁷

The importance of education has come to be recognised by various thinkers and judicial decisions:-

The immortal Poet ‘Valluvar’ whose ‘Tirukkural’ will surpass all ages and transcend all religions said of education: “Learning is excellence of wealth that none

¹¹⁵*University of Delhi and Anr. v. Ram Nath*, AIR 1963 SC 1873, (Supreme Court on Apr.-01-1963).

¹¹⁶*P.A. Inamdar and others v. State of Maharashtra and others* (2005) 6 SCC

¹¹⁷*Maharshi Mahesh Jogi ... v. State of M.P. & Ors*, Supreme Court, Jul.03-2013 Civil Appeal No.6736 of 2004.

destroy; To man nought else affords reality of joy.”¹¹⁸ It explains in these words - Learning is the true riches; all other things are not riches.¹¹⁹

An American writer and philosopher ‘Mr. Will Durrant’ defines “education”, means as the ‘transmission of civilization’, and ‘George Peabody’¹²⁰ has defined “education” means as “a debt due from present to future generations.”¹²¹ Therefore, “education” confers dignity to a man.¹²²

The significant of education was very well explained by Chief Justice ‘Earl Warren’ of U.S. Supreme Court in **Brown v. Board of Education of Topeka**,¹²³ following words:-

“Education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is the very foundation of good citizenship. It is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”

The importance of education was emphasised in the ‘Neethishatakam’ by Bhartruhari (First Century B.C.) following words: (Translation)¹²⁴ -

Education is the special manifestation of man;

Education is the treasure which can be preserved without the fear of loss;

¹¹⁸ *Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others*, AIR1993 SC 2178

¹¹⁹ Mu.Va, KalangiarKarunanidhi, *et al.*, *Thirukkural: Thirukkural with Three Different Meaning* (Cursa Publications, 2015).

¹²⁰ George Peabody, was an entrepreneur and philanthropist who founded the Peabody Institute. He was born (Feb.-18-1795 to Nov.-4-1869) in what was then South Danvers, Massachusetts (now Peabody, Massachusetts).

¹²¹ Mark Pennington, *Critical Thinking Openers Toolkit*, 53 (Pennington Publishing, USA, 2010)

¹²² *Maharshi Mahesh Jogi ... v. State of M.P. & Ors*, Supreme Court, Jul.03-2013 Civil Appeal No.6736 of 2004.

¹²³ *Brown v. Board of Education of Topeka*, U.S. Supreme Court Report 98 Law. Ed. 347 U.S. 483, 873 (1954), available at: <http://www.legalcrystal.com/98896>.

¹²⁴ Bhartruhari, NeethiShatakam (First Century B.C.), as cited in *Unni Krishnan, J.P. and Others etc.ect.v. State of Andhra Pradesh and Others etc.etc.*, AIR1993 SC 2178, Decided on Feb-04-1993, para. 178, available at: <http://www.legalcrystal.com/654252>. Bapuji Educational Association v. State, AIR 1986 Kant. 119. See also, in *Ashok Kumar Thakur v. Union of India and Ors.*, [2008]INSC615(10 April 2008).

Education secures material pleasure, happiness and fame;

Education is the teacher of the teacher;

Education is God incarnate;

Education secures honour at the hands of the State, not money.

A man without education is equal to animal.

According to Pestalozzi who is a Swiss pedagogue and educational reformer stated that education is a constant process of development of innate powers of man, which are natural, harmonious and progressive. It is said that in the 21st Century, “a nation’s ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future.” Accordingly the 21st Century is termed as the century of knowledge.¹²⁵

Education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education.¹²⁶ In the independent India education is, in order to ensure that the society is enlightened and by such enlightenment the rights of the people and orderly society is ensured in this country.¹²⁷

2.6. Aim of Education:

Plato says in his book ‘The Republic’, “Then to help these two natures, as it seems, I would say some god has given two arts to mankind, music and gymnastic, for the philosophic and the high spirited parts; not for soul or body particularly, except by the

¹²⁵*Maharshi Mahesh Jogi ... v. State Of M.P. & Ors*, Supreme Court, Jul.03-2013 Civil Appeal No.6736 /2004.

¹²⁶*State of Orissa and Anr.v. MamataMohanty* (2012): 1 SCC 762.

¹²⁷*Maharshi Mahesh Jogi ... v. State of M.P. & Ors*, decided on Jul.03-2013 Civil Appeal No.6736 of 2004.

way; but for both together, in order that they may be fitted together in concord, by being strained and slackened to the proper point.”

“Then the one who best mingles music and gymnastic, and most proportion ably applies them to the soul, would most rightly be called the perfect musician and master of melody, much rather than the one who tunes together the strings of harps: and that is what we say.”¹²⁸

According to **Plato**, Man’s mind is always active. Man is attracted towards all things, that he sees in his surroundings and he runs after them. The educator should take advantage of this propensity in the child educate him. He should pay attention to the objects which surround the child. Such objects should be beautiful so that the child is naturally attracted to them and his curiosity is aroused. The process of education advances through this constant interaction between the stimulus by which the mind develops. For this reason the child should be kept in beautiful environment. In fact, the human individual requires such an environment not only in infancy but through his entire life. Because, according to Plato, the process of education is never complete. It continues throughout one’s life. Plato has laid the greatest stress on mental development in education. He conceives of the state as an advanced mind. Education aims not merely at providing information but at training the individual in his duties and rights as a citizen. Just as the state evolves from the mind, the mind itself passes through all those stages of development through which the state passes. In Plato’s opinion, the aim of education is human perfection, and with this end in view, he suggests a curriculum which comprehends all subjects.¹²⁹

‘John Dewey’ has rightly remarked that, “All education proceeds by participation of the individual in the social consciousness of the race.” Thus it is the society which will determine the aims, contents and methods of teachings. In this way the process of education consists of 3 poles - the teacher, the child and the society. John Dewey defined

¹²⁸ R.N. Sharma, *The Great Educators Of The World*, 26 (Shushi publication Haryana, India, 1st edn., 2013)

¹²⁹ R.N. Sharma, *The Great Educators Of The World*, 27 (Shushi publication Haryana, India, 1st edn., 2013)

that, education is a growth. The end of growth is more growth and the end of education is more education. According to John Dewey, “an individual is a changing and growing personality.” The purpose of education is to facilitate the process of his/her growth.¹³⁰

Therefore, the role of education is countless for a perfect society and man. It is necessary for every society and nation to bring holistic happiness and prosperity to its individuals. Aims of education are formulated keeping in view the needs of situation. Human nature is multisided with multiple needs, which are related to life. Educational aims are correlated to ideals of life. The goal of education should be the full flowering of the human on this earth. According to a UNESCO’s study, “the physical, intellectual, emotional and ethical integration of the individual into a complete man/woman is the fundamental aim of education.”

The goal of education is also to form children into human persons committed to work for the creation of human communities of love, fellowship, freedom, justice and harmony. Students are to be moulded only by making them experience the significance of these values in the school itself. Teachers could achieve this only by the lived example of their lives manifested in hundreds of small and big transactions with students in word and deed.

2.7. Free and Compulsory Education:

The word ‘free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay and kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.¹³¹

¹³⁰ John Dewey, *Democracy And Education: An Introduction To The Philosophy Of Education* (Aakar Books, Publication, Delhi, 2011).

¹³¹The Right of Children to Free and Compulsory Education (Bill No. LXV of 2008) Bill, 2008, the Rajya Sabha Document No. GMGIPMRND-4264RS(S-5)-10-12-2008 (Minister of Human Resource Development, Government of India, New Delhi, 2008). Statement of object and reasons of the bill.

The term ‘compulsory education’ inclines to provoke different meanings and interpretations from different persons. Frequently, ‘compulsory education’ is interpreted in terms of mandatory attendance necessities, or as the first stage of education. It is related with the right to education, and at time, to most persons ‘compulsory education’ and ‘right to education’ mean, much or some, the same thing. Though, there is a minor but important difference. The ‘right to education’ should also apply to adults. Later, while systems exist in several countries to force parents to send their children to school, adult education is not, as a rule, and compulsory since adults can choose whether or not they want to take advantage of the facilities provided to them for education. The aim of ‘compulsory education’ is to protect right to education of children, because children have no approach of proclaiming that right for themselves when through carelessness or unawareness, no attention is paid to this need.

The meaning of ‘compulsory education’ defined in International Dictionary of Education, London, (1977)¹³², and Dictionary of Primary Education (2004)¹³³ as - the ‘Compulsory Education’ means that “which must be attended or undertaken by the law of a particular country or State. The legal requirement may be education from a certain starting age or it may be education up to a certain standard”.

According to Cosmo Dictionary of Education (2005)¹³⁴- the ‘Compulsory Education’ means that “which must be attended or undertaken by the law of a particular country or State. The legal requirement may be education from a certain starting age to a certain school leaving age or it may be education to a certain standard.

One other, meaning of the ‘compulsory education’ inclines to refer to the necessities from children and governments in relation to this stage - the requirement being that the children must attend school and that the government must provide that schools to children. The following definition of compulsory education in the Concise

¹³²G. Terry Page, and J.B. Thomas, *International dictionary of education*, (Kogan Page Publication, London, 1977), available at: <http://www.worldcat.org>

¹³³Nehal Ashraf, *Dictionary of Primary Education* 47 (A.P.H. Publishing Corporation, New Delhi, 2004)

¹³⁴Cosmo Dictionary, *Cosmo Dictionary of Education*, 65 (Genesis Publishing Pvt Ltd, 2005).

Dictionary of Education (1982)¹³⁵ refers to these mandatory conditions - the ‘Compulsory Education’ means “the legal requirements in all States mandating minimal school attendance annually for children between latest school starting ages and earliest school leaving ages specified by the individual States; States correspondingly require provision of public education through which legal school attendance requirements may be met.”

When, ‘Compulsory Education’ is perceived as a right, the focus shifts to ‘self-assertion’. This is the meaning of compulsory education propagated by liberal and socialist philosophers, politicians and educationists as a vehicle for safeguarding a human right for people ‘under age’.

The UNESCO’s noticed ‘compulsory education’ as a right. Thus, as a right it has shifted from being applied to the population as a inactive subject, to now mainly applied to the state as an active subject such as - “the compulsory nature of education refers not only to the child’s obligation to receive it but also to the State’s obligation to provide”.¹³⁶

It is said, in Parliamentary Debates on Article 21-A, that the word ‘compulsion’ needs to be properly defined. The word, ‘compulsion’ is not to be related to the student or the parents. Parents cannot be penalized for being too poor to send their children to school. The word, ‘compulsion’ has to be understood in relation to the State and the obligation of the State to provide for free education.¹³⁷

Therefore, the word ‘compulsory education’ means “casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education”.¹³⁸

¹³⁵Gene R. Hawes, Lynne Gusikoff, *The Concise Dictionary of Education* (Van Nostrand Reinhold, New York, 1982)

¹³⁶ UNESCO’s, *International Year Book of Education: Primary Education on the Threshold of the 21st Century*, Vol. XXXVIII (UNESCO’s Publication, 1986).

¹³⁷ Government of India, Debates: The Parliamentary Debates on Article 21-A: Vol. 20, No. 6-10, (Government of India, New Delhi, 28 Nov., 2001, 523p.).

¹³⁸The Right of Children to Free and Compulsory Education (Bill No. LXV of 2008) Bill, 2008, the Rajya Sabha Document No. GMGIPMRND-4264RS(S-5)-10-12-2008 (Minister of Human Resource Development, Government of India, New Delhi, 2008). Statement of object and reasons of the bill.

2.8. Compulsory Education v. Compulsory Schooling:

In some cases, ‘compulsory education’ requirements can be met even without attending school. In such cases, it is the achievement of a stage of education that is the determining factor and not the attendance of the child at a school. In many countries, the conditions of compulsory education may be met through home schooling or through the provision of education through some other means. The following definition, from an American publication, also refers to this ‘achievement of objectives’ meaning of the term, in addition to the more common meanings related to the requirements to attend school and the requirements to provide schooling facilities. Such definitions of compulsory education draw attention to the distinction between compulsory schooling and compulsory education defined in Good/Third Educational Dictionary of Education (1973) as - “Compulsory Education: (1) the practice now common to all States, Territories, and possessions of the United States, of requiring school attendance by law; responsibility to be placed on the parents in some States; (2) historically, the requirement that every child should be able to read and write by a certain age commonly 12 years, school attendance not being mandatory (3) the requirement that a political subdivision provide education for the school age population.”

There is an important difference between “compulsory education” and “compulsory schooling”. Compulsory schooling requires compulsory attendance at a public school; it applies to a specific process whereby education is to be managed. On the other hand “compulsory education”, applies only to the output; to the fact that learning must take place, giving little or no importance to where it takes place, as long as it is actually taking place.

The present state education acts in India, by and large, make education, rather than schooling, compulsory. However, they make it a requirement for the child to attend an approved school, but, at the same time, schooling can be exempted if the child is shown to be acquiring the required education through some other means. In most countries in

Europe (with the exception of Germany) and even in the UK, laws allow children to be educated at home.¹³⁹ A large number of States in the USA also emphasise education, and not necessarily schooling, but others still require attendance at schools.

2.9. Education and Child:

It is often said that “a child is a future of a country” it is a building block of a nation whom should be given all facilities and room for his all development so that a national development reach its zenith. In this objective education plays a very important role. As pointed out by Edmund Burke - “The foundation of every state is the education of the youth, and it is that chief defence of nations.” Further, children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens of the future of the country.¹⁴⁰

Education is a systematic process through which a child or an adult acquires knowledge, experience, skill and sound attitude. It makes an individual civilized, refined, cultured and educated. For a civilized and socialized society, education is the only means. Its goal is to make an individual perfect. Every society gives importance to education because it is a panacea for all evils. It is the key to solve the various problems of life.¹⁴¹

Education has been described as a process of waking up to life: Waking up to the inter-dependencies of all things, to the threat to our global village, to the power within the human race to create alternatives, to the obstacles entrenched in economic, social and political structures that prevent our waking up.¹⁴²

Recognizing the above objective, every Constitution, Human rights instrument speaks explicitly or implicitly about the significance of child education. The Constitution

¹³⁹J. Amanda Petrie, “Home Educators and the Law within Europe” Vol. 41(3-4), *International Review of Education* 285-296 (1995).

¹⁴⁰*Sheela Barse v. Secretary, Children’s Aid Society*, (1987) 3 SCC 50.

¹⁴¹Meaning, Nature and Aims of Education <https://johnparankimalil.wordpress.com/2012/03/26/meaning-nature-and-aims-of-education/>

¹⁴²Meaning, Nature and Aims of Education <https://johnparankimalil.wordpress.com/2012/03/26/meaning-nature-and-aims-of-education/>

of India too has been since in regard with this topic. The first step towards right to education was taken right after Independence in 1950 when the Constitution (Art. 45) by way of a directive principle promised free and compulsory education within 10 years (by 1960). It is true the framers of the Constitution took that view. Article 45 of the Directive Principles of State Policy of the newly adopted the Constitution of India, provides that, provision for free and compulsory education for children, “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.”¹⁴³

The dreams of forefather came true through the enactment, Constitution (Eighty-six Amendment) Act, 2002, the right to education has been explicitly declared as a fundamental right by inserting a newly Article 21-A.¹⁴⁴ The Amendment Act has provided three insertions¹⁴⁵ in the Constitution of Indian, there are - Article 21-A: Right to Education - which mandates, “The State shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may, by law, determine.”¹⁴⁶ Article 45: Provision for early childhood care and education to children below the age of six years - that provides, “The State endeavour to provide early childhood care and education for all children until they complete the age of six years.”¹⁴⁷ Article 51-A: It shall be the duty of every citizen of India --- In Article 51-A, after clause (j), the following clause (k) has been inserted:“Who is a parent or guardian to

¹⁴³The Constitution of India, art. 45 (As it was before 86th Amendment) Act, 2002.

¹⁴⁴ Here it is pertinent to mention that India is going to top with the largest demographic dividend in the world but, the true benefit of it can only be reaped if this dividend is sound and fruitful. Capacity building of our demographic dividend by imparting free and compulsory education is the only solution in the contemporary world of cut throat competition otherwise; it could be converted into a demographic deficit (Deliberations of Prof. Moot Chand Sharma on the topic). So it was not only the social aspects which were responsible for the Constitution (86th Amendment) An. 2002 but also the economic aspects which emerged particularly after the emergence of LPG world in the early 1990s.

¹⁴⁵ *Ibid.*, Inserted new Article 21-A in Part III of the Constitution, and replaced Article 45 in Directive Principles of State Policy, and new Article 51-A(k) aided as Fundamental Duties in Part IV-A of the Constitution.

¹⁴⁶ Ins. By the Constitution (Eighty-six Amendment) Act, 2002, Sec. 2

¹⁴⁷ Subs. By the Constitution (Eighty-six Amendment) Act, 2002, Sec. 3

provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”¹⁴⁸

Thus, these ample Constitutional provisions itself speaks necessity of educating a child. The time purpose of education must be to create a mind which is both scientific and religious. The first concern of education must be with learning the true art of learning and then with the training particular profession. The educating a child should in consonance of the above mentioned goal.

2.10. Meaning of a Child:

From Jesus to Gandhi, before and after, every sublime soul has beheld divinity and juvenility. Yet with the march of the mankind this glorious gift has suffered culpable neglect and callous cruelty for so long and so lawlessly.¹⁴⁹ The hallmark of culture and advance of civilization consists in the fulfilment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature-physically, mentally, morally and spiritually. It is the birth right of every child that cries for justice from the world as a whole.¹⁵⁰ Human rights are inalienable and so are the rights of the child.¹⁵¹

Every new born child revives the hope of human survival in this world. The children are the most important part of the family, the society and the nations. In all countries in the world, there are children living in exceptionally difficult conditions and that such children need special consideration, taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child. It has been duly recognized that the child, by reason of his

¹⁴⁸ Ins. by the Constitution (Eighty-six Amendment) Act, 2002, Sec. 4

¹⁴⁹ R.S. Verma (ed.), *Human Rights: Burning Issues Of The World - Vol.2*, 341 (Indian PublishresDistibutors, Delhi, 2000)

¹⁵⁰ *Ibid.*, Justice, V.R. Krishna Iyer, *Jurisprudence Of Juvenile Justice: A Preambular Perspective* (Indian Law Institute, New Delhi, 2015). Mamta Rao, *Law Relating To Women And Children* 388 (Eastern Book Company, Lucknow, 2005). Justice, V.R. Krishna Iyer, *The Dialectics and Dynamics of Human Rights in India* (Eastern Law House, New Delhi, 1999)

¹⁵¹ R.S. Verma (ed.), *Human Rights: Burning Issues Of The World - Vol.2* 342 (Indian PublishresDistibutors, Delhi, 2000)

physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.¹⁵²

The word “child” has been used in various legislations as a term denoting relationship as a term indicating capacity, and as a term of special protection. Underlying these alternative specifications are very different concepts about the child. These include viewing children as a burden which invokes right to maintenance and support regarding children as undergoing temporary disabilities making for rights to special treatment and special discrimination treating children as especially vulnerable for ensuring right to protection and recognizing children as resources for the country’s development necessitating their nurturing and advancement.¹⁵³

The task is a challenging one. In the words of an eminent author: this is an irony that the increasingly scientific, industrial and competitive world has made the lives of the modern day children more and more difficult. This is an adverse commentary on modern civilization. In the world created by the adults and for the adults, there is very little space for nurturing the tenderness of a child.¹⁵⁴

What is the meaning of a Child? In most cases, the answer is that the child is an infant, a minor or an adolescent. A child is regarded as belonging to or even being the property of the family in many societies. During babyhood the family usually feels it has the duty to feed the child and care for him, to instruct him to a certain extent and to discipline him. Later the child is understood to have various duties, including going to school or assisting adults in the home.¹⁵⁵

In civilized society, the importance of child welfare cannot be underestimated because the welfare of the entire community, its growth and development, depends on the

¹⁵²NageshwarDayal, “Expanding Horizon of Rights of the Child” Vol. 25-26, *Law Review* 137 (2004-2005 & 2005-06)

¹⁵³Bajpai Asha, *Child Rights in India: Law, Policy, and Practice*, 5 (Oxford University, Press New Delhi, 2006)

¹⁵⁴Rekeshrenu, “Nature’s Prodigy” *The Employment News*, November 13-19, 2004, 1p.

¹⁵⁵ Yuri Kolosov, “The Rights Of The Child” in JanuszSymonides (ed.), *Human Rights: Concept And Standard* 259 (PremRawat for Rawat Publications, New Delhi, 2002)

health and well-being of its children. Children are a ‘supremely important national asset’ and the future well-being of the nation depends on how its children grow and development.¹⁵⁶

Justice Kuldip Singh, B.L. Hansaria, and S.B. Majmudar Hansaria, open his judgment in **M.C. Mehta v. State of Tamil Nadu and Others**¹⁵⁷ after quoting the following lines of ‘Manie Gene Cole’ -

“I am the child.

All the world waits for my coming.

All the earth watches with interest to see what I shall become.

Civilization hangs in the balance, for what I am, the world of tomorrow will be.

I am the child.

You hold in your hand my destiny.

You determine, largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness.

Train me, I beg you, that I may be a blessing to the world”.

Manie Gene Cole, It may be that the aforesaid appeal lies at the back of the saying that, “Child is the Father of Man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so for as the society is concerned.¹⁵⁸

¹⁵⁶Mamta Rao, *Law Relating To Women And Children* 388 (Eastern Book Company, Lucknow, 2005).

¹⁵⁷AIR1997SC699.

¹⁵⁸*Ibid*, para. 1

2.11. Legal Definition of a Child:

When we talk about the children, then the question arises that, who is a child? In view of various Conventions and recommendations of the United Nations and International Labour Organization adopted by India, it tries to follow the standards set by such convention. However, firstly it is important to note, who is a child?

All cultures share the view that the younger the children, the more vulnerable they are physically and psychologically and the less they are able to fend for themselves. Age limits are a formal reflection of society's judgment about the evaluation of children's capacities and responsibilities. Almost everywhere age limits formally regulate children's activities: - when they can first time join in primary school education, when they can leave school, when they can marry, when they can vote, when they can join the armed forces, and when they can work. But age limits differ from activity to activity and from country to country.¹⁵⁹ It is estimated there are more than 250 Central and State legislations under which the child is covered in India, but there does not appear to be any criteria or scientific parameters for age.¹⁶⁰

The several laws relating to rights of child labour prohibit a person under the age of 14 years to work. Thus, the minimum age at which compulsory education ends synchronizes with the minimum age of employment.¹⁶¹ Until recently, national laws did not always contain a legal definition of the notion of the 'child'. Usually, all persons who do not have full legal capacity until a certain age are regarded as children. The age of full legal capacity varies from State to State. Many national legal systems recognize the limited legal capacity of children relating to various activities.¹⁶²

¹⁵⁹ Carol Bellamy, *The State Of The World's Children 25* (UNICEF by Oxford University Press) available at: <https://www.unicef.org>

¹⁶⁰ Asha Bajpai, *Child Rights In India: Law, Policy, And Perspective*, 7 (Oxford University Press, New Delhi, 2nd edn., 2008)

¹⁶¹ Madabhushi Sridhar, *Legal Provisions Regarding Age of Child: To protect the Rights of Children* (Unpublished Discussion Paper, NALSAR University of Law, Hyderabad) available at: <http://ncpcr.gov.in>

¹⁶² Yuri Kolosov, "The Rights of The Child" in JanuszSymonides (ed.), *Human Rights: Concept And Standard* 259 (PremRawat for Rawat Publications, New Delhi, 2002).

In India, the census of India defines persons below the age of fourteen as children. Most of the government programmes on children are targeted for the age group below fourteen years. The legal conception of a child has thus tended to vary depending upon the purpose.

An International perspective on I.L.O. Minimum Age Convention No. 138 proclaimed that the basic principle that minimum age for admission to employment or work should not be less than the age for completing compulsory schooling and in no event less than the age of 15 years. The other word the convention sets a higher minimum age of 18 for hazardous work. However, India has not ratified this convention yet. The latest and most recent convention on child labour is the Worst Forms of Child Labour Convention, 1999 this applied to all persons under the age of 18 and calls for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.¹⁶³

According to International Convention on the Rights of the Child (CRC), 1989 the very first Article of CRC says “for the purpose of the present convention, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”¹⁶⁴

The Constitution of India, does not mention who is a child? But in India, Article 24 of the Constitution mandates, the prohibition of employment of children in factories, etc. “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”¹⁶⁵ Thereafter near about fourteen years ago amending the Article 21-A of the Constitution, the minimum compulsory age of education is now fixed as 14 years. Thus, Article 21-A provides, Right to Education and mandates, “the State shall provide free and compulsory education of the

¹⁶³The Worst Forms of Child Labour Convention, 1999. Adopted by the Eighty-seventh Annual International Labour Conference.

¹⁶⁴United Nations Convention on the Rights of the Child, art. 1

¹⁶⁵The Constitution of India, art. 24

age of six to fourteen years in such manner as the State may, by law, determine.”¹⁶⁶ Thus both provisions are fundamental rights in part III of the Constitution. Thereafter, in part IV of the Constitution as Directive Principles of State Policy, Article 45 provides, provision for early childhood care and education to children below the age of six years – “the State endeavour to provide early childhood care and education until they complete the age of six years.”¹⁶⁷ Further, Article 39(e) provides, that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.¹⁶⁸ Thereafter, Article 39(f) provides that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.¹⁶⁹

Near about 14 years ago, in 2002, the ILO launched the first ‘World Day’ against “Child Labour” observed on June 12 every year. Earlier, in 1992, India became a signatory to the United Nations CRC, 1989. Encouraging as these two crunch events in ensuring universal child rights may sound, the very definition of the word ‘child’ according to Indian laws remains ambiguous. In India, different laws define the words ‘child’ and ‘minor’ differently.¹⁷⁰

Therefore, a child defined in various legislations. Some of the provisions relating to age are as follows:

The Indian Penal Code, 1860: - The Indian Penal Code, 1860 contains provisions giving protection to children. Nothing is an offence which is done by a child under seven years of age,¹⁷¹ and nothing is an offence which is done by a child above seven years of

¹⁶⁶The Constitution of India, art. 21-A, Ins. by the Constitution (Eighty-Sixth Amendment) Act, 2002, Sec. 2

¹⁶⁷The Constitution of India, art. 45, Subs. by Constitution (Eighty-sixth Amendment) Act, 2002, Sec. 3

¹⁶⁸The Constitution of India, art. 39(e)

¹⁶⁹The Constitution of India, art. 39(f)

¹⁷⁰ShubhomoySikdar, “Who is a child? With different Indian laws defining the age of ‘a child’ differently, the fight against child labour remains blunted” *The Hindu*, June 15, 2012, available at: <http://www.thehindu.com>

¹⁷¹The Indian Penal Code, 1860 (Act No. 45 of 1860), sec. 82

age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.¹⁷²

The Indian Contract Act, 1872: - Every person is competent to contract who is of the age of majority according to the law.¹⁷³ A person below the age of eighteen years has no capacity to contract.

The Age determination is a very complex issue. In **Mohori Bibee v. Dhurmodas Ghose**,¹⁷⁴ Court held that, a minor's contract is void *ab initio* and not merely voidable. This was also in accordance with the Hindu Nation of the minor's incompetent to contract. Thereafter, in the **Bhoop Ram v. State of Uttar Pradesh**¹⁷⁵ and **Pratap Singh v. State of Jharkhand and Others**¹⁷⁶ the Supreme Court held that on the point of proof of age, school leaving certificate is the best evidence and so far as the medical certificate is concerned, the same is based on estimate, and possibility of error cannot be ruled out.

The Indian Majority Act, 1875: - This Act was enacted in order to bring about uniformity in the applicability of Laws to persons of different religions.¹⁷⁷ Unless a particular personal Law specifies otherwise, every persons of domiciled in India is deemed to have attained majority upon completion of eighteen years of age. However, in case of a minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of 18 years, and in case of every minor the superintendence of whose property has been assumed by the 'Court of Wards' before the minor has attained that age, the age of majority will be twenty-one years and not eighteen years.¹⁷⁸

¹⁷²The Indian Penal Code, 1860 (Act No. 45 of 1860), sec. 83

¹⁷³The Indian Contract Act, 1872 (Act No. IX of 1872) sec. 11, which came into force on the 01.09.1872

¹⁷⁴ILR (1903) 30 Cal. 539 (P.C.)

¹⁷⁵AIR, 1989 SC 1329.

¹⁷⁶AIR 2005 SC 2731

¹⁷⁷ Indian Majority Act, 1875 (Act No. 9 of 1875), Preamble (extended the Union Territory of Pondicherry with the following modifications by Act 26 of 1968, Section 3 and Scheduled, Part I)

¹⁷⁸*Ibid*, sec.3

The Guardians and Wards Act, 1890: - In this Act, define a “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (Act No. 9 of 1875), is to be deemed not to have attained his majority.¹⁷⁹

The Indian Ports Act, 1908: - The Act prescribes a minimum age limit of fourteen years for the employment of children.¹⁸⁰

The Child Marriage Restraint Act, 1929 (As replaced by Prohibition of Child Marriage Act, 2006): - In this Act define a “child” means a person who, if a male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age.¹⁸¹ Further, the “minor” means a person of either sex who is under eighteen years of the age.¹⁸² In 2006, the Child Marriage Restraint Act, 1929 was repealed by the Prohibition of Child Marriage Act, 2006. While the new law maintains some parallels with the older law, there are significant departures too in the new Act. The definition of ‘child’ remains the same as under the previous statute.

The Children (Pleading of Labour) Act, 1933: - This enactment dealing with child labour and Act define a “child” means person who has under the age of fifteen years.¹⁸³

The Employment of Children Act, 1938: - The Act Prohibits employment of children below 15 years in any occupation connected with transport of passengers or goods or mail by railway or a port authority within the limit of a port.¹⁸⁴

The Dissolution of Muslim Marriage Act, 1939: - The age of majority for the purposes of appointment of guardians of person and property of minors according to the Mohammedan Law is also completion of eighteen years.¹⁸⁵

¹⁷⁹ The Guardians and Wards Act, 1890 (Act No. 8 of 1890), sec. 4(1)

¹⁸⁰ The Indian Ports Act, 1908 (Act No. 15 of 1908), w.e.f. dec.18-1908.

¹⁸¹ The Child Marriage Restraint Act, 1929 (Act No. 19 of 1929), sec. 4(a). Now repealed by the Prohibition of Child Marriage Act, 2006 (Act No. 6 of 2007).

¹⁸² *Ibid*, sec. 4(d)

¹⁸³ The Children (Pleading of Labour) Act, 1933 (Act No. 2 of 1933), sec. 2

¹⁸⁴ The Employment of Children Act, 1938

The Factories Act, 1948: - The first Indian law defining child prescribed prohibitory regulation for employment of children below 7 years of age. Latter the amended Factory Act, 1922 was raised the minimum age of child to 12 years. Children below 12 years of age were only prohibited from being employed. Subsequently the Factory Act, 1934 raised the minimum age from 12 - 13 years.

The present Factories Act, 1948 is an important Act which provides the Prohibition of employment of young children and prescribes working hours for minors. The Act provides that, “No child who has not completed his 14 years shall be required or allowed to work in any factory.”¹⁸⁶

The Plantation Labour Act, 1951: - The Act defines as “No child who has not completed his twelfth year shall be required or allowed to work in any plantation.”¹⁸⁷

The Merchant Shipping Act, 1951: - The Act prescribed, No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except: - (a) in a school ship, or training ship, in accordance with the prescribed conditions; or (b) in a ship in which all persons employed are members of one family; or (c) in a home trade ship of less than two hundred tons gross; or (d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.¹⁸⁸

The Mines (Amendment) Act, 1952: - The Mines Act, 1952 regulates the employment of children in mines. It prohibits the employment of person below 18 years of age to work in any mine and also prohibits the presence of any child in any part of mine which is blow ground or in any mining operation is being carried on. After the

¹⁸⁵ The Dissolution of Muslim Marriage Act, 1939

¹⁸⁶ The Factories Act, 1948, sec. 67

¹⁸⁷ The Plantation Labour Act, 1951, Sec. 24

¹⁸⁸ The Merchant Shipping Act, 1951, sec. 109

commencement of the Mines (Amendment) Act 1983, no person below 18 years of age shall be allowed to be present in any mine or any part thereof.¹⁸⁹

The Hindu Minority and Guardianship Act, 1956: - In this Act define a “minor” means a person who has not completed the age of 18 years.¹⁹⁰

The Young Persons (Harmful Publications) Act, 1956: - In this Act define a “young person” means a person under the age of twenty years.¹⁹¹

The Motor Transport Workers Act, 1961: - The Act prohibits the employment of children which mandates, “No child shall be required or allowed to work in any capacity in any motor transport undertaking.”¹⁹²

The Apprentices Act, 1961: -The Apprentices Act, 1961 provides protection against engagement of children as apprentices. The Act prescribed, “a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he – (a) is not less than fourteen years of age, and(b)satisfies such standards of education and physical fitness as may be prescribed.”¹⁹³

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966: - It is a special enactment to regulate the conditions of work of beedi and cigar workers. The Act prescribed as “No child below the age of 14 years shall be employed in any industrial premises.”¹⁹⁴

The Army Head Quarters Regulations: - The age of recruitment in the army is from 16 to 25 years. Person, who are recruited at the age of 16 years undergo basic

¹⁸⁹The Mines (Amendment) Act, 1952, sec. 40

¹⁹⁰ The Hindu Minority and Guardianship Act, 1956 (Act No. 32 of 1956), sec. 4(a), The Act received the assent the President on 25th August, 1956, and published in the Gazette of India Extraordinary, Part II, Section 1, dated August 27, 1956.

¹⁹¹The Young Persons (Harmful Publications) Act, 1956 (Act No. 93 of 1956), sec. 2(c). The Act received assent of President and published in Gazette of India, 1955, Part II, Section 2, Extra. p. 357

¹⁹²The Motor Transport Workers Act, 1961, sec. 21

¹⁹³ The Apprentices Act, 1961, s. 3

¹⁹⁴ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, s. 24

military training for up to two and-a-half years from the date of enrolment and are than inducted into regular services.¹⁹⁵

The Child labour (Prohibition and Regulation) Act, 1986: - The Act defines, “child” to means child a person who has not completed his 14 years of age.¹⁹⁶ Thereafter, the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 has define the “child” means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), whichever is more,¹⁹⁷ and inter alia define, “adolescent” means a person who has completed his fourteenth year of age but has not completed his eighteenth year.¹⁹⁸

The Juvenile Justice (Care and Protection of Children) Act, 2000: - In this Act, unless the context otherwise requires - “Juvenile” or “child” means a person who has not completed 18 years for both boys and girls.¹⁹⁹

The Prohibition of Child Marriage Act, 2006: - In this Act defined a “child” means a person who, if a male, has not complete twenty-one years of age, and if a female, has not complete eighteen years of age.²⁰⁰

The Right of Children to Free and Compulsory Education Act, 2009: - The Act defines as a child, a “child” means a male or female child of the age of six to fourteen years.²⁰¹ Thus, it is a narrow definition of child, and Act provides the “every child of the

¹⁹⁵ The Army Head Quarters Regulations

¹⁹⁶ The Child labour (Prohibition and Regulation) Act, 1986 (Act No. 61 of 1986), sec. 2(ii)

¹⁹⁷ The Child Labour (Prohibition and Regulation) Amendment Bill, 2012 (Bill No. LXII of 2012), in Section 2 of the principal Act, 1986 (b) for clause (ii), the following clause shall be substituted, namely (ii) the word ‘child’.

¹⁹⁸ *Ibid.*, Section 2 of the principal Act, 1986 (a) clause (i) shall be renumbered as clause (ia) thereof and before clause (ia) as so renumbered shall be inserted, namely (i) the word ‘adolescent’.

¹⁹⁹ The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No. 56 of 2000 as amended by Act No. 33 of 2006), sec. 2(k)

²⁰⁰ The Prohibition of Child Marriage Act, 2006 (Act No. 6 of 2007), sec. 2(a). The Act received assent of President on 10.01.2007 and published in Gazette of India Extraordinary, Part II, Section 1, No. 6, dated 11.01.2007.

²⁰¹ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), sec. 2(c). The Act received the assent of the President on the 26th August, 2009 and Act published in the Gazette of India (Extraordinary) part II Section 1, dated 27.08.2009, pages 1-13.

age of 6-14 years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education.²⁰²

Protection of Children from Sexual Offences (POCSO) Act, 2012: - The Act defines child as, a ‘child’ means every person is a child, who is below the age of 18 years.²⁰³

The Juvenile Justice (Care and Protection of Children) Act, 2015: - The Act defines child as, a ‘child’ means a person who has not completed eighteen years of age.²⁰⁴ According to child rights activists, in the large context, the confusion surrounding the age, who is a child, remains. “So even before discussing further areas where laws like the Child Labour Act need to be applied, there needs to be some consistency on the definition of a child”.

2.12. Historical Development of Right to Education:

Efforts to make the right to free and compulsory education available to the child began a little more than a century ago. Several changes that had taken place in the 18th Century Europe had their impact on Indian contemporary life and perceptions. This was the period of appearance of the middle class, of the rationalistic and distinctive philosophies and of the ‘Nation State’. With these new ideas emerged new ideas regarding education as a right of all the citizens and as a duty of the State. In the latter half of the 19th Century, the educated Indians in their travel abroad, noticed these changes on the Island as well as in Great Britain. They noticed, in particular, the difference in the entitlement of citizens in England and in British India.

²⁰² *Ibid*, sec. 3

²⁰³ Protection of Children from Sexual Offences (POCSO) Act, 2012 (Act No. 32 of 2012), Sec., 2(1.d). The following Act of Parliament received the assent of the President on the 19 June, 2012, and Act published in the Gazette of India (Extraordinary) part II Section 1, dated 20 June, 2012

²⁰⁴ The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016), Sec., 2(12). The following Act of Parliament received the assent of the President on the 31st December, 2015, and Act published in the Gazette of India (Extraordinary) part II Section 1, dated 01.01.2016

In England, 1870 when legislation passed to make education free and compulsory, a demand was raised, in India, to provide similar treatment in its colonies. A number of educated Indians deposed before the Indian Education Commission in 1882²⁰⁵ and asked for laws to be made to make education compulsory and to deter children away from labour in factories and other kinds of unsuitable work.²⁰⁶ The struggle began for making available this same right to every child in India from this point onwards. To show to the British that such ideas were not too ‘Utopian’ in the Indian context, a number of princely States such as Baroda, Travancore, Manipur etc., introduced legislation in their States to make the compulsory education.²⁰⁷ A brief overview of the major historical events in chronological demands as follows:

- 1870: Compulsory Education Act passed in Britain – Demand for similar treatment for Indians.
- 1910: Resolution moved by Gopal Krishna Gokhale in the Imperial Legislative Council on 19 March 1910. It stated, “That this Council recommends that a beginning should be made in the direction of making elementary education free and compulsory throughout the country, and that a mixed commission of officials and non-officials be appointed at an early date to frame definite proposals.” The Bill suggested that free and compulsory education for boys between the ages of 6-10 years.²⁰⁸ When within the next one year nothing tangible was done for the progress of primary education in British India, Gokhale introduced a private Bill “to provide for the gradual introduction of the principle of compulsion into the elementary educational system of the country” on 16 March 1911. First, the Bill

²⁰⁵ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 93 (Orient Blackswan Pvt. Ltd., New Delhi, 2013). Hunter commission, in February 1882 Ripon appointed the first Indian Education Commission with William Hunter, a member of his Executive Council, as its Chairman. The Commission was also asked to keep the enquiry in to the primary education in the forefront, partly because of an agitation alleging its neglect in India, and partly because a national system of compulsory elementary education was built up in England two years ago with the passing of the Elementary Education Act, 1880.

²⁰⁶ D.M. Desai, *Universal Compulsory and Free Primary Education in India* (Indian Institution Of Education, Bombay, 1993).

²⁰⁷ K.G. Saiyidian, J.P. Husai, *et.al.*, *Compulsory Education In India*, (Universal Publication, Delhi, 1966).

²⁰⁸ The Bill suggested especially in those areas where 33 per cent of the male population was already at school be introduced.

when passed into an Act would apply to those areas of local bodies where certain specific percentage of boys and girls to be decided by the government of India was already attending the schools. Secondly, the local bodies were fully empowered to enforce the Act with the prior consent of the government concerned to the whole or any specified area within their jurisdiction.²⁰⁹ Finally, local bodies were permitted to levy an educational cess supplemented by the grants-in-aid from the governments concerned. Since the financial aspect of the Bill was to be decided its acceptance or rejection in the Council. The Bill was circulated for opinion and came up for discussion on 17 March 1912. The official members who were in a clear majority in the Imperial Legislative Council as well as the non-official members consisting of the landed classes were opposed to the passing of the Bill despite the eloquent pleading of Gokhale. So when the motion to refer the Bill to the Select Committee was put to vote, it was rejected by 38 votes to 13.

- 1937: Mahatma Gandhi gave a string call for universal education. He expressed his view quite plainly: “the cruellest irony of the new reforms lies in the fact that we are left with nothing but liquor revenue to fall back upon in order to give our children”. He solved what he called the “Educational Puzzle” by proposing ‘self-funded education’, in what came to be “Nai Talim” later on (consisting of transformed into Pre-basic, Basic, Post-basic, Adult-education).
- 1944: Post War Plan for Educational Development in India (Sargent Plan) proposes scheme for India to achieve universal elementary education in by 1984.
- 1947: Constituent Assembly Sub-Committee on fundamental rights explores avenues to achieve Universal Elementary Education (UEE).²¹⁰
- 1950: Directive Principles of State Policy (DPSP) under in Article 45 directs State to endeavour to provide free and compulsory education to all children until fourteen years of age within a period of 10 years Constitution of India introduced

²⁰⁹ It was incumbent on the parents to send their boys and later girls, between 6 and 10 years of age to school and any one failing to do so was to be liable to punishment.

²¹⁰ Government of India, Constituent Assembly of India from 9th December, 1946 to 24th January, 1950.

as Article 45. “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”.

- 1964-1966: The first National Commission for Education under Dr. D.S. Kothari submits its reports²¹¹. National Policy on Education (NPE)²¹² urges serious efforts toward provision of free and compulsory education: Strenuous efforts should be made for the early fulfilment of the Directive principle under Article 45 of the Constitution seeking to provide free and compulsory education for all children up to the age of 14 years. Suitable programmes should be developed to reduce the prevailing wastage and stagnation in schools and to ensure that every child who is enrolled in schools successfully completes the prescribed course.
- 1976: Constitution amendment making education a subject of Concurrent List.²¹³ Where responsibility of both Centre and the State Government.
- 1986: National Policy on Education resolves to provide all children free and compulsory education up to the age of 14 years under the principles of free and compulsory education.²¹⁴ National Policy on Education (NPE) recommending Common School System (CSS) was formulated under the principles of Equalisation of Educational Opportunity.
- Consequently NPE sanctioned CSS, but it has not been implemented properly till now and Kothari Commission Report also called for a 20 year plan to implement

²¹¹ Government of India, Report: *Report of the Education Commission 1964-66* (National Council of Educational Research and Training, Government of India, New Delhi, 1970). In October 1964 -1966, set up a National Education Commission, under Resolution of July 14, 1964 under the Chairmanship of Daulat Singh Kothari, than Chairman of the UGC, consisted of sixteen members. The report was submitted by the Commission on 29 June 1966.

²¹²The National Policy on Education was adopted by Parliament in May 1986. A committee was set up under the Chairmanship of A. Ramamurti in May, 1990 to review NPE and to make recommendations for its modifications. That Committee submitted its report in December 1990. At the request of the Central Advisory Board of Education (CABE) a committee was set up in July, 1991 under the Chairmanship of Shri N. Janardhana Reddy, Chief Minister of Andhra Pradesh, to consider modifications in NPE taking into consideration the report of the Ramamurti Committee and other relevant developments having a bearing on the Policy, and to make recommendations regarding modifications to be made in the NPE. This Committee submitted its report in January 1992. The report of the Committee was considered by the CABE in its meeting held on 5-6 May, 1992. While broadly endorsing the NPE, CABE has recommended a few changes in the Policy.

²¹³The Constitution of Indian (Forty-second Amendment) Act, 1976.

²¹⁴ Government of India, Constituent Assembly of India from 9th December, 1946 to 24th January, 1950.

CSS, starting with simultaneously improving quality of current schools while pushing the quality of ten per cent of schools to higher standards.

- 1990: Ramamurti Committee was appointed to Review the National Policy on Education, 1986 - Ramamurti Committee submitted in its report titled “Towards an Enlightened and Humane Society - National Policy on Education, 1986 - A Review” chides the government for its continued failure since independence to fulfil the Constitutional instruction: “Now time has come to recognize “Right to Education” as one of the fundamental rights of the Indian citizens for which necessary Amendments to the Constitution may have to be made and more importantly, conditions be created in society such that this right would become available for all children of India.”²¹⁵
- 1991: Myron Wiener in his Book named “The Child and the State in India: Child Labour and Education Policy in Comparative Perspective” makes ripples. Its main thesis being that India’s poverty was less relevant, as an explanation for the failure to eradicate child labour and enforce compulsory education, than the belief system of the middle classes.²¹⁶
- 1992: India becomes signatory to the UN Convention on Rights of the Child, 1989²¹⁷ which requires states to recognize the right of the child to education. Convention states that, “States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular - (a) Make primary education compulsory and available free to all.....”²¹⁸

²¹⁵Government of India, Report: *Report of the Committee of State Education Ministers on Implications of the Proposal of Make Elementary Education A Fundamental Right, 1997* (Ministry Of Human Resource Development Department of Education, Government of India New Delhi, 1997), Para 6.1.3

²¹⁶Myron Wiener, *The Child And The State In India: Child Labour And Education Policy In Comparative Perspective*, (Oxford University Press, New Delhi, 1991)

²¹⁷Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with Article 49.

²¹⁸*Ibid*, art. 28.

- As part of this agreement, India is also committed to review its laws and bring them in line with the Convention. International treaties serve to set standards and Court generally interprets domestic laws so as to maintain harmony with the provision of international law. The Indian Constitution states that the State shall endeavour to foster respect for international law and treaty obligation.²¹⁹
- 1992: The right to education for the first time got attention of the Supreme Court in **Miss. Mohini Jain v. State of Karnataka and Others**²²⁰, while deciding issue of capitation fee in educational institutions in Karnataka, the Court held that the right to life under Article 21 and dignity of an individual couldn't be assured unless accompanied by the right to education.
- 1993: The Supreme Court of India in the case of **Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others**²²¹ ruled that the right to education is a fundamental right that flows from the Right to Life in Article 21 of the Constitution. Its contents and parameters have to be determined in the light of Article 45 and 41. In other words, every child/ citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to limits of economic capacity and development of the State. The Supreme Court asked the State to honour the command of Article 45 of Constitution. This judgement allowed that 'right to education' comes out of 'right to life', and so included education as a right for children of age 0-18 years.
- 1996: General Election the Congress Party failed to return to power and following a 13-day stint of the Bharti Janta Parti Government at the Centre, a United Front Government with Congress support from outside was formed under Deve Gowda. The United Front Government went a step further towards universalisation of elementary education by appointing a Committee of State Education Ministers

²¹⁹The Constitution of India, art.51(c).

²²⁰ AIR1992 SC 1858, decided on Jul. 30, 1992.

²²¹ AIR 1993 SC 2178, decided on Feb. 4, 1993.

under the Chairmanship of the Minister of State for Education, Muhi Ram Saikia, in August 1996 to report on it.²²²

- 1997: The Saikia Committee submitted its report in January 1997, the Report of the Committee of State Education Ministers on Implications of the Proposal to Make Elementary Education A Fundamental Right. Saikia Committee recommended that, “the Constitution of India should be amended to make the right to free elementary education up to the 14 years of age, a fundamental right. Simultaneously an explicit provision should be made in the Constitution to make it fundamental duty of every citizen who is a parent to provide opportunities for elementary education to all children up to 14 years of age.” The Committee also recommended the amendment of existing state legislation on compulsory education.
- 1997 (July): The Constitution (Eighty-third Amendment) Bill, 1997, tabled in the Lok Sabha. Constitution Amendment making Education a fundamental right was introduced in Parliament to insert a new article, namely, Article 21-A conferring on all children in the age group of 6 to 14 years the right to free and compulsory education.²²³ The said Bill was scrutinised by the Parliamentary Standing Committee on Human Resource Development and the subject was also dealt with in its One Hundred Sixty Fifth Report by the Law Commission of India.²²⁴
- 1997 (Nov.): Parliamentary Standing Committee on Human Resource Development submits report to both houses of Parliament, and recommends that the bill be passed subject to changes recommended by it. The major recommendations of the committee related to retaining of Article 45 to provide to

²²² Government of India, Report: *Report of the Committee of State Education Ministers on Implications of the Proposal of Make Elementary Education A Fundamental Right, 1997* (Ministry Of Human Resource Development Department of Education, Government of India New Delhi, 1997), available at: <http://www.teindia.nic.in/mhrd>

²²³ Government of India, The Constitution (Eighty-third Amendment) Bill, 1997.

²²⁴ Government of India, Report: *One Hundred Sixty Fifth Report On Free And Compulsory Education For Children 1998*, (Law Commission of India, Ministry of Law, Justice and Company Affairs, Government of India, New Delhi, 1998). The Report has submitted by Justice B.P. Jeevan Reddy Chairman, Law Commission of India in vide letter on dated 19.11.1998. Justice B.P. Jeevan Reddy was the Supreme Court Justice and then he decided the case of *Unni Krishnan, J.P. and Ors. etc. v. State of Andhra Pradesh & Ors.etc.*, (Feb.-04-1993, Supreme Court of India).

below 6 years age of child, and proposed Article 21-A relating to private institutions may be deleted.

- 2001: The Constitution (Eighty-third Amendment) Bill was amended and restored as Constitution (Ninety-third Amendment) Bill, 2001 in the Parliament with the following provisions - After Article 21 of the Constitution, the following Article shall be inserted namely: “21-A. 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.” Further, Article 45 of the Directive Principles of State Policy, the following shall be substituted, namely: “The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.” Thereafter, in Article 51-A of the Constitution, after clause (j), the following clause shall be added, namely: “(k) 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 6 and 14 years.”
- The Constitution (Ninety-third Amendment) Bill, 2001, was discussed and passed by unanimous vote in the Lok Sabha on November 27, 2001 and by the Rajya Sabha on May 14, 2002. It again went back to the Lok Sabha for approval of the clauses to amend the date of the Bill to 2002. Article 368 of the Constitution, there was no need for ratification by the state legislatures. After the Bill received the President's assent, it became the Constitution (Eighty-sixth Amendment) Act subsequent to considerable internal and external pressure. The Constitution (Eighty-sixth Amendment) Act, 2002 makes elementary education a fundamental right and the Right of Children to Free and Compulsory Education (RTE) Act is born. In 2002, the Constitution (Eighty-sixth Amendment) Act, 2002 to the Constitution introduced Article 21-A making the right to education a fundamental right. This Act provides three²²⁵ pull-outs/dimensions in the Indian Constitution, These are as: First, “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State, may by,

²²⁵*Ibid.*, Ins. By Constitution (Eighty-sixth Amendment) Act, 2002, newly Articles 21-A, 45 and 51-A(k).

law determine”.²²⁶ Second, “the State endeavour to provide early childhood care and education for all children until they complete the age of six years.”²²⁷ Third, “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 to fourteen years”.²²⁸

This was deemed as diluting RTE since we went backward from 0-18 to 6-14. Many proponents of the original right wanted the constitution to be amended again. The rough draft of the RTE Bill was composed in 2005 by a sub-committee of CAGE, but opposition was raised due to this mandatory provision to provide 25% reservation of disadvantaged group in private schools. Indian Law Commission²²⁹ initially proposed 50% reservation seats. However, the CAGE sub-committee held this provision as a significant prerequisite for creating a democratic egalitarian society.

- 2009-10: The 86th Constitutional Amendment was followed by multiple rounds of discussions (tabling of the Right of Children To Free And Compulsory Education Bill²³⁰ by the NDA and UPA Governments), which made education a fundamental right for children in the age group of six to fourteen years.²³¹ The Act was introduced in Rajya Sabha in December 2008. Nearly six years after the amendment is clear by the Cabinet. It was officially passed by the parliament 4th August 2009 and the President gave his assent to it on 26th August 2009.²³² The Act came into force on 01 April, 2010 as a fundamental right of every child in India. Then HRD Minister said that, “This is a historic opportunity as there was never such a law in the last 62 years since Independence”. Prime Minister Manmohan Singh said that, “We are committed to ensuring that all children,

²²⁶The Constitution of India, art.21-A, Ins. by the Constitution (Eighty-sixth Amendment) Act, 2002, Sec. 2.

²²⁷The Constitution of India, art.45, replaced by the Constitution (Eighty-sixth Amendment) Act, 2002, Sec. 3.

²²⁸The Constitution of India, art. 51-A(k), replaced by Constitution (Eighty-sixth Amendment) Act, 2002, Sec.4.

²²⁹Government of India, The Constitution (Eighty-third Amendment) Bill, 1997.

²³⁰ Government of India, The Right of Children to Free and Compulsory Education Bill, 2008 (Bill No. LXV of 2008), Rajya Sabha Document No.GMGIPMRND-4264RS(S-5)-10-12-2008 (Minister of Human Resource Development, Government of India, New Delhi, 2008).

²³¹ The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).

²³² Received the assent of the President on the 26th August 2009 and Act Published in the Gazette of India (Extraordinary) Part II, Sec. 1, Dated 27th August 2009, 1-13pp.

irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India”.

Parliament, in its wisdom, brought in a new legislation the Right of Children to Free and Compulsory Education Act, 2009 to provide free and compulsory education to children of the age 6 to 14 years, to discharge the constitutional obligation of the State, as envisaged under Article 21-A of the Indian Constitution. Provisions have also been made in the Act to cast the burden on the non-state actors as well, to achieve the goal of Universal Elementary Education.

CHAPTER - 3

INTERNATIONAL LEGAL FRAMEWORK FOR EDUCATION OF CHILDREN

The right to education is marked priority on the agenda of the International community since right to education is not only a human right in itself but also is essential for the exercise of all other human rights. A number of human rights treaties accepted and recognised internationally, identifies right to education as a fundamental aspect for development and social transformation. Right to education stands recognised universally as a human right universally. Every woman, man, youth and child has the right to be educated, which is the source of the realisation of other fundamental human rights.

The right to education does not limit education to the primary or the first stage of basic education, or among children of a particular age range. The right to education is also not an end to itself, but an important tool in improving the quality of life. Education is a key to economic development and the enjoyment of many other human rights. Education provides a means through which all people can become aware of their rights and responsibilities, which is an essential tool for achieving the goals and peace.²³³

Importance of education is recognized on the worldwide basis and every country has its education related laws irrespective of their philosophical and political differences with basic aim to develop enlightened citizens to meet the demand of emerging freedoms in this era. Achieving the right to education for all is one of the biggest challenges of our times.

Several International instruments have compelled government to take action regarding recognition of the right to education. The right to education is a human right and purpose of human rights law is to transform allocation for education from

²³³ AjitMondal and Dr. Jayanta Mate, *Right to Education 5* (A.P.H. Publishing Corporation, New Delhi, 2013)

discretionary to obligatory.²³⁴ This process entail acceptance of human rights correctives in decision making, which is a political process at all levels from local to global. Securing a match between governmental human rights obligation in education and fiscal allocation requires another step viz. priority to primary education. Promotion human right requires knowledge about International obligations of the State.²³⁵

The need to ensure that the children were treated humanely was being felt by right thinking people for a long time. They could not do much since the societies considered children to be mere possessions and believed that those who ‘own’ them – parents and relatives – had a right to do whatever they felt with them. Even with the advent of the era of Human Rights applied automatically to children. However in reality, they were derived to them.²³⁶

Long ago, countries basically had no concern for children and their rights. It is pertinent to mention the abuses of the factory system in England where a child labour force could be recruited and made to work for long hours from the age of eight years. Very often the children while working at the machines for a long time used to sleep and get rolled into them along with cotton bales.²³⁷

Law in the form of International Conventions can contribute considerably. International instruments stress ‘participation’ as a core value along with survival, protection, and development. Laws and legal strategies must be devised to encourage these values. In a recent judgment, the Supreme Court held that ‘once signed, any International Treaty or Convention will be treated as a part of law unless otherwise stated’. The Indian government is thus bound in its obligation to implement any Convention or Treaty that is signed. India has ratified the United Nations Convention on

²³⁴SwarupamaChaturvedi, “Fundamental Right to Education” 39 *JCPS* 167, No. 1-4 (Jan.-Dec., 2005)

²³⁵*Ibid.*

²³⁶Dr. S. Subramanian, *Human Rights: International Challenges*, 115 (Manas Publications, New Delhi, 2004)

²³⁷Dr. Mamta Rao, *Law Relating to Women and Children*, 338 (Eastern Book Company, Lucknow)

the Rights of the Child (UNCRC) and the Convention of Elimination of All Forms of Discrimination against Women (CEADAW).²³⁸

Since the beginning of the twentieth century, the development of International law on rights of child has paralleled, in part, the development of the general body of International Human Rights Law. The first stage was the recognition by the International community that all individuals, including children, were the objects of International law requiring legal protection. The second stage, which is still evolving, is the granting of specific substantive rights to individuals including children. The third stage, which is also still developing, is the acknowledgement that in order to ensure that individuals are able to enjoy the exercise of their fundamental rights they must be acknowledged to possess the necessary procedural capacity to exercise and claim these rights and freedom.²³⁹

The first impression of International concern over the “situation of children” came in 1923 when the Council of the newly-established Non-Governmental Organization “Save the Children International Union” (SCIU) adopted a five-point declaration on the rights of the child. This Geneva Declaration was endorsed the following year, 1924, by the fifth Assembly of the League of Nations.

3.1. Geneva Declaration of the Rights of the Child (1924):

After World War - I, Mr. E. Jebb realised that children need special protection, he found ‘Save the Children Fund’ in London in 1919 with the help of her sister, D. Buxton to provide assistance to and protect children who have experienced World War - I. In 1920, the ‘Save the Children Fund’ was organized and structured around the

²³⁸ Asha Bajpai, *Child Rights in India: Law, Policy, and Practice*, 14-15 (Oxford University Press, New Delhi, 2nd Edn. 2006, 2nd imp. 2008).

²³⁹ Geraldine Van Bueren, *The International Law on the Rights of the Child* 7 (Kluwer Academic Publishers, Netherland, 1995).

‘International Save the Children Union’ with the support of the International Committee of the Red Cross (ICRC).²⁴⁰

The ‘International Save the Children Union’ adopted the first version of the Declaration of the Rights of the Child during its fourth general assembly in February 1923. The Declaration of the Rights of the Child (**Geneva Declaration**), September 1924 adopted by the fifth assembly of the League of Nations, can be seen as the first International instrument dealing with children’s rights. It was a historic day the first time specific rights for children were recognized. The Declaration established the claim that ‘mankind owes to the child the best it has to give’.²⁴¹ The five principles that are as follows:

1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

The Geneva Declaration, 1924 is important as it highlights the social and economic entitlements of children and establishes internationally the concept of the rights

²⁴⁰ Geneva Declaration of the Rights of the Child 1924, Adopted 26 September, 1924, League of Nations, *available at*: <http://www.humanium.org>

²⁴¹ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 15 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

of the child, thereby laying the foundation for setting future International standards in the field of children's rights.²⁴²

Although Declaration of Geneva, 1924 does not specially make reference to the right of learners to education, it does lay some foundations for such a right.²⁴³ Principle 5 states "the child must be brought up in the consciousness that its talents must be devoted to the service of fellow men".²⁴⁴

However, even though the document addressed certain fundamental rights, it was not legally binding. The General Assembly of the League of Nations once again approved the 'Geneva Declaration' in 1934. The signatories promised to incorporate the principles of the document into their national laws, but they were not legally bound to do so. However, the 'Geneva Declaration' remains the first International Human Rights Document in history to specifically address children's rights.²⁴⁵

Right to education has been a key element of almost every International Convention, on human rights since the UN was established. Several International Conventions have enshrined therein the right to education and placed binding commitments on ratifying States. The right to education is codified in the Universal Declaration of Human Rights (1948), Discrimination (Employment and Occupation) Convention (1958), International Declaration of the Rights of the Child (1959), Convention against Discrimination in Education (1960), International Convention on the Elimination of All Forms of Racial Discrimination(1965), International Covenant on Economic, Social and Cultural Rights (1966), and Committee on Economic, Social and Cultural Rights, (1999-GC. 11) and Committee on Economic, Social and Cultural Rights, (1999-GC. 13), Convention on the Elimination of All Forms of Discrimination against

²⁴² Geraldine Van Bueren, *The International Law on the Rights of the Child 7* (Kluwer Academic Publishers, Netherland, 1995).

²⁴³ D. Hodgson, *The Human Right To Education 11*(Dartmouth Publishers, Ashgate, 1998).

²⁴⁴ Geneva Declaration of the Rights of the Child 1924 – UN Documents: Gathering a body of global agreements, Adopted 26 September, 1924, League of Nations, *available at:* <http://www.undocuments.net>

²⁴⁵ Geneva Declaration of the Rights of the Child 1924, Adopted 26 September, 1924, League of Nations, *available at:* <http://www.humanium.org>

Women (1979), Declaration on the Right to Development (1986), International Convention on the Rights of the Child (1989), and UN Committee on the Rights of the Child, (2001-GC. 1), World Declaration on Education for All (1990), World Summit for Children (1991), The World Conference on Human Rights (1993), World Education Forum Dakar (2000), Millennium Development Goals (2000), The World Summit (2005), The World Education forum - Incheon Declaration (2015), Transforming our World: 2030 Agenda for Sustainable Development Declaration, all express a commitment to education as a right. United Nations Educational Scientific and Cultural Organization (UNESCO) have therefore place the right to education at the forefront of its activities and the Education for All is high on its agenda.

3.2. Universal Declaration of Human Rights (1948):

The International Human Rights Movement was strengthened when the United Nations General Assembly adopted of the Universal Declaration of Human Rights²⁴⁶ (UDHR) on 10 December 1948. The Declaration was one of the first major achievements of the United Nations, and after 50 years remains a powerful instrument which continues to apply a vast effect on people's lives all over the world. This was the first time in history that a document considered to have universal value was adopted by an International Organization.²⁴⁷ Although the 58 Member States which formed the United Nations at that time different in their ideologies, political systems and religious and cultural backgrounds and had different patterns of socio-economic development, the UDHR represented a common statement of goals and aspirations – ‘a vision of the world as the International community would want it to become’.²⁴⁸

²⁴⁶ Universal Declaration of Human Rights 1948, it adopted by General Assembly resolution 217A (III) of 10 December, 1948. *available at:* <http://www.un.org/en/documents/udhr/index.shtml>

²⁴⁷ Since 1948, the Universal Declaration has been translated into more than 200 languages and remains one of the best known and most often cited human rights documents in the world. Over the years, the Declaration has been used in the defense and advancement of people's rights. Its principles have been enshrined in and continue to inspire national legislation and the constitutions of many newly independent states. References to the Declaration have been made in charters and resolutions of regional inter-governmental organizations as well as in treaties and resolutions adopted by the United Nations system. *available at:* <http://www.un.org/rights/50/carta.htm>

²⁴⁸ DPI Press Kit, *All Human Rights For All* (Published by the United Nations Department of Public Information DPI/1937/A, December 1997), *available at:* <http://www.un.org/rights/50/carta.htm>

The Declaration recognizes that the “inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world” and is linked to the recognition of fundamental rights towards which every human being aspires, namely the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and to enjoy in other countries asylum from persecution; the right to own property; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment, among others. These are inherent rights to be enjoyed by all human beings of the global village - men, women and children, as well as by any group of society.²⁴⁹

Education is defined as a right in itself, but the text of the Universal Declaration of Human Rights²⁵⁰ also implies that education is a means to an end, rather than an end in itself. Education is seen as the process through which all citizens can become aware of their rights and responsibilities, so that peace as well as prosperity can be secured for all nations and people. The Article 26 of Universal Declaration of Human Rights was proclaimed by the General Assembly as a ‘common standard of achievement for all peoples and all nations’ to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures to secure the universal and effective recognition and observance.²⁵¹ The Universal Declaration of Human Rights established right to education in its Article 26, in the following terms:

1. Everyone has the 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.²⁵²

²⁴⁹ *Ibid.*

²⁵⁰ Universal Declaration of Human Rights, *available at*:<http://www.un.org/en/documents/udhr/index.shtml>

²⁵¹ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 356 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

²⁵² Universal Declaration of Human Rights 1948, art. 26.1

2. 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 the maintenance of peace.²⁵³
3. Parents have the prior right to choose the kind of education that shall be given to their children.²⁵⁴

Whereas, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,²⁵⁵ the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.²⁵⁶

The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, National and International, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.²⁵⁷

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.²⁵⁸ Everyone is entitled to all the rights and freedoms set forth in this

²⁵³*Ibid*, art. 26.2

²⁵⁴*Ibid*, art. 26.3

²⁵⁵*Ibid*, pre.

²⁵⁶*Ibid*, pre.

²⁵⁷*Ibid*, pre., This is a non-binding resolution of the General Assembly but it helped in laying down certain common standards for children world-wide.

²⁵⁸*Ibid*, art. 1

Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...²⁵⁹

It includes all activities by which human being transmit to their descendants a body of knowledge and skills a moral code,²⁶⁰ however elementary, which will enable that group to subsist in the particular conditions of its characteristic environment and ethics.²⁶¹

This declaration provides the foundation for both moral and legal principles in education. Although it was not recognised as being legally binding, it covers the political and moral scope of human rights resolutions by which member state to the declaration must abide. In order to make it binding, it was necessary that its major principles should also be taken up in an instrument such as a Covenant.²⁶²

The importance of United Nations Educational, Scientific and Cultural Organisation (UNESCO) Conventions, Declarations and programmes adopted on the right to education, lies in the fact that firstly they reaffirm certain principles enshrined in the basic text of the Conventions and then these are given concrete substance, otherwise, they would remain ‘mere principles’ whose application would not be clear. Secondly, they ensure that member state commit to the right to education by updating the principles for reaffirming that right.²⁶³

3.3. Declaration on the Rights of Child (1959):

The Preamble describes the principles as enunciating rights and freedom, which government should observe by legislation and other measures progressively taken. The

²⁵⁹ *Ibid*, art. 2, furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

²⁶⁰ S. Detrick, *Commentary On United Nations Convention On The Rights Of The Child* 427 (MartinusNijhoff Publishers, Hague, 1999).

²⁶¹ A.M. M’Bow, “Introduction” in G. Mialaret (ed.) *The Child’s Right To Education* 7 (UNESCO, Paris, 1979, 9-19p.)

²⁶² Noushad Husain, “The Right to Education: Some Historical Landmarks” in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 28 (Shipra Publications, Delhi, 2014, 24-45p.).

²⁶³ Y. Daudet and K. Singh, *The Right To Education: Analysis Of UNESCO* (Standard Setting Instruments, UNESCO, Paris, 2001).

United Nations Declaration on the Rights of Child (DRC) makes reference in its preamble to both the United Nations Charter²⁶⁴ (UNC) and UDHR. The preamble also refers to the special safeguard and care, including appropriate legal protection needed by Geneva Declaration 1924 and in the statutes of specialised agencies and International Organisations concerned with children. It reiterates the pledge that, ‘mankind owes to the child the best it has to give’, and it places a specific duty upon voluntary organisation and local authorities to strive for the observance of these rights. The role of voluntary organisations is highlighted because of their instrumental role in persuading governments of the needed for International legal protection of children’s right and their recognised impartial expertise in the formulation of these rights.²⁶⁵

The United Nation Declaration of the Rights of the Child 1959, Principle 7 provides that, the child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavor to promote the enjoyment of this right.²⁶⁶

Thus, A noticeable departure from the principle of the 1924 Geneva declaration is that the earlier declaration specified that ‘children must be the first to receive relief’, whereas the DRC lay down that children shall be ‘among the first’ to receive protection

²⁶⁴The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. *available at:* <http://www.un.org/en/charter-united-nations/index.html>

²⁶⁵ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 16 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

²⁶⁶Declaration of the Rights of the Child, 1959. It Proclaimed by General Assembly Resolution 1386 (XIV) of 20 November 1959. This was the basis of the basis of the Convention of the Rights of the Child adopted by the UN General Assembly 30 years later on 20 November 1989. The Convention on the Rights of the Child was entered into force on 2 September 1990, *available at:* <http://www.unicef.org>

and relief. The DRC enshrines the principle that children are entitled to ‘special protection’ and that such special protection should be implemented by reference to ‘the best interest of the child’, which ‘shall be the paramount consideration’.²⁶⁷

3.4. Convention against Discrimination in Education (1960):

A further International recognition of the right to education came with the adoption of Convention against Discrimination in Education (CADE) by the UN General Conference of UNESCO in 1960.²⁶⁸ The CADE provides for the right to education, with a focus on the fundamental principle of equality of educational opportunities.²⁶⁹ The Convention reaffirms Article 7 of UDHR, which asserts the general principle of non-discrimination and proclaims in Article 26 that every person has right to education. The Convention also reaffirms the UNESCO’s Constitution that advocates the ideals of equality of educational opportunity without regard to race, sex or any other discrimination in education, but it also promotes equality of opportunity and equal treatment for all. It allows the establishment and maintenance of private educational institutions based on language, religion and cultural belief, as long their purpose is not to discriminate or exclude other group of persons and provide that they offer a quality and level of education equal to those provided by public authorities.²⁷⁰

Thus, Article 2(c) states, the establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance with that object, and if the education

²⁶⁷ UN Declaration of the Rights of the Child 1959, Principle 2

²⁶⁸ This Convention have adopted in Paris by All UNESCO members in 14 December 1960, at its eleventh session, which came in to force in 22 May 1962, Article 3 prohibits, discrimination of race, sex or any other discrimination in education, and Article 4 provides equality of opportunities in education. *available at:* <http://portal.unesco.org>

²⁶⁹ Kishore Singh, *Right to Education - UNESCO Convention against Discrimination in Education (1960) and Articles 13 and 14 (Right to Education) of the International Covenant on Economic, Social and Cultural Rights: A comparative analysis* 11 (UNESCO, Paris, 2006)

²⁷⁰ Noushad Husain, “The Right to Education: Some Historical Landmarks” in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 31 (Shipra Publications, Delhi, 2014, 24-45p.).

provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

The CADE prohibits any discrimination or inequality of treatment in education of any kind. Articles 3 and 4 offer the necessary guidelines for this purpose by indicating the measures to be taken in the matters of school fees, the granting of scholarships and other forms of assistance, standards of education, etc.²⁷¹ Non-discrimination also has to do with a very important principle of freedom, that of the right of parents to choose for their children the educational establishment of their choice when there exist institutions other than those maintained by the public authorities, and the right to ensure, in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of their children.²⁷²

Therefore, Article 3 provides that, in order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

- a) to abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;²⁷³
- b) to ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;²⁷⁴
- c) not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;²⁷⁵

²⁷¹ Kishore Singh, *Right to Education - UNESCO Convention against Discrimination in Education (1960) and Articles 13 and 14 (Right to Education) of the International Covenant on Economic, Social and Cultural Rights: A comparative analysis* 13 (UNESCO, Paris, 2006)

²⁷² *Ibid.*

²⁷³ Convention against Discrimination in Education, art. 3.a

²⁷⁴ *Ibid.*, art. 3.b

²⁷⁵ *Ibid.*, art. 3.c

- d) not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;²⁷⁶
- e) to give foreign nationals resident within their territory the same access to education as that given to their own nationals.²⁷⁷

Article 4 provides that, the States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:

- a) to make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;²⁷⁸
- b) to ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;²⁷⁹
- c) to encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;²⁸⁰
- d) to provide training for the teaching profession without discrimination.²⁸¹

Further, Article 5 of the CADE is as related to the choice of education, Article 5(1) provides that, The States Parties to this Convention agree that:

²⁷⁶*Ibid*, art. 3.d

²⁷⁷*Ibid*, art. 3.e

²⁷⁸*Ibid*, art. 4.a

²⁷⁹*Ibid*, art. 4.b

²⁸⁰*Ibid*, art. 4.c

²⁸¹*Ibid*, art. 4.d

- a) 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 the maintenance of peace;²⁸²
- b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions;²⁸³
- c) It is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however - (i) That this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty; (ii) That the standard of education is not lower than the general standard laid down or approved by the competent authorities; and (iii) That attendance at such schools is optional.²⁸⁴

²⁸²*Ibid*, art. 5.1.a

²⁸³*Ibid*, art. 5.1.b

²⁸⁴*Ibid*, art. 5.1.c

Thereafter, CADE provides, the States Parties to this Convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this Article.²⁸⁵

3.5. International Convention on the Elimination of All Forms of Racial Discrimination (1965):

The first stage in this process being with the entry into force of the Charter of the United Nations and continues at least until the adoption in 1966 of the International Convention on Human Rights. By this time, the Universal Declaration of Human Rights had been adopted by United Nations, as had the International Convention on Elimination of All Forms of Racial Discrimination²⁸⁶ (ICEARD), to mention only the principle human rights instruments. India ratified this Convention on 3 December 1968 with certain reservations.²⁸⁷ During this same period, the European Convention of Human Rights²⁸⁸ (1950) entered into force, the Organisation of American States proclaimed the American Declaration of the Rights and Duties of Man,²⁸⁹ and United Nations Educational Scientific and Cultural Organisations (UNESCO) and International Labour Organisation (ILO),²⁹⁰ respectively, adopted the Convention against Discrimination in

²⁸⁵ *Ibid*, art. 5.2

²⁸⁶ Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969, in accordance with Article 19, *available at*: <http://www.ohchr.org>

²⁸⁷ Core International Human Rights Treaties, Optional Protocols & Core ILO Conventions Ratified by India, *A Handbook on International Human Right Convention 22* (National Human Rights Commission, New Delhi), *available at*: <http://www.nhrc.nic.in>

²⁸⁸ European Convention of Human Rights (European Court of Human Rights, Council of Europe), The Convention adopts the term 'everyone' and children have successfully brought cases either on their own behalf or as co-applicants with their parents. The Convention has thus been used as valuable instruments for children. The Council of Europe has also adopted the European Social Charter 1961. The Charter contains a number of specific references to children. Part I enshrines the basic principle: 'Children and young persons have the right to special protection against the physical and moral hazards to which they are exposed'. *available at*: <http://www.echr.coe.int>

²⁸⁹ American Declaration of the Rights and Duties of Man, 1948, Approved by the Ninth International Conference of American States, Bogota, Colombia, 1948) *available at*: <http://www.un.org>

²⁹⁰ The ILO is the UN specialized agency that seeks the promotion of social justice internationally recognized human and labour rights, Founded in 1919, and 187 members of world.

Education and Convention concerning Discrimination in Respect of Employment and Occupation.²⁹¹

Along with liberty, equality is the most important principle imbuing and inspiring the concept of human right. True liberty can only exist on the basis of equality for all. With the emergence of modern democratic and social ideas, this formal principle has gradually been transformed into a principle of substantive equality, the right to equal protection of the law.²⁹² In other words, democratically elected legislative bodies were entrusted with the task of creating the legal conditions to ensure substantive that is social or 'de facto' equality.

Therefore, ICEARD provides, that, the States Parties to this Convention have agreed as of Article 5, in compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the other of Economic, Social and Cultural Rights in particular - The right to education and training, and The right to equal participation in cultural activities.²⁹³

Thereafter, the States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the UN, the UDHR, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.²⁹⁴

²⁹¹Thomas Buergenthal, "International Human Rights in an Historical Perspective" in JanuszSymonides (ed.), *Human Rights: Concept and Standard* 10 (Rawat Publication, Jaipur, 2002).

²⁹²Manfred Nowak, "Civil and Political Rights" in JanuszSymonides (ed.), *Human Rights: Concept and Standard* 98 (Rawat Publication, Jaipur, 2002).

²⁹³International Convention on Elimination of All Forms of Racial Discrimination, art. 5.e.5 and 6

²⁹⁴*Ibid*, art. 7

3.6. International Covenant on Economic, Social and Cultural Rights (1966):

India accede the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 on 10 April 1979.²⁹⁵ It applies to all 'men and women' and therefore by implication to children.²⁹⁶ The Preamble recognizes that all human rights are interlinked and of equal importance. The Covenant stresses that children 'deserve special measures of protection and assistance'.²⁹⁷

The Covenant specifically refers to children in Article 19 and Article 12 of the Covenant.²⁹⁸ In Article 10, the states recognize the family as the 'natural and fundamental group unit of society' and therefore accord the widest possible protection and assistance to the family. Article 10(3) contains a broad ambit of protection.²⁹⁹ Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation.

The main UN treaty on International Covenant on Economic, Social and Cultural Rights³⁰⁰ (ICESCR) 1966 covers the right to education comprehensively, specially Article

²⁹⁵ Core International Human Rights Treaties, Optional Protocols & Core ILO Conventions Ratified by India, *A Handbook on International Human Right Convention 22* (National Human Rights Commission, New Delhi), available at: <http://www.nhrc.nic.in>

²⁹⁶ Kabuta, "Protection Of Children's Rights" Vol. 39-40, No. 108 *International Review Of Criminal Policy* (United Nations, 1989)

²⁹⁷ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice 22* (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

²⁹⁸ Article 19, The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with Articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with Article 18.

Articles 12.1, The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

²⁹⁹ Article 10.3, Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

³⁰⁰ International Covenant on Economic, Social and Cultural Rights 1966. It adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with Article 27. India is signatory to the UDHR and has acceded to the ICCPR and ICESCR on 10th April, 1979, available at: <http://www.ohchr.org>

13 and 14, as they set out the aim of education systems and the content of education.³⁰¹ Article 14 deals more specifically with the provision of free primary education,³⁰² Article 13(2) corresponds with Article 26(1) of the Universal Declaration of Human Rights and point out that primary education shall be compulsory and available to all. The States undertake to implement all the rights in the covenant. This Covenant implicitly helped to raise the status of children in the resource allocation of the various countries.³⁰³

The International Covenant on Economic, Social and Cultural Rights also enshrines in Article 13(1) provides that the States parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.³⁰⁴

Article 13(2) of the ICESCR provides that the States parties to the present Covenant recognize that, with a view to achieving the full realization of the right to education:

- a) Primary education shall be compulsory and available free to all;³⁰⁵
- b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by

³⁰¹ Y. Daudet and K. Singh, *The Right To Education: Analysis Of UNESCO 7* (Standard Setting Instruments, UNESCO, Paris, 2001).

³⁰² S. Detrick, *Commentary on United Nations Convention on the Rights of the Child 474* (MartinusNijhoff Publishers, Hague, 1999).

³⁰³ Geraldine Van Bueren, *The International Law on the Rights of the Child* (MartinusNijhoff Publishers, Netherlands, 1995)

³⁰⁴ International Covenant on Economic, Social and Cultural Rights, art. 13.1

³⁰⁵ *Ibid.*, art. 13.2.a

every appropriate means, and in particular by the progressive introduction of free education;³⁰⁶

- c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;³⁰⁷
- d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;³⁰⁸
- e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.³⁰⁹

Article 13(3) provides that the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.³¹⁰

Article 13(4) provides that the No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.³¹¹

Further, Article 14 provides, each State party to the present Covenant which, at the time of becoming a party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge,

³⁰⁶*Ibid*, art. 13.2.b

³⁰⁷*Ibid*, art. 13.2.c

³⁰⁸*Ibid*, art. 13.2.d

³⁰⁹*Ibid*, art. 13.2.e

³¹⁰*Ibid*, art. 13.3

³¹¹*Ibid*, art. 13.4

undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.³¹²

Article 23 provides, the States parties to the present Covenant agree that International action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.³¹³

India is a signatory to the UDHR and has acceded to the ICCPR³¹⁴ and ICESCR on 10 April 1979. The civil and political rights were made subject to immediate realization, while the other group of economic, social and cultural rights were sought to be progressively realised. Delicate balance between the political and civil rights and social and economic rights has been sought to be achieved in the Indian Constitution.³¹⁵ Similarly, balance has been tried to be maintained between the individual rights and social needs. The universal approach made in our Constitution to both categories of human rights, i.e. (a) political and civil rights and (b) economic, social and cultural rights, is highly considerable.³¹⁶

3.6.1. Committee on Economic, Social and Cultural Rights, 1999 (GC. 11):

The UN Committee on Economic, Social and Cultural Rights³¹⁷ (CESCR) has provided plans of Action for Primary education under Article 14 of the Covenant, as follows:

³¹² *Ibid.*, art. 14

³¹³ *Ibid.*, art. 23

³¹⁴ International Covenant on Civil and Political Rights 1966, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49.

³¹⁵ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 357 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

³¹⁶ *Ibid.*

³¹⁷ United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 11 (1999), Plane of action for primary education (Article 14), Agenda Item 7, Twentieth session, Geneva, 26 April – 14 May 1999, 17

1. Article 14 requires, each State party which has not been able to secure compulsory primary education, free of charge, to undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all. In spite of the obligations undertaken in accordance with Article 14, a number of States parties have neither drafted nor implemented a plan of action for free and compulsory primary education.³¹⁸
2. The right to education, recognized in Articles 13 and 14 of the Covenant, as well as in a variety of other International Treaties, such as the CRC and the CEDAW, is of vital importance. It has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights.³¹⁹
3. In line with its clear and unequivocal obligation under article 14, every State party is under a duty to present to the Committee a plan of action. The Committee is fully aware that many diverse factors have made it difficult for States parties to fulfill their obligation to provide a plan of action.³²⁰
4. Plans of action prepared by States parties to the Covenant in accordance with Article 14 are especially important as the work of the Committee has shown that the lack of educational opportunities for children often reinforces their subjection to various other human rights violations. Moreover, there is a direct correlation between primary school enrolment levels for girls and major reductions in child marriages.³²¹

April 2001, E/C.12/1999/4, 10 May 1999, *available at*: <http://www.right-to-education.org/resource/cescr-general-comment-11-plans-action-primary-education>

³¹⁸*Ibid*, para. 1

³¹⁹*Ibid*, para. 2

³²⁰*Ibid*, para. 3

³²¹*Ibid*, para. 4

5. Article 14 contains a number of elements which warrant some elaboration in the light of the Committee's extensive experience in examining State party reports.³²²
6. The element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the State are entitled to treat as optional the decision as to whether the child should have access to primary education.³²³
7. The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians.³²⁴ The State party is required to adopt a plan of action within two years.³²⁵
8. A State party cannot escape the unequivocal obligation to adopt a plan of action on the grounds that the necessary resources are not available.³²⁶
9. The plan of action must be aimed at securing the progressive implementation of the right to compulsory primary education, free of charge, under Article 14 of the Covenant.³²⁷
10. The Committee calls upon every State party to which Article 14 is relevant to ensure that its terms are fully complied with and that the resulting plan of action is submitted to the Committee as an integral part of the reports required under the Covenant.³²⁸

3.6.2. Committee on Economic, Social and Cultural Rights, 1999 (GC. 13):

The UN Committee on Economic, Social and Cultural Rights³²⁹ (CESCR) has provided right to education under Article 13 of the Covenant, as follows:

³²² *Ibid*, para. 5

³²³ *Ibid*, para. 6

³²⁴ *Ibid*, para. 7

³²⁵ *Ibid*, para. 8

³²⁶ *Ibid*, para. 9

³²⁷ *Ibid*, para. 10

³²⁸ *Ibid*, para. 11

³²⁹ UN Committee on Economic, Social and Cultural Rights, General Comment No. 13 (1999), The Right to Education (Article 14 of the Covenant), Twenty first session, 15 Nov., - 3 Dec., 1999, E/C.12/1999/10, 8 Dec., 1999, *available at*: <http://www.right-to-education.org>

1. Article 13(1) provided that States parties agree that all education, whether public or private, formal or non-formal, shall be directed towards the aims and objectives, these educational objectives reflect the fundamental purposes and principles of the U N Charter under Articles 1 and 2. Article 13(1) says that education shall be directed to the human personality's in three respects: "sense of dignity", it shall "enable all persons to participate effectively in a free society", and it shall promote understanding among all "ethnic" groups, as well as nations and racial and religious groups.³³⁰
2. Article 13(2) provided the right to receive education and says that education in all its forms and at all levels shall exhibit the following inter-related 4A's essential features³³¹ these are availability, accessibility, acceptability, and adaptability –
 - a. **Availability** - operative educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon many factors, including the developmental context within which they operate as building infrastructures, sanitation, drinking water, trained teachers and library facilities, etc..
 - b. **Accessibility** - educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions - (i) Non-discrimination (ii) Physical accessibility (iii) Economic accessibility.
 - c. **Acceptability** - the form and substance of education, including curricula and teaching methods, have to be acceptable as relevant, culturally appropriate and of good quality education to students.
 - d. **Adaptability** - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.

³³⁰*Ibid*, para. 4

³³¹*Ibid*, para. 6

3. Article 13(2) provides right to primary education includes the elements of availability, accessibility, acceptability and adaptability which are common to education in all its forms and at all levels.³³²

3.7. Convention on the Elimination of All Forms of Discrimination against Women (1979):

The Women's Rights Convention from 1979 known as the Convention on the Elimination of All Forms of Discrimination against Women³³³ (CEDAW). India signed the Convention on 30 July 1980 and ratified it on 9 July 1993 with certain reservations. CEDAW obligates State parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women: –

- a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;³³⁴
- b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;³³⁵
- c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;³³⁶

³³² *Ibid*, para. 8

³³³ It adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979, entry into force 3 September 1981, in accordance with Article 27(1), available at: <http://www.ohchr.org>

³³⁴ Convention on the Elimination of all Forms of Discrimination against Women, art. 10.a

³³⁵ *Ibid*, art. 10.b

³³⁶ *Ibid*, art. 10.c

- d) The same opportunities to benefit from scholarships and other study grants;³³⁷
- e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;³³⁸
- f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;³³⁹
- g) The same Opportunities to participate actively in sports and physical education;³⁴⁰
- h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.³⁴¹

3.8. Declaration on the Right to Development (1986):

The human rights discourse and the development discourse emerged simultaneously after the Second World War, but there was little in common between the two. The adoption by the United Nations General Assembly of the Declaration on the Right to Development (DRD)³⁴² in the 1986 was the culmination of a long process of re-establishing unity of human rights. This unity which existed immediately after the Second World War got split into two categories of rights – civil and political rights on one hand, and economic, social and cultural rights on other hand.³⁴³

The idea was first articulated by the developing countries in the context of the ‘New International Economic Order’ (NIEO), largely understood as a rallying eliminating injustice and inequality of ‘nations’ and ‘peoples’. It was only later that the eligibility of RTD as a human right began to be extensively discussed. Formal recognition of the concept came in 1979, I resolution 4 (XXXV) of the commission on

³³⁷*Ibid*, art. 10.d

³³⁸*Ibid*, art. 10.e

³³⁹*Ibid*, art. 10.f

³⁴⁰*Ibid*, art. 10.g

³⁴¹*Ibid*, art. 10.h

³⁴²Adopted by General Assembly resolution 41/128 of 4 December 1986, *available at*: <http://www.ohchr.org>

³⁴³ Stephen P. Marks, *The Right To Development: A Primer* 43 (Centre for Development and Human Rights, Sage Publications, New Delhi, 2004)

human rights. The resolution mandated the UN General Secretary to study the conditions required for the effective enjoyment of RTD by all peoples and individuals.³⁴⁴

Article 1 proclaims that, the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.³⁴⁵

Although the world ‘process’ is not mentioned in Article 1, the word ‘development as a process’ is derivable from the preamble to the RTD, which defines, that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.

Further Article 1 provides, the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.³⁴⁶

All children, young persons and adults have the human right to benefit from an education that will meet their basic learning needs. This includes ‘learning to know, to do, to live together and to be’, and seeks to tap and develop each individual’s talents, potential and personalities, so that they can ‘improve their lives and transform their societies’.³⁴⁷

The right to education was, according to Manfred Nowak, first categorically upheld as a human right in the Constitution of Soviet Union in 1936. It guaranteed free

³⁴⁴*Ibid.*, 46-47p

³⁴⁵Declaration on the Right to Development, art. 1.1

³⁴⁶*Ibid.* art. 1.2

³⁴⁷ Stephen P. Marks, *The Right To Development: A Primer* 77 (Centre for Development and Human Rights, Sage Publications, New Delhi, 2004). Education For All: Meeting Our Collective Commitments, Text Adopted By The World Education Forum (Dakar, Senegal, 26-28 Apr. 2000)

and compulsory education through a system of scholarship and vocational training in state enterprises.³⁴⁸

Therefore, Article 8 proclaims, States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.³⁴⁹

Further, Declaration provides, the States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.³⁵⁰

3.9. Convention on the Rights of the Child (1989):

The United Nations Convention on the Rights of the Child (CRC), the recent major human rights instrument, is based on a commitment to a solidarity effort on behalf of the children of the world. The CRC, as compared to any other human rights instrument, has been ratified and accepted as a binding multilateral treaty by the largest number of countries in the shortest period of time. Countries that have yet to ratify the International Covenants which are part of the International Bill of rights have ratified the CRC. This indicates a core reality. In a world full of conflict and violent confrontation, we have found a single issue that can evoke a positive sense of agreement. If we widen this small window of reconciliation and realise even a few of the core values of

³⁴⁸Manfred Nowak, "The Right to Education" in AsbjornEideet.al. (eds.), *Economic, Social And Cultural Rights* (MartinusNijhoff Publishers, 1995), *Ibid.*, 77-78p.

³⁴⁹Declaration on the Right to Development, art. 8.1

³⁵⁰*Ibid.* art. 8.2

humanism that the CRC articulates, we may well succeed in having an impact on the quality of life of all people.³⁵¹

For the protection of Children's Rights under International law, the CRC is the most important legal instrument. The CRC, adopted by the General Assembly of the United Nations on November 20, 1989, has been ratified by 192 of the 194 States that exist in the World. No other human rights treaty comes that close to universal ratification. The CRC is at the same time the human rights treaty with widest coverage.³⁵² Approximately every country in the world has ratified the International Convention on the Rights of the Child (CRC).³⁵³ The Government of India has ratified the CRC on 12 November 1992 and accede the Convention on 11 December 1992.³⁵⁴

The record of many countries in implementing International standards has not been one of which they can be proud. State Parties ratify Conventions and yet decades later continue to recognize laws, policies and practices at national levels which infringes on those standards. Most International Instruments refer to "the people" on whose behalf these instruments have been ratified. Yet it is only recently that the people are becoming aware that International law has been transformed. It is no longer exclusively a matter for diplomatic relations between States but rather a set of norms that can be used to promote accountability in government within the State and at the national level.³⁵⁵

The European Convention of Human Rights has adopted a radical procedure in this regard and even gives individuals right of relief and redress for any infringement of the standards of the Convention by their governments. There are those who will argue

³⁵¹ R.S. Verma (ed.), *Human Rights – Burning Issues of the World Vol. II* 309 (Indian Publishers Distributors, Delhi, 1st edn., 2000)

³⁵² Jaap E Doek "Child Rights & the Law" vol.3 Issue 1 *Combat law Publications* (2004)

³⁵³ The Convention adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with Article 49. It has also been incorporated into various regional treaties. Many countries have also made provisions for the right to education in their national constitutions. *available at:* <http://www.ohchr.org>

³⁵⁴ Core International Human Rights Treaties, Optional Protocols & Core ILO Conventions Ratified by India, *A Handbook on International Human Right Convention* 22 (National Human Rights Commission, New Delhi), *available at:* <http://www.nhrc.nic.in>

³⁵⁵ R.S. Verma (ed.), *Human Rights – Burning Issues of the World Vol. II* 310 (Indian Publishers Distributors, Delhi, 1st edn., 2000)

that a rights strategy and realizing justice through the use of law are superfluous or irrelevant concepts, particularly in developing countries which suffer problems of poverty, social disruptiveness and economic limits. Yet the history of the past and the realities of today must surely convince us that the State has to be a presence in governance. It cannot 'wither away' if we are to prevent anarchy. It is therefore vital to recognize that reality and develop structures and institutions that will humanise the interaction between the State and the people. Laws and a legal system fashioned according to norms of justice and International Human Rights Standards which reflect the anguish and inspiration of human experience in struggling with authoritarianism are important for all peoples and their governments. They represent a universal and common heritage for ensuring that State power does not emerge as authoritarianism but is exercised in a democratic environment.³⁵⁶

The CRC is based on a strategy of rights and it envisages implementation and enforcement of those rights. It envisages an important role for the legal system in realizing those rights. International agencies such as UNICEF, which are committed to the interests of children, have a critical role in helping to interpret those rights and in refining them within the context of International Human Rights law standards. It is the responsibility of both the State and the people to ensure that these rights will not remain aspirations or concepts of International law that we have no hope or expectation of realizing. We cannot afford to create an impression of International consensus, a common vision and a value system, where there is no real commitment to move our societies towards fulfilling their promises to children.³⁵⁷

CRC has also endorsed the twenty seven survival and development goals for the year 2000 laid down by the World Summit for Children. Article 73 of the Constitution of India states: "Subject to the provisions of this Constitution, the executive power of the Union shall extend – to the matters with respect to which Parliament has power to make

³⁵⁶ *Ibid*

³⁵⁷ *Ibid*, 310-11p.

laws; and to the exercise of such rights, au thou and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.” Article 253 of the Constitution states that “Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement to Convention with any other country or countries or any decision made at any International conference, association or other body.”³⁵⁸

Therefore, International Conventions like CRC can be enforced in Indian courts without a statute. Any International Convention consistent with the fundamental rights and in harmony with its spirit must be read into the provisions of the Constitution. Therefore, the provisions of the CRC in consonance with the fundamental rights can be enforced without a statute.³⁵⁹

This was clearly laid down in the case of *Mayanbhai Ishwarlal Patel v. Union of India*³⁶⁰ and again in the case of *Vishaka v. State of Rajasthan*,³⁶¹ the Supreme Court reiterated the principle that in the absence of a domestic law the contents of International Conventions and norms are relevant for the purpose of interpretation of the fundamental rights.

It is significant to note that with the exception of the UN Convention on the CRC, there is no other child centred approach and second, the Asia region, which has the highest proportion of the world’s children, does not have any similar regional human rights or child rights instrument. All the countries have ratified the UN Convention on the Rights of the Child, subject to Reservations and Declarations.³⁶²

The UN Convention on the Rights of the Child represents a turning point in the International Movement on behalf of Child Rights. The comprehensive document

³⁵⁸The Constitution of India, art. 73 and 253

³⁵⁹ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 23-24 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

³⁶⁰ AIR 1969 SC 783

³⁶¹ (1997) 6 SCC 241

³⁶² Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 23-24 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

contains a set of universal legal standards or norms for the protection and well-being of children. The range of rights can be summarised as 3P's. - Provision, Protection, and Participation. Children have a right to be provided with certain services ranging from a name and nationality to health care and education. They have a right to be protected from certain acts, such as torture, exploitation, abuse, arbitrary detention, and unwarranted removal from parental care and children have the right to participate in the decisions affecting their lives.³⁶³

The CRC provides gives children their basic human rights - civil, economic, social, cultural, and political, which enable children to achieve their full potential. The 'economic rights' under the CRC include the rights to benefit from social security, the right to a standard of living adequate to ensure proper development and protection from exploitation at work. The 'social rights' include the rights to the highest attainable standard of health services, the rights to social care for handicapped children, protection from sexual exploitation and abduction, and the regulation of adoption. Rights to education, access to appropriate information, recreation and leisure, and participation in artistic and cultural activities are included in the 'cultural rights' of the children under the CRC.³⁶⁴

The Convention broadly the civil, political, social, economic, and cultural rights of every child can be grouped into the following four categories: "rights to survival, rights to protection, rights to development, and the rights to participation."³⁶⁵

In view of various Conventions and recommendations of the United Nations and International Labour Organization adopted by India, it tries to follow the standards set by such Convention. However, firstly it is important to note, who is a child?

³⁶³ *Ibid*, 17

³⁶⁴ Geraldine Van Bueren, "Special Features Of The Assistance And Protection Of Children" in Frits Karlshoven (ed.), *Assisting The Real Victims of Armed Conflict and Other Disasters* (MartinusNijhoff Publishers, 1989)

³⁶⁵ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 17 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

Therefore, for the purposes of this Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.³⁶⁶ Today International community has accepted this universal definition of a child, which comes from the United Nations Convention on the Rights of the Child.

Accepting treaty commitments under International law often becomes only a gesture, because most of our countries do not recognize that International law and domestic law are one system. According to this dualist approach, International law can be enforced domestically, only if treaty standards are incorporated into the national legal system. National courts, therefore, perceive treaty standards as having moral rather than legal authority. This is why it becomes vital to ensure that the standards set by the CRC are incorporated into the national legal systems. In setting about the task of incorporation, we must stand committed to certain basic values that are enshrined in the CRC. The CRC, like certain other human rights treaties, recognizes the concept of cultural pluralism and diversity. Nevertheless, Articles 2 and 3 of the CRC, which can be described as the “non-discrimination” and “best interests of the child” for all children.³⁶⁷

The CRC guided by the principle of a first call for children – a principle that essential needs of children should, at all times, be given priority in the allocation of resources at all times. The Convention is derived from a core set of human values and ethical premises that recognize the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice, and peace in the world.

The Convention also draws particular attention to the fact that such. Children need special consideration. It advocates measures for the protection and harmonious development of the child that are consistent with the traditions and cultural values of different peoples. By providing safeguards against economic and other policies that have

³⁶⁶ United Nations Convention on the Rights of the Child, 1989, Article 1.

³⁶⁷ R.S. Verma (ed.), *Human Rights – Burning Issues of the World Vol. II* 311 (Indian Publishers Distributors, Delhi, 1st edn., 2000)

a negative effect on the well-being of children, and Convention reaffirms a commitment to promote social progress that will ensure a better quality of life and greater freedom for people in general and children in particular.

1. Therefore, there are four general principles enshrined in the Convention. These are meant to help with the interpretation of the Convention as a whole and thereby guide national programmes of implementation. The four principles are - Non-Discrimination, the Best Interest of the Child, the Right to life, Survival, and Development, the Views of the Child.

Articles 28 and 29 of the CRC make vast provisions for the right to education of children. It casts duty upon the State parties to recognise the right of the child to education. The provisions of the Articles read as follows:

Article 28 (1) provides that, States parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a) Make primary education compulsory and available free to all;³⁶⁸
- b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;³⁶⁹
- c) Make higher education accessible to all on the basis of capacity by every appropriate means;³⁷⁰
- d) Make educational and vocational information and guidance available and accessible to all children;³⁷¹

³⁶⁸The Convention on the Rights of the Child, art. 28.1.a

³⁶⁹*Ibid*, art. 28.1.b

³⁷⁰*Ibid*, art. 28.1.c

³⁷¹*Ibid*, art. 28.1.d

- e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.³⁷²

Further, Article 28 (2) provides that, States parties shall take all appropriate measures to ensure that, school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention. Article 28 (3) provides that, States parties shall promote and encourage International co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Thereafter, Article 29 (1) provides that, States parties agree that the education of the child shall be directed to:

- a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;³⁷³
- b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;³⁷⁴
- c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;³⁷⁵
- d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;³⁷⁶
- e) The development of respect for the natural environment.³⁷⁷

³⁷²*Ibid*, art. 28.1.e

³⁷³*Ibid*, art. 29.1.a

³⁷⁴*Ibid*, art. 29.1.b

³⁷⁵*Ibid*, art. 29.1.c

³⁷⁶*Ibid*, art. 29.1.d

Further, Article 29 (2) provides that, No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Thus, starting from a children rights perspective, there are a number of overarching principles that relate to education.³⁷⁷ In accordance of CRC:

- Education is a right.
- Education is also an enabling right, a right that facilitates children and adults access many of their other rights throughout their lifetimes. Education plays an important role in empowerment in this regard because it supports democratic action, is a means to promote child rights and social rights, and can equip individuals and groups with the skills to move on in their lives.
- Education must be available without discrimination.
- Children have a right to quality education that will serve as the basis for lifelong learning.
- Education must address the best interests and on-going development of the complete child. This means that, in addition to being child centred, education is much more than attention to cognitive development. It is also concerned with the child's social, emotional, and physical development.
- Education also calls for more than the conventional integrated approach. Rather education must be conceptualized from the child's point of view and with an understanding of the inter-related nature of the child's needs, which vary according to the level of individual development.

³⁷⁷ *Ibid*, art. 29.1.e

³⁷⁸ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 358 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

- Education must accord dignity to every child.³⁷⁹

The CRC also establishes the indivisibility of rights. That is we must address all rights equally, and it is here that there are significant further implications that go to the very core of the conduct of educational activities.³⁸⁰

3.9.1. UN Committee on the Rights of the Child, 2001(GC. 1):

The Aims and significance of education has provided by UN Committee³⁸¹ on the Rights of the Child under Article 29 (1) are as follows:

The aims of education that it sets out, which have been agreed to by all States parties, promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights. These aims, set out in the five sub paragraphs of Article 29(1) are all linked directly to the realization of the child's human dignity and rights, taking into account the child's special developmental needs and diverse evolving capacities.³⁸²

Article 29(1) not only adds to the right to education recognized in Article 28 a qualitative dimension which reflects the rights and inherent dignity of the child; it also insists upon the need for education to be child-centred, child-friendly and empowering, and it highlights the need for educational processes to be based upon the very principles it enunciates.³⁸³ The goal is to empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence. "Education" in this context goes far beyond formal schooling to embrace the broad range of life experiences

³⁷⁹*Ibid.*

³⁸⁰ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 358 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

³⁸¹ United Nations Committee on the Rights of the Child, General Comment No. 1 (2001), Article 29 (1), The aims of education, 17 April 2001, CRC/GC/2001/1, *available at*: <http://www.refworld.org/docid/4538834d2.html>

³⁸²*Ibid.*, para. 1

³⁸³In this regard, the Committee takes note of General Comment No. 13 (1999) of the Committee on Economic, Social and Cultural Rights on the right to education, which deals, inter alia, with the aims of education under article 13(1) of the International Covenant on Economic, Social and Cultural Rights. The Committee also draws attention to the general guidelines regarding the form and contents of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention, (CRC/C/58), paras. 112-116.

and learning processes which enable children, individually and collectively, to develop their personalities, talents and abilities and to live a full and satisfying life within society.³⁸⁴

The child's right to education is not only a matter of 'access' Article 28 but also of 'content'. An education with its contents firmly rooted in the values of Article 29(1) is for every child an indispensable tool for her or his efforts to achieve in the course of her or his life a balanced, human rights-friendly response to the challenges that accompany a period of fundamental change driven by globalization, new technologies and related phenomena. Such challenges include the tensions between; inter alia, the global and the local; the individual and the collective; tradition and modernity; long- and short-term considerations; competition and equality of opportunity; the expansion of knowledge and the capacity to assimilate it; and the spiritual and the material.³⁸⁵ And yet, in the national and International Programmes and Policies on Education that really count the elements embodied in article 29(1) seem all too often to be either largely missing or present only as a cosmetic afterthought.³⁸⁶

Article 29(1) states that the States parties agree that education should be directed to a wide range of values. This agreement overcomes the boundaries of religion, nation and culture built across many parts of the world. The part of the importance of this provision lies precisely in its recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and respect for difference. Moreover, children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.³⁸⁷

³⁸⁴ United Nations Committee on the Rights of the Child, General Comment No. 1 (2001), Article 29 (1), para. 2

³⁸⁵ Report of the International Commission on Education for the 21st Century, *Learning: The Treasure Within*, 16-18p. (United Nations Educational, Scientific and Cultural Organization, 1996)

³⁸⁶ United Nations Committee on the Rights of the Child, General Comment No. 1 (2001), Article 29 (1), para. 3

³⁸⁷ *Ibid*, para. 4

3.10. World Declaration on Education for All (1990):

Education has also gone global. The World Conference on Education for All (EFA)³⁸⁸ was held in Jomtien (Thailand) in 1990. This marked a new start in the global quest to universalise basic education and eradicate illiteracy.³⁸⁹ Through the Jomtien Declaration and the Framework for Action, commitments were made and directions set for a decade of large scale and sustained efforts. Agreements were entered into by countries, inter-governmental organisations; NGOs to work together throughout the decade.³⁹⁰

Various co-operative schemes were launched in order to monitor student learning achievements, to share knowledge and experience and to drive the Jomtien agenda forward. Countries in their pursuit of the Jomtien goals were invited to set their own specific targets according to their situations and capabilities. The Jomtien Declaration was grounded in fundamental values and principles, several of which proved particularly difficult for a number of countries to sustain.³⁹¹

The period observed the important contextual changes both positive and negative for the achievement of the EFA goals: the collapse of political regimes, civil war, scientific and technological advances, major economic fluctuations, and others. These changes had quite different impacts on different countries and regions. Analyses of the success or otherwise countries have in achieving the Jomtien Goals from the main body of this Global Synthesis.³⁹² Arising from experience in trying to achieve their target, a number of crosscutting issues have emerged:

³⁸⁸ The World Declaration On Education For All: Meeting Basic Learning Needs, Coordinators' Notebook No. 14, 1993/94. In 1990 an important conference, the conference brought together some 1500 participants from 155 Nations, 33 inter-governmental bodies, 125 NGOs, Institutes and Foundations agreed the World Conference on Education for All, in Jomtien, Thailand. *available at:* <http://www.unesco.org/new/en/education/.../education-for-all/.../jomtien-1990>

³⁸⁹ R.P. Yadav (ed.), *Right To Education* 93 (Mittal Publications, New Delhi, 2014)

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*

³⁹² R.P. Yadav (ed.), *Right To Education* 94 (Mittal Publications, New Delhi, 2014)

1. How to overcome barriers to improve access and greater equality, strengthening the quality, relevance and effectiveness of education.
2. New patterns of shared responsibility and decision taking.
3. Ways to mobilise resources and use them more effectively.
4. The action of new educational knowledge base.

The World Conference on Education for All declared that the effective provision of basic education for all depends on political commitment and political will backed by appropriate and supportive fiscal, economic, trade, labour, employment and health politics. The main points of this conference related to basic learning needs are given below -

The Declaration states that, every person - child, youth, and adult - shall be able to benefit from educational opportunities designed to meet their basic learning needs. These needs comprise both essential learning tools (such as literacy, oral expression, numeracy, and problem solving) and the basic learning content (such as knowledge, skills, values, and attitudes) required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning.³⁹³

The satisfaction of these needs empowers individuals in any society and confers upon them a responsibility to respect and build upon their collective cultural, linguistic, and spiritual heritage, to promote the education of others, to further the cause of social justice, to achieve environmental protection, to be tolerant towards social, political and religious systems which differ from their own, ensuring that commonly accepted humanistic values and human rights are upheld, and to work for International peace and solidarity in an interdependent world.³⁹⁴

³⁹³The World Declaration on Education for All - Meeting Basic Learning Needs, art. 1.1

³⁹⁴*Ibid*, art. 1.2

Thereafter, another and no less fundamental aim of educational development is the transmission and enrichment of common cultural and moral values. It is in these values that the individual and society find their identity and worth.³⁹⁵ Further, Basic education is more than an end in itself. It is the foundation for lifelong learning and human development on which countries may build, systematically, further levels and types of education and training.³⁹⁶

The World Declaration on Education for All recognized the diversity, complexity, and changing nature of the basic learning needs of children, youth, and adults necessitating enlargement and constantly redefining the scope of basic education to include the following factors:³⁹⁷

- **Learning begins at birth** - these calls for early childhood care and initial education. These can be provided through arrangements involving families, communities, or institutional programmes, as appropriate.³⁹⁸
- **The main delivery system for the basic education of children outside the family is primary schooling** - Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community. Supplementary alternative programmes can help meet the basic learning needs of children with limited or no access to formal schooling; provided that they share the same standards of learning applied to schools, and are adequately supported.³⁹⁹
- **The basic learning needs of youth and adults are diverse and should be met through a variety of delivery systems.** Literacy programmes are indispensable because literacy is a necessary skill in itself and the foundation of other life skills. Literacy in the mother-tongue strengthens cultural identity and heritage. Other needs can be served by - skills training, apprenticeships, and formal and non-

³⁹⁵*Ibid*, art. 1.3

³⁹⁶*Ibid*, art. 1.4

³⁹⁷*Ibid*, art. 5

³⁹⁸*Ibid*, para. 1

³⁹⁹*Ibid*, para. 2

formal education programmes in health, nutrition, population, agricultural techniques, the environment, science, technology, family life, including fertility awareness, and other societal issues.⁴⁰⁰

- All available instruments and channels of information, communications and social action could be used to help convey essential knowledge and inform and educate people on social issues. In addition to the traditional means, libraries, television, radio and other media can be mobilized to realize their potential towards meeting basic education needs of all.⁴⁰¹

These components should constitute an integrated system - complementary, mutually reinforcing, and of comparable standards, and they should contribute to creating and developing possibilities for lifelong learning.

The Declaration and its Framework were remarkably insightful documents and they analysed the challenges and opportunities facing the last decade of the twentieth century and proposed that countries set targets for the year 2000 based on an ‘expanded’ vision of universal basic education. These were - (a) expansion of early childhood care and development activities; (b) universal access to, and completion of, primary education; (c) improvement in learning achievement; (d) reduction of the adult literacy rate to one half of its, 1990 level; (e) expansion in basic education and training in other essential skills required by youth and adults; (f) increased acquisition of the knowledge, skills, and values required for better living and sustainable development.⁴⁰²

Jomtien emphasized not only access to education, but equity and learning achievement through broadening the means and scope of basic education. According Jomtien Declaration, “active and participatory approaches are particularly valuable in assuring learning acquisition and allowing learners to reach their fullest potential. It is, therefore, necessary to define acceptable levels of learning acquisition for educational

⁴⁰⁰ *Ibid*, para. 3

⁴⁰¹ *Ibid*, para. 4

⁴⁰² Asha B0jpai, *Child Rights In India: Law, Policy, And Practice* 360 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

programmes and to improve and apply systems of assessing learning achievement.”⁴⁰³
Encouraging the use of interactive, learner-centred methods is a priority in the promotion of quality basic education. These methods should be used deliberately to support learning aims that relate to the knowledge, skills and attitudes of peace education.⁴⁰⁴

The targets were defined as directions to which countries would relate their own goals and strategies. There have been setbacks and failures, including a lack of commitment and leadership, poor planning and management, neglect of critical problems. Nevertheless, in the following ways there has been real progress towards achieving the Jomtien goals, these are -

- Significant improvements in achieving enrolment, and participation targets for basic education at all levels of education including early childhood care and education (ECCE).
- Big reductions in some countries in inequities, notably in the area of gender, disability and ethnic minorities.
- Big reductions in a small number of countries in volumes and/or rates of adult illiteracy.
- New policies, frameworks, legislation and resources in several countries to pursue one or more of the EFA target directions.
- Greater involvement of NGOs, community groups and parents in decision making, action programmes and the operation of child care and education facilities.
- Big improvements in educational information and in analytic and evaluative capacity.
- The targets, although not achieved or fully achieved, are more attainable more than a decade ago. Whatever the failures and setbacks, there is more than enough here to demonstrate the massive achievements and value of the EFA movement and to inspire confidence in the future.

⁴⁰³The World Declaration on Education for All, art. 4

⁴⁰⁴*Ibid.*

The representatives of the global education community met in the World Conference on Education for All and embraced a new vision. The World Declaration adopted at Jomtien went far beyond a renewed commitment to earlier targets set for basic education and adult literacy. It spoke for universal access to education as a fundamental right of all people, for fair and equitable treatment of all learners - infants, children, youth and adults.

In Jomtien Declaration plans were adopted which would tie commitment to action, mobilising all possible resources. It was a remarkable achievement for the world education community to reach this policy consensus and agree on the set of aspirational goals.⁴⁰⁵ The Jomtien agreements and decisions outlined broad programmatic directions designed to substantially improve opportunities and raise the level of educational performance in all countries.⁴⁰⁶ The goals for children and development for the decade adopted at the World Summit for Children in September 1990 endorsed the Jomtien goals, emphasizing the priority to universal access to primary education, completion of the primary stage by at least 80 per cent of the children and reduction of the gender gap.⁴⁰⁷

3.11. The World Summit for Children (1991):

The World Summit for Children(WSC) was convened in New York in 1991. It adopted the ‘World Declaration on the Survival protection and Development of children and Plan of Action’. This important document contains concrete goals to be achieved before the end of the 20th Century in various fields of children’s lives.⁴⁰⁸

On the basis of World Summit Plan of Action, adopted and signed by many heads of states and governments, national action plans for 1991-2000 were adopted. These plans aimed at reducing infant and maternal mortality rates, reducing malnutrition and

⁴⁰⁵ R.P. Yadav (ed.), *Right To Education 95* (Mittal Publications, New Delhi, 2014)

⁴⁰⁶ *Ibid.*

⁴⁰⁷ Asha Bajpai, *Child Rights In India: Law, Policy, And Practice* 361 (Oxford University Press, New Delhi, 2nd edn. 2006, 2nd imp. 2008).

⁴⁰⁸ Yuri Kolosov, “The Rights Of The Child” in JanuszSymonides (ed.), *Human Rights; Concept and Standards* 272-273 (PremRawat for Rawat Publications, Jaipur, 2002)

illiteracy, providing access to safe drinking water and to basic education, combating devastating emergencies resulting from natural disasters and armed conflicts, and solving the problem of children in extreme poverty.⁴⁰⁹

3.12. The World Conference on Human Rights (1993):

The World Conference on Human Rights⁴¹⁰ (Vienna, 14-25 June, 1993) paid great attention to children's rights in the Vienna Declaration and Programme of Action adopted on 25 June 1993. Section B.4, which deals with the rights of the child. The World Conference urged universal ratification of the Convention on the Rights of the Child by 1995 and its effective implementation by States Parties through the adoption of all the necessary legislative administrative and other measures, and the allocation to the maximum extent of available resources.⁴¹¹

The conference recognised the need to strengthen National and International mechanism and programmes for the defence and protection of children. International cooperation and solidarity should be promoted to support the Implementation of the Convention on the Human Rights of the Child. It also agreed that the rights of the child should be priority in the United Nations system wide action on human rights.⁴¹²

3.13. World Education Forum Dakar (2000):

One hundred eighty two Nations, 1100 participants and besides 150 civil groups including NGOs attended the World Education Forum 2000 at Dakar in Senegal.⁴¹³ It was the largest evaluation ever undertaken in the field of education. The preparations for the

⁴⁰⁹ *Ibid.*

⁴¹⁰ Vienna Declaration and Programme of Action (1993), World Conference on Human Rights, UN Doc. A/CONF.157/23, 12 July 1993.

⁴¹¹ Vienna Declaration of Human Rights (1993), para. 21, as of November 1999 there are 191 States Parties to the Convention (only Somalia and the USA have not yet ratified it).

⁴¹² Yuri Kolosov, "The Rights Of The Child" in JanuszSymonides (ed.), *Human Rights; Concept and Standards* 272-273 (PremRawat for Rawat Publications, Jaipur, 2002)

⁴¹³ The Dakar Framework for Action or The World Education Forum (Dakar, Senegal, 26-28 April 2000), ED-2000/CONF/211/1, was the first and most important event in education at the dawn of the new century. 182 Countries attended the World Education Forum, 2000 in Dakar, Senegal. All members have been adopted. *available at:* <http://www.unesco.org>

forum had been particularly comprehensive.⁴¹⁴ A considerable mass of information had been collected emphasizing a highly constructed situation from one country to another, with some countries having made remarkable progress, while others were experiencing growing difficulties in various areas education.⁴¹⁵ The breakthrough outcome of the forum had been the adoption of the Dakar Framework for Action. The Dakar Framework of Action has been adopted by all of them. The Framework of Action:⁴¹⁶

- Recognizes the right to education as a fundamental human right.
- Reaffirms commitment to the expanded vision of education as articulated in Jomtien.
- Calls for renewed action to ensure that every child, youth, and adult receive education by 2015.

The World Education Forum, commit ourselves to the achievement of education for all (EFA) goals and targets for every citizen and for every society. It is a collective commitment to action. Governments have an obligation to ensure that EFA goals and targets are reached and sustained. This is a responsibility that will be met most effectively through broad based partnerships within countries, supported by cooperation with regional and international agencies and institutions.⁴¹⁷ The Dakar Framework for Action sets out six goals for achieving basic education for all by 2015:

Goal-1:Expanding and improving comprehensive early childhood care and education, especially for the most vulnerable and disadvantaged children.⁴¹⁸

All young children must be nurtured in safe and caring environments that allow them to become healthy, alert and secure and be able to learn. The past decade has

⁴¹⁴Noushad Husain, “The Right to Education: Some Historical Landmarks” in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 39 (Shipra Publications, Delhi, 2014, 24-45p.).

⁴¹⁵*Ibid.*

⁴¹⁶ Ulrika Pepler Barry (ed.), *Final Report: World Education Forum, Dakar, Senegal, 26-28 April 2000* (UNESCO, France, 2000), available at: <http://www.unesco.org>

⁴¹⁷ The Dakar Framework for Action or The World Education Forum (Dakar, Senegal, 26-28 April 2000), ED-2000/CONF/211/1

⁴¹⁸*Ibid*, Gole-1

provided more evidence that good quality early childhood care and education (ECCE), both in families and in more structured programmes, have a positive impact on the survival, growth, development and learning potential of children.⁴¹⁹ Such programmes should be comprehensive, focusing on all of the child's needs and encompassing health, nutrition and hygiene as well as cognitive and psycho-social development. They should be provided in the child's mother tongue and help to identify and enrich the care and education of children with special needs. Partnerships between governments, NGOs, communities and families can help ensure the provision of good care and education for children, especially for those most disadvantaged, through activities centred on the child, focused on the family, based within the community and supported by national, multi sectoral policies and adequate resources.⁴²⁰

Goal-2:ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality.⁴²¹

All children must have the opportunity to fulfil their right to quality education in schools or alternative programmes at whatever level of education is considered 'basic'. All states must fulfil their obligation to offer free and compulsory primary education in accordance with the CRC and other International Commitments. The International agreement on the 2015 target date for achieving Universal Primary Education (UPE) in all countries will require commitment and political will from all levels of government. For the millions of children living in poverty, who suffer multiple disadvantages, there must be an unequivocal commitment that education be free of tuition and other fees, and that everything possible be done to reduce or eliminate costs such as those for learning materials, uniforms, school meals and transport facilities. Wider social policies, interventions and incentives should be used to mitigate indirect opportunity costs of

⁴¹⁹Noushad Husain, "The Right to Education: Some Historical Landmarks" in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 39 (Shipra Publications, Delhi, 2014, 24-45p.)

⁴²⁰*Ibid.*

⁴²¹ The Dakar Framework for Action or The World Education Forum (Dakar, Senegal, 26-28 April 2000), ED-2000/CONF/211/1, Gole-2

attending school. No one should be denied the opportunity to complete a good quality primary education because it is unaffordable. Child labour must not stand in the way of education.⁴²² The inclusion of children with special needs, from disadvantaged ethnic minorities and migrant populations, from remote and isolated areas and from urban slums areas, and others excluded from education, must be an integral part of strategies to achieve UPE by 2015.

Goal-3: Ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programmes.⁴²³

All young people and adults must be given the opportunity to gain the knowledge and develop the values, attitudes and skills that will enable them to develop their capacities to work, to participate fully in their society, to take control of their own lives and to continue learning. No country can be expected to develop into a modern and open economy without a certain proportion of its work force having completed secondary education. In most countries this requires an expansion of the secondary system. All young people should be given the opportunity for on-going education. For those who drop out of school or complete school without acquiring the literacy, numeracy and life skills they need, there must be a range of options for continuing their learning. Such opportunities should be both meaningful and relevant to their environment and needs, help them become active agents in shaping their future and develop useful work-related skills.⁴²⁴

Goal-4: Achieving a 50 percent improvement in levels of adult literacy by 2015, especially for women, and equitable access to basic and continuing education for all adults.⁴²⁵

⁴²²Noushad Husain, “The Right to Education: Some Historical Landmarks” in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 40 (Shipra Publications, Delhi, 2014, 24-45p.)

⁴²³ The Dakar Framework for Action or The World Education Forum (Dakar, Senegal, 26-28 April 2000), ED-2000/CONF/211/1, Gole-3

⁴²⁴Noushad Husain, “The Right to Education: Some Historical Landmarks” in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 41 (Shipra Publications, Delhi, 2014, 24-45p.)

⁴²⁵ The Dakar Framework for Action or The World Education Forum (Dakar, Senegal, 26-28 April 2000), ED-2000/CONF/211/1, Gole-4

All adults have a right to basic education, beginning with literacy, which allows them to engage actively in, and to transform the world in which they live. There are still some 880 million people, who cannot read or write in the world; two-thirds are women. The breakable levels of literacy acquired by many new literates compound the problem. Yet the education of adults remains isolated, often at the periphery of national education systems and budgets. Adult and continuing education must be greatly expanded and diversified, and integrated into the mainstream national education and poverty reduction strategies. The vital role that literacy plays in lifelong learning, sustainable livelihoods, good health, active citizenship and in improving the quality of life for individuals, communities and societies must be more widely recognized.⁴²⁶

Goal-5: Eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with focus on ensuring girls' full and equal access to and achievement in basic education of good quality.⁴²⁷

Gender-based discrimination remains one of the most inflexible constraints in realizing the right to education. Without overcoming this obstacle, EFA cannot be achieved. Girls are a majority among out of school children and youth, although in an increasing number of countries, boys are at a disadvantage. Even though the education of girls and women has a powerful trans generational effect and is a key element of social development and women's empowerment, limited progress has been made in increasing girls' participation in basic education. International agreement has already been reached to eliminate gender disparities in primary and secondary education by 2005. This requires that gender issues be mainstreamed throughout the education system, supported by adequate resources and strong political commitment.⁴²⁸

⁴²⁶Noushad Husain, "The Right to Education: Some Historical Landmarks" in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 41 (Shipra Publications, Delhi, 2014, 24-45p.)

⁴²⁷ The Dakar Framework for Action or The World Education Forum (Dakar, Senegal, 26-28 April 2000), ED-2000/CONF/211/1, Gole-5

⁴²⁸Noushad Husain, "The Right to Education: Some Historical Landmarks" in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 42 (Shipra Publications, Delhi, 2014, 24-45p.)

Goal-6: Improving every aspect of the quality of education, and ensuring their excellence so that recognised measurable learning outcomes are achieved by all, especially in literacy numeracy and essential life skills.⁴²⁹

Quality is at the heart of education, and what takes place in classrooms and other learning environments is fundamentally important to the future well-being of children, young people and adults. A quality education is one that satisfies basic learning needs, and enriches the lives of learners and their overall experience of living.⁴³⁰

Evidence over the past decade has shown that efforts to expand enrolment must be accompanied by attempts to enhance educational quality if children are to be concerned to school, stay there and achieve meaningful learning outcomes. Rare resources have frequently been used for expanding systems with insufficient attention to quality improvement in areas, such as teacher's training and materials development.⁴³¹ Recent assessments of learning achievement in some countries have shown that a sizeable percentage of children are acquiring only a fraction of the knowledge and skills they are expected to teacher.

3.14. Millennium Development Goals (2000):

Education has an essential social angle. Promoting social organization on the right to education is all about using the law and the language of the law to activate people to encourage them to work with governments, as well as to step up the pressure on governments, holding them to account for the right to education, as described in laws and policies, as well as in these international and regional treaties they have signed.⁴³²

As the old millennium closed, international bodies realised that for far too many people the New Millennium would be lacking in hope, as blighted by 'disease, war, and

⁴²⁹ The Dakar Framework for Action or The World Education Forum (Dakar, Senegal, 26-28 April 2000), ED-2000/CONF/211/1, Gole-5

⁴³⁰ Noushad Husain, "The Right to Education: Some Historical Landmarks" in Noushad Husain (ed.), *Right To Education – Retrospect and Prospects* 42 (Shipra Publications, Delhi, 2014, 24-45p.)

⁴³¹ *Ibid*, 42p.

⁴³² R.P. Yadav (ed.), *Right To Education* 113 (Mittal Publications, New Delhi, 2014)

as hungry and thirsty as the old one'. The Millennium Declaration is a sort of global New Year's Resolution, moved by a vision of a world in which the founding principles and Charter of the United Nations would become a reality.⁴³³

In September 2000, building upon a decade of major United Nations conferences and summits, world leaders came together at United Nations Headquarters in New York to adopt the United Nations Millennium Declaration, committing their Nations to a new global partnership to reduce extreme poverty and setting out a series of time-bound targets - with a deadline of 2015 - that have become known as the Millennium Development Goals (MDGs).⁴³⁴ The Declaration was adopted by leaders of 189 members' countries, including the head of governments.

Over the past 16 years, these internationally agreed goals have catalysed global action, prompting unprecedented progress in the expansion of educational opportunities. The United Nations Millennium Declaration articulated a bold vision and established tangible targets for improving the existence of many and for saving the lives. Out of the Declaration, with its ringing words about human rights and justice, was carved a series of more specific goals. These are not the full Declaration, are what the MDGs means.⁴³⁵ That vision, which was translated into eight Millennium Development Goals.⁴³⁶ They were trimmed and slightly reshaped and took the following forms:

1. Eradicate Extreme Poverty & Hunger.
2. Achieve Universal Primary Education.
3. Promote Gender Equality and Empower Women.
4. Reduce Child Mortality.
5. Improve Maternal Health.

⁴³³YashGhai& Jill Cottrell, *The Millennium Declaration, Rights and Constitutions 3* (Oxford University Press, New Delhi, 2011)

⁴³⁴ United Nations, Millennium Summit, 2000, *available at*: <http://www.un.org/millenniumgoals/bkgd.shtml>

⁴³⁵YashGhai& Jill Cottrell, *The Millennium Declaration, Rights and Constitutions 4* (Oxford University Press, New Delhi, 2011)

⁴³⁶ United Nations, *The Millennium Development Goals Report 2015* (United Nations New York, 2015), *available at*: <http://www.un.org/millenniumgoals>

6. Combat HIV/AIDS, Malaria and Other Diseases.
7. Ensure Environmental Sustainability.
8. Develop a Global Partnership for Development.

If a large number of countries, with different philosophies, are to agree to anything, it will usually have to be rather vague and noncontroversial. No country could admit to disagreeing with any of these goals. In fact these goals interact with each other.⁴³⁷ For many targets the year 2015 was taken – so that, taking 1990 as a baseline, twenty-five years were given for the achievement of the targets.

What happened to education rights? And how they should be improved, Education is a human right and should not be dependent upon the kindness of politicians. The Millennium Development Goals (MDGs) do mention primary and secondary education in MDG-2 and MDG-3, but do not acknowledge that every child already has a legal entitlement that goes well beyond access and completion of schooling. This runs the risk of leaving millions of children without the free and compulsory primary education that is owed to them. It also deprives them of the quality education at all levels that is so important for their full development. This is particularly true also for MDG-1 and the target of decent work and full employability. Without relevant education that supports the transition from school to work, another goal will be missed.

Access to education is also in the Millennium Development Goals agreed in 2000 following the Millennium Summit and intended to be achieved by 2015. The Millennium Development Goal-1, Goal-2 and Goal-3 are the most important goals, which cover the “eradicate Extreme Poverty and Hunger”, “achievement universal primary education”, and “promote gender equality and empower women”. The Right to Education Project has prepared briefs on education and MDGs, with recommendations for change, these are as follows:

⁴³⁷YashGhai & Jill Cottrell, *The Millennium Declaration, Rights and Constitutions 5* (Oxford University Press, New Delhi, 2011)

MDG 1: Eradicate Extreme Poverty and Hunger.⁴³⁸ : Education is critical in eliminating economic exploitation and key to ensure an economy that can lift people out of poverty.

Target 1-B: Achieve full and productive employment and decent work for all, including women and young people.

Goal 2: Achieve universal primary education⁴³⁹ : Quality education is a right, must be free and compulsory at least at the primary level, and a major post on the national budgets.

Target 2-A: Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.

Indicators:

1. No one child out of school from primary education.
2. No one poor household child left the primary school in the developing regions.
3. Net enrolment ratio in primary education.
4. Proportion of pupils starting grade 1, who reach last grade of primary.
5. Literacy rate of 15-24 years old, women and men.

Goal 3: Promote gender equality and empower women⁴⁴⁰ : Education is essential to eliminate discrimination and transform social attitudes and power relations

Target 3-A: Elimination gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015.

Indicators:

1. Ratio of girls and boys in primary, secondary and tertiary education.
2. Share of women in wage employment in the non-agricultural sector.
3. Proportion of seats held by women in national parliament.

⁴³⁸*Ibid*, Goal 1

⁴³⁹*Ibid*, Goal 2

⁴⁴⁰*Ibid*, Goal 3

4. To control women experience significant gaps in terms of poverty, labour market and wages, and private and public decision-making.⁴⁴¹

3.15. The World Summit (2005):

The World Summit (WS) 2005, held from 14 to 16 September at United Nations Headquarters in New York, brought together more than 170 Countries.⁴⁴² It was a once-in-a-generation opportunity to take daring decisions in the areas of development, security, human rights and reform of the United Nations. The agenda was based on an achievable set of proposals outlined in March 2005 by Secretary-General Kofi Annan in his report 'In Larger Freedom'.⁴⁴³

A remarkable outcome document took an integrated position by the international community on a wide range of vital matters, including tangible steps towards combating poverty and promoting development to the nation. The World Summit 2005, outcome contained in a resolution adopted by acclamation at the end of third day meeting that was attended by 150 Countries. The outcome document expressed strong and definite commitment by all Nations, in donor and developing nations alike, to achieve the Millennium Development Goals by 2015.

Five Outcomes of World Summit 2005, adopted by the General Assembly of United Nations, these are as follows:

- I. Values and principles.
- II. Development.
- III. Peace and collective security.
- IV. Human rights and the rule of law.
- V. Strengthening the United Nations.

⁴⁴¹ We can End the Poverty - The Millennium Development Goals Beyond 2015, *available at:* <http://www.un.org>

⁴⁴² World Summit Outcome, Resolution adopted by the UN General Assembly on 14-16 September 2005 (60/1. 2005), Distr.: General 24 October 2005, Sixteenth session, Agenda items 46 and 120, High-Level Plenary Meeting of UN General Assembly Headquarters, New York), *available at:* <http://www.un.org>

⁴⁴³ *Ibid.*

The second outcome development has various issues like as Global partnership for development, Financing for development, Domestic resource mobilization, Systemic issues and global economic decision-making, Education, Rural and agricultural development, Sustainable development, Gender equality and empowerment of women, Science and technology for development, etc., education is the most important issue one of them.⁴⁴⁴

All nations strongly reiterate our determination to ensure the timely and full realization of the development goals and objectives agreed at the major United Nations conferences and summits, including those agreed at the Millennium Summit that are described as the Millennium Development Goals, which have helped to stimulate efforts towards poverty eradication.⁴⁴⁵

Thus, the UN underline the critical role of both formal and informal education in the achievement of poverty eradication and other development goals as envisaged in the Millennium Declaration,⁴⁴⁶ in particular basic education and training for eradicating illiteracy, and strive for expanded secondary and higher education as well as vocational education and technical training, especially for girls and women, the creation of human resources and infrastructure capabilities and the empowerment of those living in poverty.⁴⁴⁷

Thereafter, they reaffirm our commitment to support developing country efforts to ensure that all children have access to and complete free and compulsory primary education of good quality, to eradicate gender inequality and imbalance and to renew efforts to improve girls' education. We also commit ourselves to continuing to support the efforts of developing countries in the implementation of the Education for All

⁴⁴⁴ *Ibid.*

⁴⁴⁵ *Ibid.*, para. 17

⁴⁴⁶ Ulrika Peppler Barry (ed.), *Final Report: World Education Forum, Dakar, Senegal, 26-28 April 2000* (UNESCO, France, 2000), available at: <http://www.unesco.org>

⁴⁴⁷ World Summit Outcome, Resolution adopted by the UN General Assembly on 14-16 September 2005 (Distr.: General 24 October 2005), 60/1.2005, Sixteenth session Agenda items 46 and 120, High-Level Plenary Meeting of UN General Assembly Headquarters, New York), para. 43

initiative, including with enhanced resources of all types through the Education for All,⁴⁴⁸ and they commit themselves to promoting education for peace and human development.⁴⁴⁹

3.16. Incheon Declaration (2015):

UNESCO together with UNICEF, the World Bank, United Nations Population Fund (UNFPA), United Nations Development Programme (UNDP), UN Women and *United Nations High Commissioner for Refugees* (UNHCR) organized the World Education Forum⁴⁵⁰ (WEF) 2015 in Incheon, Republic of Korea, from 19-22 May 2015, hosted by the Republic of Korea. Over 1,600 participants from 160 Countries, including over 120 Ministers, heads and members of delegations, heads of agencies and officials of multilateral and bilateral organizations, and representatives of civil society, the teaching profession, youth and the private sector,⁴⁵¹ adopted the Incheon Declaration⁴⁵¹ for Education 2030, which sets out a new vision for education for the next fifteen years.

On this remarkable day, all members of declaration reaffirm the vision of the worldwide movement for Education for All initiated in Jomtien in 1990 and reiterated in Dakar in 2000, the most important commitment to education in recent decades and which has helped drive significant progress in education. They also reaffirm the vision and political will reflected in various international and regional human rights treaties that stipulate the right to education and its inter-relation with other human rights, and adopt the Declaration that, having taken stock of progress made towards the EFA goals since 2000 and the education related MDGs as well as the lessons learned, and having observed the enduring challenges and reflected on the proposed 2030 education agenda and the

⁴⁴⁸ *Ibid.* para. 44

⁴⁴⁹ *Ibid.* para. 45

⁴⁵⁰ World Education Forum 2015, 19-22 May 2015, Incheon, Republic of Korea, *available at*: <https://en.unesco.org/world-education-forum-2015/incheon-declaration>

⁴⁵¹ Incheon Declaration and Framework for Action for the Implementation for Sustainable Development Goal 4 (Publication UNESCO), *available at*: <https://en.unesco.org>

Framework for Action (FFA) as well as on future priorities and strategies for its achievement.⁴⁵²

3.16.1. A New Vision for Education - 2030:

The New Vision for Education of Incheon Declaration for Education 2030 has seven visions, these are as follows:

1. The vision is to transform lives through education, recognizing the important role of education as a main driver of development and in achieving the other proposed SDGs. They commit with a sense of urgency to a single, renewed education agenda that is holistic, determined and ambitious, leaving no one behind. This new vision is fully captured by the proposed SDGs – 4, “Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” and its corresponding targets. It is inspired by a humanistic vision of education and development based on human rights and dignity; social justice; inclusion; protection; cultural, linguistic and ethnic diversity; and shared responsibility and accountability, and reaffirm that education is a public good, a fundamental human right and a basis for guaranteeing the understanding of other rights. It is essential for peace, tolerance, human fulfilment and sustainable development. The Declaration distinguishes education as key to achieving full employment and poverty eradication.⁴⁵³
2. To ensure the provision of 12 years of free, openly funded, equitable quality primary and secondary education, of which at least 9 years are compulsory, leading to relevant learning outcomes. To inspire the provision of at least 1 year of free and compulsory quality pre-primary education and that all children have access to quality early childhood care education and development, and commit to providing meaningful education and training opportunities for the large population

⁴⁵² Preamble, Incheon Declaration, Education 2030: Towards Inclusive and Equitable Quality Education and Lifelong Learning for All (ED-2015/WS/18), Incheon, Republic of Korea, 21 May 2015. *available at:* <https://en.unesco.org>

⁴⁵³ *Ibid*, para. 5

of out of school children and adolescents, who require immediate, targeted and constant action ensuring that all children are in school and learning.⁴⁵⁴

3. Inclusion and equity in and through education is the keystone of a transformative education agenda, and therefore commit to addressing all forms of exclusion and marginalization, disparities and inequalities in access, participation and learning outcomes. No education target should be considered met unless met by all. Therefore, to commit to making the necessary changes in education policies and focusing on access to the most disadvantaged groups, especially those with disabilities, to ensure that no one is left behind.⁴⁵⁵
4. To distinguish the importance of gender equality in achieving the right to education for all. Therefore committed to supporting gender sensitive policies, planning and learning environments, mainstreaming gender issues in teacher training and curricula, and eliminating gender based discrimination and violence in schools.⁴⁵⁶
5. To ensure quality education fosters creativity and knowledge, and ensures the acquisition of the foundational skills of literacy and numeracy as well as analytical, problem-solving and other high-level cognitive, interpersonal and social skills. It also develops the skills, values and attitudes that enable citizens to lead healthy and fulfilled lives, make informed decisions, and respond to local and global challenges through Education for Sustainable Development (ESD) and Global Citizenship Education Development (GCED).⁴⁵⁷
6. To promote quality lifelong learning opportunities for all, in all settings and at all levels of education. This includes equitable and increased access to quality technical and vocational education and training and higher education and research, with due attention to quality assurance. In addition, the provision of flexible learning pathways, as well as the recognition, validation and accreditation of the

⁴⁵⁴*Ibid, para. 6*

⁴⁵⁵*Ibid, para. 7*

⁴⁵⁶*Ibid, para. 8*

⁴⁵⁷*Ibid, para. 9*

knowledge, skills and competencies acquired through non-formal and informal education, is important. To ensuring further, that all youth and adults, especially girls and women, achieve relevant and recognised functional literacy and skill proficiency levels and acquire life skills, and that they are provided with adult learning, education and training opportunities.⁴⁵⁸

7. Furthermore, it is noted with serious concern that, a huge part of the world's out of school population lives in conflict affected areas, and that crises, violence and attacks on education institutions, natural disasters and epidemics continue to interrupt education and development globally. To developing more inclusive, responsive and resilient education systems to meet the needs of children, youth and adults in these contexts, including internally displaced persons and refugees. The need for education to be delivered in safe, supportive and secure learning environments free from violence.⁴⁵⁹

3.16.2. Agenda for Sustainable Development Declaration - 2030:

The Preamble of Transforming our World - the 2030 Agenda for Sustainable Development Declaration⁴⁶⁰ states that, This Agenda is a plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. We recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development.

All countries and all stakeholders, acting in collaborative partnership, will implement this plan. We are resolved to free the human race from the tyranny of poverty and want and to heal and secure our planet. We are determined to take the bold and transformative steps which are urgently needed to shift the world on to a sustainable and

⁴⁵⁸*Ibid, para. 10*

⁴⁵⁹*Ibid, para. 11*

⁴⁶⁰ Draft Outcome Document of the United Nations Summit for the Adoption of the Post-2015 Development Agenda, Sixty-ninth session, Agenda items 13 (a) and 115, Distr.: Limited 12 August 2015, (A/69/L.85), Draft Resolution submitted by the President of the General Assembly, United Nations, Annex, *available at*: <http://www.un.org>

resilient path. As we embark on this collective journey, we pledge that no one will be left behind.

The 17 Sustainable Development Goals and 169 targets which we are announcing today demonstrate the scale and ambition of this new universal Agenda. They seek to build on the Millennium Development Goals and complete what they did not achieve. They seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls. They are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental. The Goals and targets will stimulate action over the next 15 years in areas of critical importance for humanity and the planet.⁴⁶¹

On behalf of the peoples they serve, they have adopted a historic decision on a comprehensive, far-reaching and people-centered set of universal and transformative Goals and targets. They commit themselves to working tirelessly for the full implementation of this Agenda by 2030. They recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. They are committed to achieving sustainable development in its three dimensions - economic, social and environmental, in a balanced and integrated manner. They will also build upon the achievements of the Millennium Development Goals⁴⁶² and seek to address their unfinished business.⁴⁶³

This is an Agenda of unprecedented scope and significance. It is accepted by all countries and is applicable to all, taking into account different national realities, capacities and levels of development and respecting national policies and priorities. These are universal goals and targets which involve the entire world, developed and

⁴⁶¹ *Ibid*, preamble

⁴⁶² The Heads of State and Government and High Representatives, meeting at United Nations Headquarters in New York from 25 to 27 September 2015 as the Organization celebrates its seventieth anniversary, have decided New Global Sustainable Development Goals.

⁴⁶³ Transforming our World - the 2030 Agenda for Sustainable Development Declaration, para. 2

developing countries alike. They are integrated and indivisible and balance the three dimensions of sustainable development.

3.16.3. The Vision of Declaration - 2030:

The declaration has following vision:

1. Wherein, these Goals and targets of the declaration, setting out a supremely ambitious and transformational vision and a world free from poverty, hunger, disease and want, where all life can thrive -
 - a. A world with universal literacy and world with equitable and universal access to quality education at all levels, to health care and social protection, where physical, mental and social well-being is assured;
 - b. A world where we reaffirm our commitments regarding the human right to safe drinking water and sanitation and where there is improved hygiene; and where food is sufficient, safe, affordable and nutritious;
 - c. A world where human habitats are safe, resilient and sustainable and where there is universal access to affordable, reliable and sustainable energy.⁴⁶⁴
2. They envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity -
 - a. A world which invests in its children and in which every child grows up free from violence and exploitation.
 - b. A world in which every woman and girl enjoys full gender equality and all legal, social and economic barriers to their empowerment have been removed.
 - c. A just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met.⁴⁶⁵

⁴⁶⁴*Ibid*, para. 7

3. They envisage a world in which every country enjoys sustained, inclusive and sustainable economic growth and decent work for all –
 - a. A world in which consumption and production patterns and use of all natural resources - from air to land, from rivers, lakes and aquifers to oceans and seas - are sustainable;
 - b. One in which democracy, good governance and the rule of law, as well as an enabling environment at national and international levels, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger;
 - c. One in which development and the application of technology are climate-sensitive, respect biodiversity and are resilient. One in which humanity lives in harmony with nature and in which wildlife and other living species are protected.⁴⁶⁶

The declaration announced 17 Sustainable Development New Goals with 169 associated Targets which are integrated and indivisible.⁴⁶⁷ Never before have had world leaders pledged common action and endeavour across such a broad and universal policy agenda. They set out together on the path towards sustainable development, devoting ourselves collectively to the pursuit of global development and of ‘win-win’ cooperation which can bring huge gains to all countries and all parts of the world. They reaffirm that every State has, and shall freely exercise, full permanent sovereignty over all its wealth,

⁴⁶⁵ *Ibid*, para. 8

⁴⁶⁶ *Ibid*, para. 9

⁴⁶⁷ The new Goals and Targets will come into effect on 1 January 2016 and will guide the decisions we take over the next 15 years. All of us will work to implement the Agenda within our own countries and at the regional and global levels, taking into account different national realities, capacities and levels of development and respecting national policies and priorities. They will respect national policy space for sustained, inclusive and sustainable economic growth, in particular for developing States, while remaining consistent with relevant international rules and commitments.

natural resources and economic activity. We will implement the Agenda for the full benefit of all, for today's generation and for future generations.⁴⁶⁸

Thus, realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets. The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities. Women and girls must enjoy equal access to quality education, economic resources and political participation as well as equal opportunities with men and boys for employment, leadership and decision-making at all levels.⁴⁶⁹

We commit to providing inclusive and equitable quality education at all levels - early childhood, primary, secondary, tertiary, technical and vocational training. All people, irrespective of sex, age, race or ethnicity, and persons with disabilities, migrants, indigenous peoples, children and youth, especially those in vulnerable situations, should have access to life-long learning opportunities that help them to acquire the knowledge and skills needed to exploit opportunities and to participate fully in society. We will strive to provide children and youth with a nurturing environment for the full realization of their rights and capabilities, helping our countries to reap the demographic dividend including through safe schools and cohesive communities and families.⁴⁷⁰

3.16.4. Sustainable Development Goals and Targets Towards - 2030:

The Sustainable Development Goals and Targets⁴⁷¹ are integrated and indivisible, global in nature and universally applicable, taking into account different national realities, capacities and levels of development and respecting national policies and priorities. Targets are defined as aspirational and global, with each Government setting its own national targets guided by the global level of ambition but taking into account

⁴⁶⁸*Ibid*, para. 18

⁴⁶⁹*Ibid*, para. 20

⁴⁷⁰*Ibid*, para. 25

⁴⁷¹ Draft Outcome Document of the United Nations Summit for the Adoption of the Post-2015 Development Agenda, adopted 17 Sustainable Development Goals and 169 Targets

national circumstances. Each Government will also decide how these aspirational and global targets should be incorporated into national planning processes, policies and strategies. It is important to recognize the link between sustainable development and other relevant on going processes in the economic, social and environmental fields.⁴⁷²

Thus, there are different approaches, visions, models and tools available to each country, in accordance with its national circumstances and priorities, to achieve sustainable development; and reaffirm that planet Earth and its ecosystems are our common home and that ‘Mother Earth’ is a common expression in a number of countries and regions.⁴⁷³

There are seventeen most important Sustainable Development Goals as following:

1. End poverty in all its forms everywhere.
2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture.
3. Ensure healthy lives and promote well-being for all at all ages.
4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
5. Achieve gender equality and empower all women and girls.
6. Ensure availability and sustainable management of water and sanitation for all.
7. Ensure access to affordable, reliable, sustainable and modern energy for all.
8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.
9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.
10. Reduce inequality within and among countries.
11. Make cities and human settlements inclusive, safe, resilient and sustainable.
12. Ensure sustainable consumption and production patterns.

⁴⁷²*Ibid.*, para. 55

⁴⁷³*Ibid.*, para. 59

13. Take urgent action to combat climate change and its impacts.
14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development.
15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.
16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.
17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development.

The Sustainable Development Goal - 4 is the most important goal among all of above goals and covers inclusive and equitable quality education and promotes lifelong learning opportunities for all. Education transforms lives and is at the heart of UNESCO's mission to build peace, eradicate poverty and drive sustainable development. Education is a human right for all throughout life and that access must be matched by quality. It has been entrusted to lead the Global Education 2030 Agenda through Sustainable Development Goal - 4. UNESCO provides global and regional leadership in education, strengthens education systems worldwide and responds to contemporary global challenges through education with gender equality an underlying principle. The Goal - 4 is elaborating here -

Goal 4: Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.⁴⁷⁴

Target:

⁴⁷⁴ Draft Outcome Document of the United Nations Summit for the Adoption of the Post-2015 Development Agenda, Sixty-ninth session, Agenda items 13 (a) and 115 (A/69/L.85), Distr.: Limited 12 August 2015, Draft Resolution submitted by the President of the General Assembly (United Nations), Sustainable Development Goal 4

1. Ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes by 2030.
2. Ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education by 2030.
3. Ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university by 2030.
4. Substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship by 2030.
5. Eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations by 2030.
6. Ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy by 2030.
7. Ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development by 2030.
 - a. Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all;
 - b. Substantially expand globally the number of scholarships available to developing countries, in particular least developed countries, small island developing States and African countries, for enrolment in higher education, including vocational training and information and communications

technology, technical, engineering and scientific programmes, in developed countries and other developing countries by 2020;

- c. Substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially least developed countries and Small Island developing States by 2030.

CHAPTER – 4

NATIONAL LEGAL FRAMEWORK WITH REGARD TO RIGHT TO EDUCATION OF CHILDREN

“A good head and good heart are always a formidable combination. But when you add to that a literate tongue or pen, then you have something very special”.

----**Nelson Mandela** (1918-2013)⁴⁷⁵

Education plays an important role in building a good society, it also promotes for good governance and transparency in a State. The growth and development of a State is primarily depending upon the quality of education given to the people. The State has the obligation to ensure elementary education to all irrespective of one’s religion, race, caste and place of birth⁴⁷⁶. Education seeks to build up the personality of the pupil by assigning his physical, intellectual, moral and emotional development. Education is enlightenment. It is the one that lends dignity to a man.⁴⁷⁷

Education is a basic human right and is the foundation of a free and fulfilled life.⁴⁷⁸ A right is something, which one is entitled to and which one can claim. Having a right means that someone else has an obligation. If someone has the right to free education, then the government or school cannot demand one to pay to access education.

⁴⁷⁵ Ann Kannings, “Nelson Mandela His Words,” *Lulu Press, Inc*, (22-Jan, 2014). Nelson Mandela quotes, South African Statesman First Democratically Elected State President of South Africa (1994), 1993 Nobel Prize for Peace, (Birth 1918) available at: https://en.wikiquote.org/wiki/Talk:Nelson_Mandela

⁴⁷⁶ C. Basavaraju and B.P. Mahesha, “Right to Education as a Constitutional Perspective” Vol. XXXVII (3&4) *Indian Bar Review* 19p. (July-December 2010)

⁴⁷⁷ *University of Delhi and Anr. v. Ram Nath*, AIR 1963 SC 1873, (Supreme Court on dated Apr.-01-1963, Justice, K.C. Das Gupta, K.N. Wanchoo, and P.B. Gajendragadkar), This word observed by Justice, P.B. Gajendranath

⁴⁷⁸ Swarupam Chaturvedi, “Fundamental Right To Education: Myth or Reality” Vol. 39, No. 1-4 *Journal Of Constitutional And Parliamentary Studies*, 163p. (January-December, 2005)

Education is an important part of social and cultural life. The realisation of the right to development of every human being and nation is impossible without the recognition of the right education. Education is the key to breaking the malicious circle of ignorance and exploitation and empowering weaker sections of the society including women and girls to improve their lives. Through education, the individuals learn about their rights and fundamental freedom. Education is necessary to make them aware about their political, economic and legal rights as well as the knowledge about protective mechanism in case of violation of these rights. There is a close link between poverty and lack of education and the way it affects the lives of men and women. There is therefore no question that illiteracy has to be eradicated at all costs. It has therefore been acknowledge at a global level that life-long and sustained education improves the quality of life.⁴⁷⁹

‘Children’ and ‘education’ – these two terms are suggestive of an elementary condition of human existence. Human life is determined by a continuous change of generations.⁴⁸⁰ Every human being comes into the world as very small children, grow up and into the world they encounters become adults, and old, and finally leave this world. For the universal ‘anthropological factor’ of growing up, a classic formulation referring to the need of education is to be found with Immanuel Kant⁴⁸¹ “the human being can only become human by education.” If children are deprived of or only insufficiently provided with education, they can barely develop and frequently not even survive.⁴⁸² But at the very least, essential opportunities of life are withheld from them. Human beings need a

⁴⁷⁹Subhash Chandra Singh, “Right To Education: Revisiting The Old Agenda”Vol. 1 *All India High Court Cases*, 20p. (January-February, 2005)

⁴⁸⁰ E. Liebue and C. Wulf , “Einleitung” In E. Liebue And C. Wulf (Eds.), *Generation (DeutscherStudienverlag, Weinheim, 1996)*

⁴⁸¹AnnedorePrenal and Bernd Overwien, “Children and the Right to Education” *Revising The Rights Of The Child*, 104p., available at: <https://www.scribd.com>

⁴⁸²Mannoni, Octave, et.at., *Die Wilden Kinder* (Ed. Du Seuil, Paris, 2001)

‘right to education’ because we grow up and because growing up goes along with being educated by others, educating ourselves along the way.⁴⁸³

Thus, children ought not to be seen merely as holders of rights, but also as “social subjects,” i.e. as human beings with specific, subjective properties that, in part, differ from those of adults, but which also – depending on age and development possibilities – may be action competent players.⁴⁸⁴ There is one basic requirement for any cognitive, emotional, and social education of all children – physical well-being. The provision of food, clothing, a home, protection against violence and abuse as well as help when they have experienced violence or are ill, contribute to their well-being. The less this provisioning and help are possible in keeping with the child’s age, the less education will be possible. This is why the right to education fundamentally also depends on the children’s physical condition.⁴⁸⁵

Children’s right to education is not only a human right by itself, but is also instrumental for realising other human rights. Education opens up opportunities of access to good things of life. It brings awareness for development of one’s own personality, for excellence of character, welfare of his or her family and for better human relationship. It enables and motivates better participation in social, political and cultural life of the community. It helps to overcome exploitations and the traditional inequalities of caste, class and gender.

Education leads to ‘liberation from ignorance which shrouds the mind, liberation from superstition which paralyses effort, liberation from prejudices which blind the Vision of the Truth.’⁴⁸⁶ Education is a preparation for living in a better way in future with an ability to participate successfully in the modern economy and society. It is a well proved

⁴⁸³ AnedorePrengal and Bernd Overwien, “Children and the Right to Education” *Revising The Rights Of The Child*, 104p., available at: <https://www.scribd.com>

⁴⁸⁴ *Ibid*

⁴⁸⁵ *Ibid*

⁴⁸⁶ Bhartruhari, NeethiShatakam (First Century B.C.), as cited in Unni Krishnan, *J.P. and Others v. State of Andhra Pradesh and Others*, AIR 1993 SC 2178, Supreme Court on Feb-04-1993, *Bapuji Educational Association v. State*, AIR 1986 Kant. 119, *Ashok Kumar Thakur v. Union of India and Ors.*, (2008)6 SCC 1.

fact that with universalization of education, the community's health standards, life expectancy and leaning for harmonious life get enriched. In brief, education is a key to the civilizational standards, to the process of social transformation and strivings towards excellence. Value addition in human quality and lifestyle or vision takes place with early education.⁴⁸⁷

The right to education is the most potent mechanism for the advancement of human being. It enlarges, enriches and improves the individual's images of future. Education emancipates the human being and leads to liberation from ignorance.⁴⁸⁸ According to Johann Heinrich Pestalozzi,⁴⁸⁹ education is a constant process of development of innate powers of man which are natural, harmonious and progressive. It is said that in the 21th Centaury, a "nation's ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future," accordingly 21st Century is termed as the century of knowledge.

Right to education means that these rights-holders can stand up and that something can be done. Right to education for all is one of the biggest development challenges faced by the International and National community today. Right to education is the most important part of the human development. It is the foundation of free and fulfilled life. Education plays an important role in building a good society; it also promotes good governance and transparency in a state. The growth and development of a state is primarily dependent upon the quality of education given to the people.

The right to education is also an enabling right. Education "creates the 'voice' through which right can be claimed and protected"⁴⁹⁰, and without education people lack

⁴⁸⁷ P. Ishwara Bhat, *Law, Child Welfare and Social Transformation* 651 (Eastern Book Company, Lucknow, 2009)

⁴⁸⁸ Pinki Sharma, "The Right To Education And Human Rights: National And International Perspectives With Special Reference To India" Vol. 52, No. 3 *Indian Journal Of International Law* 389p. (July-September, 2012)

⁴⁸⁹ 02, January 1746 – 17, February 1827 (Switzerland), He was a Swiss pedagogue and educational reformer, available at: <http://en.m.wikipedia.org>

⁴⁹⁰ Kelvin Watkins, *The Oxfem Education Education Report* (Oxfem GB In Association With Oxfem International In 2000, 1stedn., 2000).

the capacity to “achieve valuable functioning as part of the living”.⁴⁹¹ If people have access to education they can develop the skills, capacity and confidence to secure other rights. Education gives people the ability to access information detailing the range of rights that they hold, and government’s obligations. It supports people to develop the communication skills to demand these rights, the confidence to speak in a variety of forums, and the ability to negotiate with a wide range of government officials and power holders.⁴⁹²

As per the separation of powers provided under the Constitution of India adopted in 1950, the subject matter of legislation for children fell in the State List of the Seventh Schedule of the Constitution. For this reason, even though, there was a crying need for a uniform countrywide legislation, but the same could not be enacted. The Constitutional scheme, thus while recognising the importance of affairs relating to the welfare of children, however had left matters as education, administration of justice, reformation and other institutions to the prerogative of the States. As a result of the 42nd Constitution (Amendment) Act, 1976, education (Entry No. 25) and administration of justice, Constitution and organisations of all Courts, except the Supreme Court, and the High Court were transferred to the Concurrent List i.e. List - III under the Seventh Schedule of the Constitution.

4.1. Constitutional Provisions with Regard to Right to Education of Children:

15th August 1947 is a red letter day in Indian History when India got freedom. The Constitution of the country was adopted on 26 November 1949 and came into force on 26 January 1950. The Preamble of the Constitution outlines the social philosophy which should govern all our institutions including educational. Right to Education is one of the fundamental rights enshrined in the Constitution of India. The Constitution of India gives a few directions and suggestions for the development of education in the countries which

⁴⁹¹ Amartya Sen, “Capability and Well-Being” in Martha Nussbaum and Amartya Sen (eds.), *The Quality of Life* (Clarendon Press; New York: Oxford University Press, 1993)

⁴⁹² Amartya Sen, “Capability and Well-Being” in Daniel M. Hausman (eds.), *The Philosophy of Economics An Anthology* 370p. (Cambridge University Press, 3rd edn., 2008)

are also called constitutional provisions. In India, constitutional provisions have exercised a direct as well as indirect bearing on education at different stages and indifferent aspects.⁴⁹³

Education is the bedrock of social and economic development. It is only through education that we can hope to eradicate social evils.⁴⁹⁴ The Constitution of India, building of the Nation, the object of social and economic development and equal opportunity is unequivocally enunciated in the preamble of our Constitution promises to secure to all citizens of India - Justice, social, economic, and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of individual and the (unity and integrity of the Nation)⁴⁹⁵.

In the **Golak Nath v. State of Punjab**,⁴⁹⁶ Justice, Subba Rao said that, the preamble to an Act sets out the main objectives which the legislation is intended to achieve. It is a sort of introduction to the statute and many a times very helpful to understand the policy and legislative intent.⁴⁹⁷

In the **Keshavananda Bharati Sripadagalvaru and Others v. State of Kerala and Anr.**,⁴⁹⁸ in this case Supreme Court Justice Shelat, and Justice Grover, said that, the Constitution makers gave to the Preamble “the place of pride.” It embodies in a solemn form all the ideals and aspirations for which the country had struggled during the British regime.

⁴⁹³ R.S.S. Neharu, *Elementary Education* 20p. (S.B. Nangia, A.P.H. Publishing Corporation, New Delhi, 2014)

⁴⁹⁴ Pinki Sharma, “The Right To Education And Human Rights: National And International Perspectives With Special Reference To India” Vol. 52, No. 3 *Indian Journal Of International Law* 400p. (July-September, 2012)

⁴⁹⁵ The Constitution of India, preamble, Subs. By The Constitution (Forty- Second Amendment) Act, 1976, Section 2, for the words “unity of the Nation” (w.e.f. 3.1.1977)

⁴⁹⁶ AIR 1967 SC 1643

⁴⁹⁷ Sir L. KrishnaswamiBharathi, Constituent Assembly of India Debates (Proceedings) – Vol. X, Tuesday, the 11th October 1949, 417. The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr.Rajendra Prasad) in the Chair.

⁴⁹⁸ AIR 1973 SC 1461, (1973)4 SCC 225, (This case decided by large bench of Supreme Court on dated Apr.-24-1973, Chief Justice, S.M. Sikri; Justice, A.N. Grover; Justice, A.N. Ray; Justice, D.G. Palekar; Justice, H.R. Khanna; Justice, J.M. Shelat; Justice, K.K. Mathew; Justice, K.S. Hegde; Justice, M.H. Beg; Justice, P. Jaganmohan Reddy; Justice, S.N. Dwivedi; Justice, Y.V. Chandrachud)

In Re: the **Berubari Union** case⁴⁹⁹ the Supreme Court has said that, the Preamble to the Constitution is a key to open the mind of makers, and shows the general purpose for which they made the several provisions in the Constitution. The Preamble, which is the key to understand the Constitution, emphasises by the very opening words, the democratic nature of the Republic guaranteeing equality of status to all which the people of India had resolved to constitute by adopting, enacting and giving to themselves the Constitution. The personality of the Constitution is developed in Part III dealing with the Fundamental Rights.⁵⁰⁰

Minerva Mills Ltd. and Ors. v. Union of India & Ors.⁵⁰¹ In this case Supreme Court has held that Articles 14, 19 and 21 of the Constitution constitute the golden triangle which affords to the people of this country an assurance that the promise held forth by the Preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculating of the rights to liberty and equality which alone can help preserve the dignity of the individual.

4.2. Right to Education before (Eighty-sixth Amendment) Act, 2002:

On the cumulative reading of the Preamble with Articles 21, 38, 39(a) and (f), 41 and 45 of the Constitution, the Court observed in **Miss. Mohini Jain v. State of Karnataka and Others**⁵⁰² - It is no doubt correct that 'right to education' as such has not been guaranteed as fundamental right under part III of the Constitution, but reading the above quoted provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens.

Constitution is the fundamental law of the country, reflecting the underlying and unifying values of society. It spells out the basic rights of each person; it serves as a framework for all other laws and policies, and cannot be easily changed. However, it can

⁴⁹⁹ AIR 1960 SC 845

⁵⁰⁰ *R.C. Poudyal & Anr. vs. Union of India & Ors.* [1993] INSC 77 (10 February 1993), para, 28, 1993 AIR 1804 available at: <http://www.advocatekhoj.com>

⁵⁰¹ (1980)3 SCC 625

⁵⁰² AIR 1992 SC 1858, (1992)3 SCC 666, (decided on Jul.-30-1992)

be amended and updated through a democratic process, and it is important to keep it alive, by popularising and using it, and by campaigning for its reform or amendment, if necessary. The most relevant articles are given here, but we should encourage reading the constitution in its totality.⁵⁰³ The State is the main agency in any claim to the right to education: it is the prime duty-bearer and the prime implementer; it is the guarantor; and it is the state's signature in relation to the international norms and standards, which binds it to respect, protect and fulfil the right to education. The state must, therefore, be judged or challenged on its central text on the right to education, whether this is the constitution, the laws or the policies.⁵⁰⁴

Thus, **Unnikrishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.**,⁵⁰⁵ in this case Supreme Court held that right to education is implicit in and flows from the right to life guaranteed by Article 21 of the Constitution. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world. The need of education has been duly and rightly stressed. Therefore court observed that, we agree with the observation that without education being provided to the citizens of this country, the objectives set forth in the Preamble of the Constitution cannot be achieved. The Constitution would fail. We do not think that the importance of education could have been better emphasised than in the above words.⁵⁰⁶

The founding fathers of Indian Constitution had the vision of time bound policy of free and compulsory education for all children until they complete the age of 14 years, this was introduced as a Directive Principle of State Policy.⁵⁰⁷ Although expected to be

⁵⁰³Naushad Husain, "The Right To Education: A Conceptual Framework" in Naushad Husain (Ed.) Right To Education: Retrospect and Prospects 63 (Shipra Publications, New Delhi, 2014)

⁵⁰⁴*Ibid*

⁵⁰⁵AIR 1993 SC 2178; (1993)1 SCC 645, (Supreme Court on Feb.-04-1993, Chief Justice, L.M. Sharma; Justice, S. Ratnavel Pandian; Justice, S. Mohan; Justice, B.P. Jeevan Reddy and; Justice, S.)

⁵⁰⁶*Ibid*

⁵⁰⁷ As original Article 45 of the Directive Principles of State Policy, newly adopted the Constitution of India, provides, the provision for free and compulsory education for children, "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.

fundamental in the governance of the State, due to apathy and lack of adequate social will, universal primary education was destined to remain as an unfulfilled promise. Judicial activism in reading the Directives into fundamental Rights, especially right in life under Article 21 resulted in recognition of right to life as a component of right to dignified life⁵⁰⁸ in **Miss. Mohini Jain v. State of Karnataka and Others**,⁵⁰⁹ and **Unni Krishnan, J.P. and Others v. State of Andhra Pradesh**⁵¹⁰ cases.

Right to Education and the Constitution of India Right from the Preamble of the Constitution of India, which assures the dignity of the individual, our Constitution has incorporated Articles 41, 45, 46 in the part IV of Directive Principles of State Policy (DPSP). Further, to protect the educational interest of religious and linguistic minorities special provisions have been made by inserting Fundamental Rights in Part III under Article 30, entitling them to establish and administer educational institutions of their choice. Further Article 26 provides that every religious denomination or any section thereof have been authorized to establish and maintain institutions for religious and charitable purposes.

Article, 41 of the Indian Constitution provides that, the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.⁵¹¹

The first step towards right to education was taken right after Independence in 1950 when the Constitution (Art. 45) by way of a directive principle promised free and compulsory education within 10 years (by 1960). It is true the framers of the Constitution

⁵⁰⁸ P. Ishwara Bhat, Law, Child Welfare and Social Transformation 651 (Eastern Book Company, Lucknow, 2009)

⁵⁰⁹ *Miss. Mohini Jain v. State of Karnataka and Others*, AIR 1992 SC 1858; (1992)3 SCC 666, (decided on Jul.-30-1992)

⁵¹⁰ *Unni Krishnan, J.P. and Others v. State of Andhra Pradesh*, AIR 1993 SC 2178, (1993)1 SCC 645, (decided by Supreme Court on dated Feb.-04-1993, Chief Justice, L.M. Sharma; Justice, S. Ratnavel Pandian, S. Mohan, B.P. Jeevan Reddy, and Justice S.)

⁵¹¹ The financial condition of India at the time of our independence was also discussed in the Constituent Assembly Debates, Vol. VII at pages 909-910 of the (1948-49) wherein it was stated that, "In the directives we have provided that in fifteen years' time there should be universal primary education. But no one knows whether the financial and other conditions in the country would permit of universal primary education to be established even then."

took that view. Article 45 of the Directive Principles of State Policy, newly adopted in the Constitution of India, provides, the provision for free and compulsory education for children, “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.”⁵¹²

Article 46 provides that, provision for 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.”

The question was whether it was sufficient in order to attain the Constitutional goals of Justice, Liberty, Equality and Fraternity as laid down in Preamble of our Constitution? On one front as set down in part III of our Constitution by way of Articles 26 and 30, they did not make provisions for holistic perspective. On the other front part IV of the Constitution, after incorporating provisions like Articles 41, 45 and 46 made them non-justiciable rights. Furthermore, the failure of the policy makers in implementing the provisions of Article 45 even after six decades after the constitutional mandate of 10 years, made the thing more aggravated.

4.2.1. Other Provisions Contained in the Constitution Relating to Right to Education:

Provisions relating to education under Indian constitution are of different nature. Some provisions are fundamental rights of citizens and some are only directives to the government under Directive Principles of State Policy. Some of the specific provisions of the Constitution containing in part III deal with fundamental rights and Fundamental Duties in part IV.

⁵¹²The Constitution of India, art. 45, it was before Constitution (Eighty-sixth Amendment) Act, 2002.

Article 14 deals with the “Right to Equality” - equality before law, the State shall not deny to any person equality before law or the equal protection of law within the territory of India.

Article 15 mandates the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth -

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.⁵¹³
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to –
 - a. Access to shops, public restaurants, hotels and places of public entertainment; or
 - b. The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.⁵¹⁴
3. Nothing in this Article shall prevent the State from making any special provisions for women and children.⁵¹⁵
4. Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.⁵¹⁶
5. Nothing in this Article or in sub-clause (g) of clause (1) of Article 19 shall prevent the State from making any special provision, by law, for advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes insofar as much special provisions relate to their

⁵¹³The Constitution of India, art. 15(1)

⁵¹⁴*Ibid*, art. 15(2)

⁵¹⁵*Ibid*, art. 15(3)

⁵¹⁶*Ibid*, art. 15(4), Ins. By the Constitution (First Amendment) Act, 1951, Sec. 2

admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.⁵¹⁷

Article 21 mandates protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 24 mandates the prohibition of employment of children in factories etc.- which provides that, no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 25 mandates freedom of conscience and free profession, practice and propagation of religion –

1. Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
2. Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law –
 - a. Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - b. Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

In this way, the wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Furthermore, in sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the

⁵¹⁷*Ibid*, art. 15(4), Ins, by the Constitution (Ninety-third Amendment) Act, 2005 (No. 93 of 2005), Sec. 2, vide notification No. S.O. 72 (E), dated 20th January, 2006, published in the Gazette of India (Extraordinary) Part II, Sec. 3 (II), dated 20th January, 2006. *available at*: <http://indiacode.nic.in>

Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26 mandates freedom to manage religious affairs, which provides that, subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

- a. To establish and maintain institutions for religious and charitable purpose;
- b. To manage its own affairs in matter of religion.

Article 28 mandates freedom as to attendance at religious instruction or regions worship in certain educational institutions –

1. No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
2. Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
3. No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

Therefore, if they partially or partially funded by the government only those institutions have to follow this Article.

Article 29 provides that, protection of interests of minorities –

1. Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

2. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Miss. Ravneet Kaur v. Christian Medical College and Others⁵¹⁸, Punjab and Haryana High Court observed that, the private educational institution is not immune from judicial surveillance of the Supreme Court or High Court. Clause 2 of Article 29 debars any educational institution receiving aid out of the State funds from denying admission on grounds “only of religion, race, caste, language.....” In other words, the provision confers a fundamental right on every citizen not to be discriminated against in the matter of admission even by a private Educational Institution receiving financial aid from the Government on the grounds of religion etc. Article 30 embodies a special provision in respect of the religious and linguistic minorities.

Article 30 mandates right of minorities to establish and administer educational institutions, which provides that -

1. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

Thereafter, Article 30(1-A) provides in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.⁵¹⁹

2. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

⁵¹⁸*Miss. Ravneet Kaur v. Christian Medical College and Others*, AIR 1998 P&H 1 (FB)

⁵¹⁹Ins. By the Constitution (Forty-fourth Amendment) Act, 1978, Sec. 4 (w.e.f. 20.06.1979)

P.A. Inamdar and Others v. State of Maharashtra and Others⁵²⁰, Supreme Court held that, the Article 30(1) speaks of ‘educational institutions’ generally and so does Article 29(2). Articles 29 and 30 confer certain educational and cultural rights as fundamental rights.

T.M.A. Pai Foundation v. State of Karnataka⁵²¹ Supreme Court held that, the right to establish and maintain educational institutions may also be sourced to Article 26(a), which grants, in positive terms, the right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognized head of charity. Therefore, religious denominations or sections thereof, which do not fall within the special categories carved out in Article 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. This would allow members belonging to any religious denomination, including the majority religious community, to set up an educational institution. Given this, the phrase “private educational institution” as used in this judgment would include not only those educational institutions set up by the secular persons or bodies, but also educational institutions set up by religious denominations; the word “private” is used in contradistinction to government institutions.

Thereafter, Directive Principles of State Policy of Article 39, mandates certain principles of policy to be followed by the State – which says that, the State shall, in particular, direct its policy towards securing - 39(a) provides that the citizen, men and women equally, have the right to an adequate means of livelihood; and 39(e) provides that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength; thereafter, Article 39(f) provides that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom

⁵²⁰*P.A. Inamdar and Others v. State of Maharashtra and Others*, (2005) 6 SCC 537

⁵²¹*T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481

and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Further, new Article 39-A, which inserted by (Forty-Second Amendment) Act, 1976 provides, equal justice and free legal aid- the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.⁵²²

The framers of the Constitution have provided for legislation on education by competent legislature. According to the Article 246, education was a State subject in Entry 11 placed in List II State List. By the Constitution (Forty-Second Amendment) Act, 1976,⁵²³ the above said Entry was deleted and a new Entry 25 was inserted in List III Concurrent List.⁵²⁴ Entry 25 incorporates education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I vocational and technical training of labour. As regarded legislative competence regarding education, following entries may be referred to -

Entries Mentioned in Union List:

This list contains 97 subjects where the following entries are related to education -

Entry 62:-The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

⁵²²The Constitution of India, Article 39-A, Ins. by the Constitution (Forty-second Amendment) Act, 1976, Sec. 8 (w.e.f. 31.01.1977)

⁵²³The Constitution of India, Constitution 42nd Amendment Act, 1976 (w.e.f. 03.01.1977), it was 44th Amendment Bill, 1976 (Bill No. 91 of 1976) which was enacted as the Constitution (42nd Amendment) Act, 1976

⁵²⁴The Constitution of India (Forty-second Amendment) Act, 1976 making education a subject of Concurrent List, where Parliament and State legislature both can make law.

Entry 63:-The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the (Delhi University; the University established in pursuance of Article 371-E)⁵²⁵ any other institution declared by Parliament by law to be an institution of national importance.

Entry 64:-Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

Entry 65:-Union agencies and institutions for -

- a. Professional, vocational or technical training, including the training of police officers; or
- b. The promotion of special studies or research; or
- c. Scientific or technical assistance in the investigation or detection of crime.

Entry 66:-Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

⁵²⁵The Constitution of India, Subs. by the Constitution (Thirty-second Amendment) Act, 1973, Sec. 4, for the words "Delhi University and" (w.e.f. 01.07.1974)

Entry Mentioned in State List:

State list contains of 66 subjects, out of which the following is entries related to education –

Entry 12:-According to this entry all libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those (declared by or under law made by Parliament)⁵²⁶ to be of national importance.

Entries Mentioned in Concurrent List:

It comprises 47 entries, among them the following are related to education -

Entry 25:-Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.⁵²⁷

Entry 26:-Legal, medical and other professions.

Entry 39:-Newspapers, books and printing presses.

After that, other Articles discussed here as - Article 343 - Hindi in Devanagari Script is considered as an official or national language of the country. Article 350-A – Facilities for instruction in mother-tongue at primary stage, “it shall be the endeavour of every State and of every local authority whiten the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.⁵²⁸

⁵²⁶Subs. by the Constitution (Seventh Amendment) Act, 1956, Sec. 27, for the words “declared by Parliament by law”

⁵²⁷Entry 25, Ins. by the Constitution (Forty-Second Amendment) Act, 1976, Sec. 57, (w.e.f. 3.1.1977)

⁵²⁸The Constitution of India, art. 350-A, Ins. by the Constitution (Seventh Amendment) Act, 1956, Sec. 21

Article 350-B – provides Special Officer for linguistic minorities – (1) there shall be a Special Officer for linguistic minorities to be appointed by the President. (2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.⁵²⁹

Article 351 - provides directive for development of the Hindi language - It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

4.2.2. Right to Education under Article 21:

Article 21 of the Indian Constitution mandates that no person shall be deprived of his life or personal liberty except according to procedure established by law. This is interpreted to mean ‘due process of law’.⁵³⁰ The bare of the poverty is the root of the child labour and they are being subjected to deprivation of their meaningful right to life, leisure, food, shelter, medical aid and education. Every child shall have, without any discrimination on the ground of caste, birth, colour, sex, language, religion, social origin, property or birth alone, right to health, well-being, education and social protection.

The expression of ‘life’ used in Article 21 cannot be confined only to the taking away of life, i.e., causing death. In **Munn v. Illinois**⁵³¹, Justice Field, defined ‘life’ in the

⁵²⁹The Constitution of India, art. 350-B, Ins. by the Constitution (Seventh Amendment) Act, 1956, Sec. 21

⁵³⁰*Bandhua Mukti Morcha Etc. v. Union of India and Others*, (1997)10 SCC 549 (Supreme Court on Feb.-21-1997, Justice, K. Ramaswamy; and Justice, S. Saghir Ahmad)

⁵³¹*Munn v. Illinois*, (1877)94 U.S. 113

following words – “Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.”

Right to education is a fundamental right. The fundamental rights have two aspects - they act as fetter on plenary legislative powers and, secondly, they provide conditions for fuller development of our people including their individual dignity. Right to live in Article 21 covers access to education. But unaffordability defeats that access. It defeats the State's endeavour to provide free and compulsory education for all children of the specified age. To provide for free and compulsory education in Article 45 is not the same thing as to provide free and compulsory education. The word ‘for’ in Article 45 is a preposition. The word ‘education’ was read in Article 21. However, Article 21 merely declared ‘education’ to fall within the contours of right to live.⁵³²

Article 21, which is the heart of fundamental rights has received expanded from time to time there is no justification as to why it cannot be interpreted in the light of Article 45 wherein the State is obligated to provide education up to 14 years of age, within the time limit.⁵³³

Article 21 is the fundamental right of every one in this country, assured under the interpretation given to Article 21 in **Francis Coralie Mullen’s Case**,⁵³⁴ right to live with human dignity means that, free from exploitation of every one.

The ‘right to live’ with ‘human dignity’ enshrined in Article 21 derives its life breath the Directive Principles of State Policy and particularly Clauses (e) and (f) of

⁵³²*Society for Un-aided Private Schools of Rajasthan v. UOI & Anr.*, 2012(6) SCC 1; 2012(4) SCJ 318 (decided on 12 April, 2012).

⁵³³*Unnikrishanan, J.P. and Others v. State of Andhra Pradesh and Others*, AIR 1993 SC 2178; (1993)1 SCC 645 (Supreme Court on Feb.-04-1993, Chief Justice, L.M. Sharma; Justice, S. Ratnavel Pandian; Justice, S. Mohan; Justice, B.P. Jeevan Reddy and; Justice, S.)

⁵³⁴*Francis Coralie Mullin v. the Administrator, Union Territory of Delhi and Others*, AIR 1981 SC 746, (1981)1 SCC 608, (Supreme Court on Jan.-13-1981) Justice, P.N. Bhagwati, Justice Fazalali, Justice Syed Murtaza

Article 39 Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, unities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.⁵³⁵

In the case of **Miss. Mohini Jain v. State of Karnataka and Others**⁵³⁶ the Supreme Court of India held that, it is no doubt correct that “right to education” as such has not been guaranteed as fundamental right under Part III of the Constitution but Article 21, read with the Articles 39(a), (e) and (f), 41 and 45 of the Constitution provisions cumulatively it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens. The preamble of our Constitution promises to secure to all citizens of India ‘justice, social, economic and political’, ‘liberty of thought, expression, belief, faith and worship’. It further provides ‘equality of status and of opportunity’ and assures dignity of the individual.

The Supreme Court India (Justice, Kuldeep Singh and Justice, R.M. Sahai) held that, the objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three pronged justice promised by the preamble is only an illusion to the teeming million who are illiterate. It is only the education which equips a citizen to participate in achieving the objectives enshrined in the preamble. The preamble further assures the dignity of the individual. The Constitution seeks to achieve this object by guaranteeing fundamental rights to each individual which he can enforce through court of law if necessary. The directive principles in Part IV of the Constitution are also with the same objective. The dignity of man is inviolable. It is

⁵³⁵ *Bandhua Mukti Morcha v. Union of India & Others*, AIR 1984 SC 802; (1984)2 SCR 67 (Supreme Court on Dec.-16-1983, Justice, P.N. Bhagwati, Justice R.S. Pathak Justice Amarendra Nath Sen).

⁵³⁶ AIR 1992 SC 1858; (1992)3 SCC 666 (decided on Jul.-30-1992)

the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man.⁵³⁷

Thus, Article 21 cannot be read in isolation and right to live under Article 21 is not restricted to mere animal existence⁵³⁸ rather something including within its ambit the right to live with human dignity.⁵³⁹ An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him.⁵⁴⁰ The State government was held duty bound to make endeavour to provide educational facilities at all levels.⁵⁴¹ This was the landmark judgment on interpreting the right to life with the Directive Principles of State Policy and advocating for right to education.

Dr. B.R. Ambedkar has said that, “In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip-service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country.”⁵⁴²

Thereafter, the larger bench of the Supreme Court of India, in the case of **Unnikrishanan, J.P. and Others v. State of Andhra Pradesh and Others**⁵⁴³ though upheld that right to education flows from Article 21 but at the same time Apex Court

⁵³⁷*Miss. Mohini Jain v. State of Karnataka and Others*, AIR 1992 SC 1858; (1992)3 SCC 666, (Justice Kuldeep Singh may be called as a champion in the field of right to education because earlier no judge could take such a bold step in the recognition of right to education as a fundamental right although many judges indirectly recognized the importance of education), decided on Jul.-30-1992.

⁵³⁸*Munnun v. Illinois*, 94 US 113, and also quoted in *Francis Coralie Mullin v. the Administrator, Union Territory of Delhi and Others*, AIR 1981 SC 746

⁵³⁹*Smt. Maneka Gandhi v. Union of India and Others*, AIR 1978 SC 597

⁵⁴⁰*Miss. Mohini Jain v. State of Karnataka and Others*, AIR 1992 SC 1858; (1992)3 SCC 666.

⁵⁴¹*Ibid*

⁵⁴²Constituent Assembly Debates On 23 November, 1948, VOL. VII, Tuesday, the 23rd November 1948, *available at*: <http://indiankanoon.org/doc/870715>, see also *Ibid*, para. 8

⁵⁴³AIR 1993 SC 2178; (1993)1 SCC 645, (Supreme Court on Feb.-04-1993, Chief Justice, L.M. Sharma; Justice, S. Ratnavel Pandian; Justice, S. Mohan; Justice, B.P. Jeevan Reddy and; Justice, S.)

limited its scope to the targeted group of children until they complete the age of fourteen years. The Supreme Court has duly recognized the importance of education and opined that – “If really Article 21, which is the heart of fundamental rights has received expanded from time to time there is no justification as to why it cannot be interpreted in the light of Article 45 wherein the State is obligated to provide education up to 14 years of age, within the time limit.” The Directive Principles contained in Part IV constitute the stairs to climb the High edifice of a socialistic State and the Fundamental Rights are the means through which one can reach the top of the edifice.⁵⁴⁴

Further, the Supreme Court of India commented on the quality of the teaching many a time in its judgment. Allowing ill-trained teachers coming out of unrecognized institutes or licensing them to teach the children of impressionable age contrary to the norms prescribed will be detrimental to the interest of the nation itself in the sense that in the process of building a great nation teachers and educational institutions also play vital role. In cases like these, interest of individuals cannot be placed above or preferred to larger public interest.⁵⁴⁵

Right to education is a fundamental right under Article 21-A. It is said that another fundamental right to life encompasses more than a breath and a heartbeat. In reflecting on the meaning of ‘personal liberty’ in Articles 19 and 21, we have held that ‘personal liberty’ is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the ‘personal liberties’ of man.⁵⁴⁶

4.3. Right to Education after (Eighty-sixth Amendment) Act, 2002:

After the Constitution (Eighty-six Amendment) Act, 2002 made specific provisions in Constitution to facilitate the realisation of free and compulsory education to children between the ages of six to fourteen years as a fundamental right. It guarantees

⁵⁴⁴ *Ibid*

⁵⁴⁵ *L. Muthukumar v. State of Tamil Nadu*, (2000)7 SCC 618

⁵⁴⁶ *Avinash Mehrotra v. Union of India and Others*, (2009)6 SCC 398 (SC on dated Apr.-13-2009, Justice, Dalveer Bhandari, and Lokeshwar Singh Pant)

free and compulsory education to all children between the age group of 6 to 14 years. Correspondingly, the provisions of Article 45 have been amended making it an obligation on the part of the State to impart free education to the children. Amendment in Article 51-A of the Constitution inserting the clause-k has also been made making it obligatory on the part of the parents to provide opportunities for education to their children between the age of 6 to 14 years. Now we can see after **Mohini Jain**⁵⁴⁷ & **Unnikrishanan J.P.**, cases⁵⁴⁸, the process of realizing right to education got augmented. In this regard, mention may be made of the important commissions on education, the Report of Kothari Commission⁵⁴⁹ and second was Report of Saikia Committee⁵⁵⁰.

In the cases of **Miss. Mohini Jain v. State of Karnataka and Others**⁵⁵¹ the Supreme Court held that the right to education is a fundamental right guaranteed under Article 21 of the Constitution and that dignity of individuals cannot be assured unless accompanied by right to education and that charging of capitation fee for admission to educational institutions would amount to denial of citizens right to education and is violation of Article 14 of the Constitution.

Thereafter, in the case of **Unnikrishanan, J.P. and Others v. State of Andhra Pradesh**,⁵⁵² In this case Supreme Court was asked to examine the decision of ‘**Mohini Jain’s case**’ and Supreme Court was affirmed to the extent of holding that the right to

⁵⁴⁷ *Miss. Mohini Jain v. State of Karnataka and Others*, AIR 1992 SC 1858; (1992)3 SCC 666; (1992)3 SCR 658, (decided on Jul.-30-1992)

⁵⁴⁸ *Unnikrishanan, J.P. and Others v. State of Andhra Pradesh and Others*, AIR 1992 1993 SC 2178; (1993)1 SCC 645; (1993)1 SCR 594 (decided by Supreme Court on dated Feb.-04-1993, Chief Justice, L.M. Sharma; Justice, S. Ratnavel Pandian; Justice, S. Mohan; Justice, B.P. Jeevan Reddy and; Justice, S.)

⁵⁴⁹ Raghuram, R.K., “*Recommendations of Kothari Commission*” (New Delhi: Crescent Publishing Corporation, 2009).

⁵⁵⁰ Government of India, Report: *Saikia Committee Report* (New Delhi, Ministry Of Human Resource Development, Department Of Education, 1999). The Constitution of India should be amended to make the right to free and elementary education up to 14 years of age of fundamental right. Simultaneously, an explicit provisions should be made to make it a fundamental duty of every citizen who it a parent to provide opportunities for elementary education to all children up to 14 years of age.

⁵⁵¹ *Miss. Mohini Jain v. State of Karnataka and Others*, AIR 1992 SC 1858; (1992)3 SCC 666; (1992)3 SCR 658, (decided on Jul.-30-1992)

⁵⁵² *Unnikrishanan, J.P. and Others v. State of Andhra Pradesh and Others*, AIR 1992 1993 SC 2178; (1993)1 SCC 645; (1993)1 SCR 594 (decided by Supreme Court on dated Feb.-04-1993, Chief Justice, L.M. Sharma; Justice, S. Ratnavel Pandian; Justice, S. Mohan; Justice, B.P. Jeevan Reddy and; Justice, S.)

education flows from Article 21 of the Constitution and charging of capitation fee was illegal. The Court partly overruled '**Mohini Jain case**' and held that the right to free education is available only to children until they complete the age of 14 years and after that obligation of the State to provide education would be subject to the limits of its economic capacity and development. Private unaided recognised/affiliated educational institutions running professional courses were held entitled to charge the fee higher than that charged by government institutions for similar courses but that such a fee should not exceed the maximum limit fixed by the State. The Court also formulated a scheme and directed every authority to impose that scheme upon institutions seeking recognition/affiliation, even if they are unaided institutions. Supreme Court also recognised the right to education as a fundamental right guaranteed under Article 21 of the Constitution and held that the right is available to children until they complete the age of 14 years.

The Department of Education, Ministry of Human Resources Development (MHRD), Government of India after the judgment in **Unni Krishnan**, made a proposal to amend the Constitution to make the right to education a fundamental right for children up to the age of 14 years and also a fundamental duty of citizens of India so as to achieve the goal of Universal Elementary Education. The Department also drafted a Bill (Constitution - Eighty-third Amendment Bill, 1997) so as to insert a new Article 21-A in the Constitution.

The Constitution (Eighty-third Amendment) Bill, 1997 was presented before the Chairman of Rajya Sabha on dated July 28, 1997, who referred the Bill to a Committee for examination and report. The Committee called for suggestions and views from every individuals, organisations, institutions etc. and finally submitted its report on November 04, 1997. The Committee in its Report referred to the written note received from the Department of Education and stated that, the Department of Education written note stated that the Supreme Court in its judgment in **Unni Krishnan** has held that children of this country have a Fundamental Right to free and compulsory education until they complete

the age of 14 years. This right flows from Article 21 relating to ‘personal liberty’ and its content, parameters have to be determined in the light of Article 41, which provides for right to work, to education and to public assistance in certain cases and Article 45, which provides for free and compulsory education to children up to the age of 14 years. The apex Court has observed that the obligations created by these Articles of the Constitution can be discharged by the State either by establishing institutions of its own or by aiding recognising and granting affiliation to educational institutions.

The Committee recommends that, the Bill be passed subject to the recommendations. The Report was adopted by the Parliamentary Standing Committee on Human Resource Development and submitted the same to the Rajya Sabha on November 24, 1997 and also laid on the Table of the Lok Sabha on same day. The Lok Sabha was however dissolved soon thereafter and elections were declared and that Bill was not further pursued.

After that, The Chairman of the Law Commission who authored the **Unni Krishnan** judgment took up the issue ‘suo moto’ and submitted his 165th Report to the Ministry of Law, Justice and Company Affairs, Union of India vide letter⁵⁵³ stated “Law Commission had taken up the aforesaid subject ‘suo moto’ having regard to the Directive Principles of State Policy of the Constitution of India as well as the decision of the Supreme Court of India.”

Thus, the process of realizing right to education got increased, the Law Commission 165th Report, the Parliamentary Standing Committee Report, and **Unni Krishnan** judgment etc. were the basis on which the Constitution (Ninety-third Amendment) Bill, 2001 was prepared and presented.

Then, these were the statement of objects and reasons of the Bill - With a view to making right to education free and compulsory education a fundamental right, the

⁵⁵³ Report of 165th Law Commission, Ministry of Law, Justice and Company Affairs, Union of India, submitted in vide letter on dated 19.11.1998 (The Report submitted by Justice B.P. Jeevan Reddy Chairman, Law Commission of India (than he was chairman of law commission and the justice of Unnikrishnan, J.P. case)

Constitution (Eighty-third Amendment) Bill, 1997 was introduced in the Parliament to insert a new Article, namely, Article 21-A conferring on all children in the age group of six to fourteen years the right to free and compulsory education. The said Bill was scrutinised by the Parliamentary Standing Committee on MHRD and the subject was also dealt with in its 165th Law Commission Report.

After taking into consideration the Law Commission report, and the recommendations of the Standing Committee of Parliament, the proposed amendments in Part III, Part IV and Part IV-A of the Constitution were made, which are as follows:

- i. To provide for free and compulsory education to children in the age group of six to fourteen years and for this purpose, a legislation would be introduced in parliament after the Constitution (Ninety-third Amendment) Bill, 2001 is enacted;
- ii. To provide in Article 45 of the Constitution that the State shall endeavour to provide early childhood care and education to children below the age of six years; and
- iii. To amend Article 51-A of the Constitution with a view to providing that it shall be the obligation of the parents to provide opportunities for education to their children.

The Bill was introduced in the parliament in 1997 and bill acquired the Statues of a Constitution (Eighty-sixth Amendment) Act, 2002, subsequent to considerable internal and external pressure.⁵⁵⁴ By the way of Constitution (Eighty-six Amendment) Act, 2002, the right to education has been explicitly declared as a fundamental right by inserting a newly Article 21-A.⁵⁵⁵ The Amendment Act has provided three insertions⁵⁵⁶ in the Constitution of Indian, there are as follows:

⁵⁵⁴The Constitution (Eighty-Six Amendment) Act, 2002 (Act No. 65 of 2002). The bill was passed and received the assent of the President on 12-12-2002 and Act was published in the Gazette of India (Extraordinary) Part II. Sec. 1, on dated 13-12-2002.

⁵⁵⁵ Here it is pertinent to mention that India is going to top with the largest demographic dividend in the world but, the true benefit of it can only be reaped if this dividend is sound and fruitful. Capacity building of our demographic dividend by imparting free and compulsory education is the only solution in the contemporary world of cut throat

Part III – Fundamental Rights:

Article 21-A: Right to Education - which mandates, “The State shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may, by law, determine.”⁵⁵⁷

Part IV – Directive Principles of State Policy:

Article 45: Provision for early childhood care and education to children below the age of six years - that provides, “The State endeavour to provide early childhood care and education for all children until they complete the age of six years.”⁵⁵⁸

Part IV-A – Fundamental Duties:

Article 51-A: It shall be the duty of every citizen of India --- In Article 51-A, after clause (j), the following clause (k) has been inserted:

“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.”⁵⁵⁹

To provide for right to access education, Article 21-A was enacted to give effect to Article 45 of the Constitution. Under Article 21-A, right is given to the State to provide by law ‘free and compulsory education’. Article 21-A contemplates making of a law by the State. Thus, Article 21-A contemplates right to education flowing from the law to be made which is the 2009 Act, which is child centric and not institution centric. Thus, as stated, Article 21-A provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine.

competition otherwise; it could be converted into a demographic deficit (Deliberations of Prof. Moot Chand Sharma on the topic). So it was not only the social aspects which were responsible for the Constitution (Eighty-sixth Amendment) Act, 2002, but also the economic aspects which emerged particularly after the emergence of LPG world in the early 1990s.

⁵⁵⁶*Ibid.*, Inserted new Article 21-A in Part III of the Constitution, and replaced Article 45 in Directive Principles of State Policy, and new Article 51-A(k) added as Fundamental Duties in Part IV-A of the Constitution.

⁵⁵⁷Ins. By the Constitution (Eighty-six Amendment) Act, 2002, Sec. 2

⁵⁵⁸Subs. By the Constitution (Eighty-six Amendment) Act, 2002, Sec. 3

⁵⁵⁹Ins. by the Constitution (Eighty-six Amendment) Act, 2002, Sec. 4

The manner in which this obligation will be discharged by the State has been left to the State to determine by law.⁵⁶⁰

Thus, Article 21-A of the Constitution should be divided into three parts as– first, the State shall provide free and compulsory education to all children of the age of six to fourteen years, and second; the Right to Free and Compulsory Education referred to in part first shall be enforced in such manner as the State may, by law, determine, and third; the State shall make any law, for free and compulsory education under part second, in relation to aided and un-aided educational institutions.

Therefore, the Constitution (Eighty-sixth Amendment) Act, 2002 makes elementary education a fundamental right and its consequential legislation. To enforce Article 21-A parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009⁵⁶¹. The Act came into force 1 April, 2010. Therefore now we have reached a historic milestone in our country's struggle for children's right to education.⁵⁶²

4.3.1. Right to Education as a Fundamental Right under Article 21-A:

The Constitution of India has also directed the State to provide elementary education to all up to the age of 14 years. The Supreme Court of India has also recognized the right to education as a fundamental right under in Article 21-A of the Indian Constitution. In view of the importance of Article 21-A, it is imperative that the education which is provided to children in the primary schools should be in the safety environment.⁵⁶³

The right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21-A, which reads as follows,

⁵⁶⁰2012(6)SCC1; 2012(4)SCJ318 (Supreme Court on dated Apr.-12-2012). This Judgment has delivered by the three Judges – Chief Justice, S.H. Kapadia, Justice, Swatanter Kumar and Justice, Radhakrishnan. The judgement was delivered by majority of Chief Justice S.H. Kapadia and Justice, Swatanter Kumar

⁵⁶¹ The Rights of Children to Free and Compulsory Education Act 2009 (Act 35 of 2009)

⁵⁶² Received the assent of the President on the 26th August, 2009 and Act Published in the Gazette of India (Extraordinary) Part II Section 1 dated 27-8-2009 Pages 1-13.

⁵⁶³ *Avinash Mehrotra v. Union of India and Others*, (2009)6 SCC 398 (This case has decided by Supreme Court on dated Apr.-13-2009, Justice, Dalveer Bhandari, and Justice Lokeshwar Singh Pantia)

places an obligation primarily on the State: “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 51-A(k), which reads as follows, places burden squarely on the parents: Fundamental duties – “it shall be the duty of every citizen of India who is the 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.”

The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two Articles also balance the relative burdens on parents and the State. Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State’s resources. The right to education, then, is more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society.⁵⁶⁴

Under Article 21-A, it is a mandatory obligation of the State to provide free and compulsory education to all children age of six to fourteen years. In order to achieve this constitutional mandate, the State has to place much greater emphasis on allocating more funds for primary and secondary education. There is no corresponding constitutional right to higher education. The entire Nation's progress virtually depends upon the proper and effective implementation of Article 21-A.⁵⁶⁵

4.3.2. Right to Education: Free and Compulsory:

The RTE, Act 2009 makes the Right of Children to Free and Compulsory Education justiciable, and envisages that each child must have access to a neighborhood school. It has been enacted keeping in mind the crucial role of Universal Elementary Education for strengthening the social fabric of democracy through provision of equal

⁵⁶⁴*Ibid*

⁵⁶⁵(2008)6 SCC 1, (Supreme Court on Apr.-10-2008, Justice, Dalveer Bhandari)

opportunities to all. The Directive Principles of State Policy enumerated in our Constitution lay down that the State shall provide free and compulsory education to all children up to the age of 14 years. The RTE, Act provides for right of children to free and compulsory admission, attendance and completion of elementary education in a neighborhood school.

The word 'Free' in the long title to the RTE Act, stands for removal by the State of any financial barriers that prevents a child from completing years of schooling.

The word 'Compulsory' in that title stands for compulsion on the State and the parental duty to send children to school. To protect and give effect to this right of the child to education as enshrined in Article 21 and Article 21-A of the Constitution. Article 21-A provides for free and compulsory education to all children of the age 6 to 14 years and also casts an obligation on the State to provide and ensure admission, attendance and completion of elementary education in such a manner that the State may, by law, determine.

The provisions of RTE Act are intended not only to guarantee right to free and compulsory education to children, but it also envisages imparting of quality education by providing required infrastructure and compliance of specified norms and standards in the schools. The Preamble of RTE Act enacted inter-alia to provide for free and compulsory education to all children of the age of 6 to 14 years.

The RTE Act is, therefore, enacted to provide for free and compulsory education to all children of the age 6 to 14 years and is anchored in the belief that the values of equality, social justice and democracy and the creation of just and humane society can be achieved only through a provision of inclusive elementary education to all the children. Provision of free and compulsory education of satisfactory quality to the children from disadvantaged groups and weaker sections, it was pointed out, is not merely the responsibility of the schools run or supported by the appropriate government, but also of schools which are not dependent on government funds.

4.4. Judicial Trend towards Right to Education:

Before the Constitution (Ninety-third Amendment) Act, 2001, the right to education was prescribed by Articles 41, 45 and 46 of the Constitution, all of which were Directive Principles of State Policy, but the Courts have interpreted the right to education as a fundamental right by incorporating it within the fundamental rights in Article 21. The trend has been held that the right to life under Article 21 and the dignity of individual cannot be assured unless it is accompanied by the right to education and that the provisions in part III and IV of the Constitution are supplementary and complementary to each other.

The judiciary showed keen interest and played active role in the interpretation of Article 21 and Article 21-A, and providing free and compulsory education to all children below the age of 14 years. This part gives an account of judicial efforts in the area of right to education and emerging issues related to right to free and compulsory education. In this way discusses judicial decisions before the Constitution (Eighty-sixth Amendment) Act, 2002 and the situation after the passing of Constitution (Eighty-sixth Amendment) Act, 2002 and constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009.⁵⁶⁶ Some of the landmark judgements are -

University of Delhi and Anr. v. Ram Nath (1963):⁵⁶⁷

This was the first case where the Supreme Court confirmed the new illumination of education. In this case Apex Court was rightly observed that, “education is enlightenment. It is the one that lends dignity to a man. Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development.”

⁵⁶⁶ The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009). This Act received the assent of the President on The 26th August 2009 and Act Published in the Gazette of India (Extraordinary) Part II Section 1 dated 27th August 2009, Pp. 1-13, Ministry of Law and Justice (Legislative Department). The Act came into force on 01 April, 2010 as a fundamental right in India.

⁵⁶⁷ AIR 1963 SC 1873, (Supreme Court on Apr.-01-1963)

Thereafter, the Supreme Court held that, under the sense of values recognised both by the traditional and conservative as well as the modern and progressive social outlook, teaching and teachers are, no doubt, assigned a high place of honour and it is obviously necessary and desirable that teaching and teachers should receive the respect that is due to them. A proper sense of values would naturally hold teaching and teachers in high esteem, though power or wealth may not be associated with them. It cannot be denied that the concept of social justice is wide enough to include teaching and teachers, and the requirement that teachers should receive proper emoluments and other amenities which are essentially based on social justice cannot be disputed.⁵⁶⁸

In fact, from a rational point of view, it would be regarded as inappropriate to describe education even as a profession. Education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words. That is why we think it would be unreasonable to hold that educational institutions are employers within the meaning of the work of teaching carried on by them is an industry because, essentially, the creation of a well-educated, healthy young generation imbued with a rational progressive outlook on life which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process.⁵⁶⁹

State of Andhra Pradesh & Anr. v. Lavu Narendranath and Ors.(1971):⁵⁷⁰

In this case the question was that the notification of entrance test of four medical college of Andhra State on 23 July 1970 is justified by law. The Writ Petitions was dismissed in trial, but in appeal the appellate Bench took a different view that, although the State Government had a right to prescribe rules and lay down its own criteria for making admissions into the colleges, it could not do so in total disregard of the marks obtained by the students at the University or other public examination necessary for

⁵⁶⁸ *Ibid*

⁵⁶⁹ *Ibid*

⁵⁷⁰ AIR 1971 SC 2560,(Supreme Court on Feb.-11-1971)

eligibility and they could only do so if their action did not contravene the University Act or any other law. It was also held that the Government could hold a 'test' in order to supplement or add to the qualifications already prescribed by the University or other educational authority for the purpose of assessing the merits of candidates but they could not hold a test in substitution for the qualifying examinations, as this would be encroaching upon the jurisdiction of the universities concerned in the matter of laying down academic standards of the students.

The Supreme Court observed that such test affected the personal liberty of the candidates secured under Article 21 of the Constitution. We fail to see how denial of an application to enter a medical college can be said to affect one's personal liberty guaranteed under Article 21. Everybody, subject to the eligibility prescribed by the University, was at liberty to apply for admission to the medical college. The number of seats being limited compared to the (1) number of applicants every candidate could not expect to be admitted. Once it is held that the test is not invalid the deprivation of personal, liberty, if any, in the matter of admission to a medical college was according to procedure established by law.

Anand Vardhan Chandel v. University of Delhi (1978):⁵⁷¹

This was the first case where the Courts demonstrated the new trend of interpreting the right to education as a fundamental right.⁵⁷² In this Case questions had arisen that, is there a fundamental right to education to be spelt out of clauses (a), (b) and (c) of Article 19(1) and Article 21 of the Constitution? Does it include participation by a student in the activities of the University Students Union? Does the denial of this right to the petitioner by the University sustain this petition under Article 226 (1) (a) of the Constitution?

⁵⁷¹ AIR 1978 Del 308, (Delhi High Court on May-05-1978)

⁵⁷² Asha Bajpai, *Child Rights In India – Law, Policy, and Practice* (Oxford University Press, 2nd edn., 2006, 2nd Impression 2008, p. 346).

Justice, V.S. Deshpande of the Delhi High Court observed that Fundamental right (also called human rights or basic rights) are of two kinds: (1) the classical rights, and (2) the economic (and social) rights. As a former Chief Justice⁵⁷³ of India observed that, “Every human being,can think speak, move about, associate with others, pray in his own way, and in olden days eked out his livelihood by cultivating a piece of land occupied by him. A State could therefore easily make them enforceable rights. But the economic rights do not exist in nature. They have to be created. A right to work, to education, to livelihood, to equal pay, to equal work, to security, to leisure and such others are very desirable rights. But unless a State creates conditions by positive action, such rights cannot come into existence.” The Constitution of India, therefore, 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.⁵⁷⁴ But even in the narrower sense right to education would appear to be a fundamental right which can be spelt out of the provisions of sub-clauses (a), (b) and (c) of Article 19(1) read with Article 21 independently of Article 41 and the Delhi University Act.⁵⁷⁵

In this case Delhi High Court observed that the law has now settled that the expression ‘life and personal liberty’ in Article 21 of the Constitution⁵⁷⁶ includes a variety of rights, though they are necessary for the full development of personality of the individual and can be included in the various aspects of the liberty of individual. The right to education is, therefore, also included in Article 21 of the Indian Constitution.⁵⁷⁷

⁵⁷³ Justice, K. Subba Rao, *Enforcement of Basic Human Rights, in Law and the Commonwealth*, 61-62p. (Fourth Commonwealth Publication, New Delhi, 1971)

⁵⁷⁴ The Constitution of India, Article 41

⁵⁷⁵ Delhi University Act, 1922

⁵⁷⁶ Article 21 provides protection of life and personal liberty. According to this Article No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁵⁷⁷ *AnandVardhanChandelv. University of Delhi*, AIR 1978 Del. 306, (Delhi High Court on May-05-1978), available at: <http://www.thelaws.com>

Francis Coralie Mullin v. the Administrator, Union Territory of Delhi and Others(1981):⁵⁷⁸

In this case Supreme Court held that, the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes right to live with human dignity and all that goes along with it viz., the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must in any view of the matter, include a right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Therefore, right to live with human dignity is under Article 21 of the Constitution.

Bandhua Mukti Morcha v. Union of India and Ors. (1984):⁵⁷⁹

In this case Court held that, the ‘right to live’ with ‘human dignity’ enshrined in Article 21 derives its life breath the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, unities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

⁵⁷⁸ AIR 1981 SC 746, (Supreme Court on Jan.-13-1981).

⁵⁷⁹ AIR 1984 802, (Supreme Court on Dec.-16-1983).

Thereafter, Court held that, the right to life guaranteed by Article 21 does take in ‘educational facilities’. Having regard to the fundamental significance of education to the life of, an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions. That right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world.

The Directive Principles of State Policy contained are not enforceable in a court of law; it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity. But where legislation is already enacted by the State providing these basic requirements, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21 of the Constitution.⁵⁸⁰

State of Maharashtra v. Vikas Sahebrao Roundale and Ors. (1992):⁵⁸¹

In this case, Justice K. Ramaswamy, speech as the relation between teacher and children’s education, and the Court observed that, the teacher plays pivotal role in moldings the career, character and moral fibers and aptitude for educational excellence in impressive young children. The formal education needs proper equipment by the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and intellectual capabilities of the students in their pursuits. The teacher is adorned as “**Guru Devo Bhava**” next after parents, as he is a Principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast ever changing techniques, the needs of the society

⁵⁸⁰*Ibid*

⁵⁸¹(1992)3SCR792

and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energized with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college all facilities and equipment are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition.

Miss. Mohini Jain v. State of Karnataka and Others (1992):⁵⁸²

The right to education for the first time got attention of the Supreme Court in this case. While deciding issue of capitation fee in educational institutions in Karnataka, the Court held that the 'right to life' under Article 21 and the dignity of an individual could not be assured unless accompanied by the right to education.

The question arose for the first time before a two judge's bench of the Supreme Court. In this petition under Article 32 of the Constitution of India, Mohini Jain has challenged the notification of the Karnataka Government permitting the private medical colleges in the State of Karnataka to charge exorbitant tuition fees from the students other than those admitted to the 'Government seats'.

The Karnataka State Legislature, with the object of eliminating the practice of collecting capitation fee for admitting students into educational institutions.⁵⁸³ Purporting to regulate the tuition fee to be charged by the Private Medical Colleges in the State, the Karnataka Government issued a notification dated June 5, 1989 under Section 5(1) of the Act thereby fixing the tuition fee, other fees and deposits to be charged from the students by the Private Medical Colleges in the State. Under the notification the candidates

⁵⁸² AIR 1992 SC 1858, Mohini Jain had challenged the notification of the Karnataka Government permitting the private medical colleges in the State of Karnataka to charge exorbitant tuition fees from the students other than those admitted to the 'Government seats'. It was held and declared that charging of capitation fee by the private educational institutions as a consideration for admission wholly illegal and cannot be permitted, (Supreme Court on Jul.-30-1992, Judges - Kuldip Singh and; R.M. Sahai, JJ.)

⁵⁸³ Karnataka Educational Institutions (Prohibition of Capitation Fee) Act, 1984, which was replaced by the Karnataka Ordinance No. 14 of 1983, and came into force with effect from July 11, 1983

admitted against 'Government seats' are to pay Rs. 2,000/- per year as tuition fee. The Karnataka students (other than those admitted against Government seats) are to be charged tuition fee not exceeding Rs. 25,000/- per annum. The third category is of 'Indian students from outside Karnataka', from whom tuition fee not exceeding Rs. 60,000/- per annum is permitted to be charged. On a writ petition filed by an out of the State student, the Supreme Court quashed the notification under Article 14.

In justification of the notification, the private medical colleges had argued that they did not receive any financial aid from the government and so they must charge much higher fees from private students to make good the loss incurred on government students. It is no doubt correct that 'right to education' as such has not been guaranteed as fundamental right under Part III of the Constitution but cumulatively reading the Article 21 along with Directive Principles of State Policy (DPSP) contained in Articles 38, 39(a), (e), (f), 41, and 45, the Court opened that, "it becomes clear that the framers of the Constitution made it obligatory for the State to provide education for its citizens."⁵⁸⁴

The DPSP which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. The Court argued that, without making right to education under Article 41 of the Constitution a reality the fundamental rights under Part III shall remain beyond the reach of large majority which is illiterate. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity. The Court has interpreted the 'life' in Article 21 of the Constitution of India that is 'right to live' with human dignity.

⁵⁸⁴ *Miss. Mohini Jain v. State of Karnataka and Others*, AIR 1992 SC 1858.

The 'Right to life' is the compendious expression for all those rights which are basic to the dignified enjoyment of life. Thus, ruled the Court, "The right to education flows directly from right to life" and that the right to education being concomitant to the fundamental rights, "the State is under a constitutional mandate to provide educational facilities at all levels for the benefit of the citizens.

The main question before the bench was whether it would be permissible for private but government. The bench characterized capitation fee as nothing but a price for selling education, and amount to commercialization of education adversely effecting educational standers. The Supreme Court characterized institutions charging capitation fee as teaching shop. The concept of 'teaching shops' is contrary to the constitutional scheme and is wholly abhorrent to the Indian culture and heritage.

The Supreme Court held that, the capitation fee brings to the fore a clear class bias, It enables the rich to take admission whereas the poor has to withdraw due to financial inability. A poor student with better merit cannot get admission because he has no money whereas the rich can purchase the admission. Such a treatment is patently unreasonable, unfair and unjust. Therefore, there is no escape from the conclusion that charging of capitation fee in consideration of admissions to educational institutions is wholly arbitrary and as such infracts Article 14 of the Constitution. Further, the Court observed in this connection - "Restricting admission to non-meritorious candidates belonging to the richer section of society and denying the same to poor meritorious is wholly arbitrary against the constitutional scheme and as such cannot be legally permitted. Capitation fee in any form cannot be sustained in the eyes, of law. The only method of admission to the medical colleges in consonance with fair play and equity is by ways of merit and merit alone."

The Court declared that, capitation fee to be charged by State recognised educational institutions is wholly arbitrary and as such violation of Article 14 of the Constitution of India. The fixing of pay Rs. 60000/ per annum as tuition fee for outside

State students in impugned notification, the Court observed that, whatever name one may give to this type of extraction of money in the name of medical education it is nothing but the capitation fee and such cannot be sustained and is liable to be struck down.⁵⁸⁵

Thereafter, Supreme Court held that every citizen has a 'right to education' under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognised educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational institutions, whether State-owned or State-recognised in recognition of their 'right to education' under the Constitution. Charging capitation fee in consideration of admission to educational institutions is a patent denial of a citizen's right to education under the Constitution.⁵⁸⁶

Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors. (1993):⁵⁸⁷

In this case same question arose which arose in Mohini Jain case, whether a citizen has a Fundamental Right to education for a medical, engineering or other professional degree. The question whether the right to primary education, as mentioned in Article 45 of the Constitution of India, is a Fundamental Right under Article 21 did not arise in Mohini Jain's case and no finding or observation on that question was called for.

Some other questions have decided in this case as - Whether the Constitution of India guarantees a fundamental right to education to its citizens? Whether there is a fundamental right to establish an educational institution under Article 19(1)(g)? Does recognition or affiliation make the educational institution an instrumentality?⁵⁸⁸

⁵⁸⁵ *Ibid*

⁵⁸⁶ *Ibid*

⁵⁸⁷ AIR 1993 SC 2178, (Supreme Court on Feb.-04-1993)

⁵⁸⁸ This case related to The Constitution of India - Articles 3, 12, 14, 15, 16(1), 19(1), 20, 21, 23, 26(1), 27, 28(1), 29(1), 30, 32, 37, 38, 39, 41, 42, 45, 46, 49, 64, 226, 256 and 371-D; Maharashtra Grant-in-Aid Code - Order 53,

In this case Supreme Court was asked to examine the decision of Mohni Jain's case and the Apex Court partly overruled the decision given in the Mohni Jain's case. The court held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 of the Constitution and must be interpreted in light of the Directive Principles of State Policy enshrined in Part IV of the Constitution. Part III and IV are supplementary and complementary to each other and fundamental rights are means to achieve the goals enshrined in Part IV and must be taken in the light of Directive Principles of State Policy. The Supreme Court, however, limited the state obligation to provide educational facilities as every citizen of this country has a 'right to free education' until he completes the age of fourteen years and beyond that stage, his right to education is subject to the limits of the economic capacity of the State. In other words, 'right to education' is concomitant to the fundamental rights enshrined in part III the Constitution. The State is under a constitutional mandate to provide educational Institutions at all levels for the benefit of citizens.' The benefit of education cannot be confined to richer classes.

The supreme court held again facts of Mohni Jain's case, on a consideration of Articles 21, 38, 39(a) and (f), 41 and 45 of the constitution - the framers of the Constitution made it obligatory for the State to provide education for citizens', the objectives set forth in the preamble to the Constitution cannot be achieved unless education is provided to the citizens of this country, the preamble also assures dignity of the individual. Without education, dignity of the individual cannot be assured, Parts III and IV of the Constitution are supplementary to each other. Unless the 'right to education

Rule 1(2); University Grants Commission Act, 1956 - Sections 12B, 14, 22, 23 and 25; Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, Sections 3A; Partnership Act, 1890 - Sections 45; Indian Partnership Act, 1932 - Sections 2, 5 and 9(1); Law Commission Act, 1965 - Sections 3(1); Andhra Pradesh Intermediate Education Act, 1971 - Sections 1, 19 and 20; Andhra Pradesh Education (Amendment) Act, 1987 - Sections 4, 7 and 15; Societies Registration Act, 1860; Indian Medical Council Act, 1956 - Sections 21 and 27; All India

mentioned in Article 41 is made a reality, the fundamental rights in part III will remain beyond the reach of the illiterate majority.⁵⁸⁹

Article 21 has been interpreted by this Court to include the right to live with human dignity and all that goes along with it. The 'right to education' flows directly from 'right to life.' In other words, 'right to education' is concomitant to the fundamental rights enshrined in part III of the Constitution. The State is under a constitutional mandate to provide educational Institutions at all levels for the benefit of citizens. The benefit of education cannot be confined to richer classes. Capitation fee is nothing but a consideration for admission. The concept of 'teaching shops' is alien to our Constitutional scheme. Education in India has never been a commodity for sale.⁵⁹⁰

The Court held that, every citizen has a 'right to education' under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through state-owned or state-recognized educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational institutions - whether state-owned or state-recognised - in recognition of their 'right to education' under the Constitution. Charging capitation fee in consideration of admission to educational institutions is a patent denial of citizens' right to education under the Constitution.⁵⁹¹

The Court held that the State action in permitting capitation fee be charged by state-recognised educational institutions is wholly arbitrary and as such violation of Article 14 of the Constitution of India.... The Capitation fee brings to the fore a clear class bias. Admission of no meritorious students by charging capitation fees - in any form whatsoever strikes at the very root of the constitutional scheme and our educational system.

⁵⁸⁹ *Miss. Mohini Jain v. State of Karnataka and Others*, AIR 1992 SC 1858.

⁵⁹⁰ *Ibid*

⁵⁹¹ *Ibid*

Thereafter, the Court held that having regard to the scheme of the Act, charging of Rs. 60,000/- for admission is 'nothing but a capitation fee'. The private medical colleges have further been given a free hand in the matter of admission of non-Karnataka State students' irrespective merit. It held further: - if the State Government fixes Rs. 2000/ per annum as the tuition fee in government colleges and for 'Government Seats' in private medical colleges then it is the state responsibility to see that any private college which has been set up with Government permission being run with Government recognition is prohibited from charging more than Rs. 2000 from any student who may be resident of any part of India. When the State Government permits private medical college to be set up and recognises its curriculum and degrees then the said college is performing a function which under the Constitution has been assigned to the State Government. We are therefore of the view that Rs. 60,000/ per annum permitted to be charged from Indian students from outside Karnataka in Para 1 (d) of the notification is not tuition fee but in fact a capitation fee and as such cannot be sustained and is liable to be struck down.⁵⁹²

The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. Article 41 of the Constitution illustrates the content of the right to education flowing from Article 21. The Supreme Court relied that, some of the directive principles of locate the parameters of the right to education implicit in Article 21, it does not follow automatically that each and every obligation referred to in Part IV gets automatically include within the purview of Article 21. The Court held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, Court has referred to Articles 41, 45 and 46 merely to determine the parameters of the right to education.⁵⁹³

The Supreme Court held that, the citizens of this country have a fundamental right to education. The right to education flows from Article 21. This right is, however, not an

⁵⁹² *Ibid*

⁵⁹³ *Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.*, AIR 1993 SC 2178

absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.⁵⁹⁴

The Supreme Court held that, the obligations created by Articles 41, 45 and 46 of the Constitution can be discharged by the State either by establishing institutions of its own or by aiding, recognising and/or granting affiliation to private educational institutions. Where aid is not granted to private educational institutions and merely recognition or affiliation is granted it may not be insisted that the private education institution shall charge only that fee as is charged for similar courses in governmental institutions. The private educational institutions have to and are entitled to charge a higher fee, not exceeding the ceiling fixed in that behalf. The admission of students and the charging of fee in these private educational institutions shall be governed by the scheme evolved herein - set out in Part-III of this Judgment.⁵⁹⁵

The Supreme Court held that, A citizen of this country may have a right to establish an educational institution but no citizen, person or institution has a right much less a fundamental right, to affiliation or recognition or to grant-in-aid from the State. The recognition and/or affiliation shall be given by the State subject only to the conditions set out in, and only accordance with the scheme continued in Part-III of this Judgment. No Government/University or authority shall be competent to grant recognition or affiliation except in accordance with the said scheme. The said scheme shall constitute a condition of such recognition or affiliation, as the case may be, in addition to such other conditions and terms which such Government, University or other authority may choose to impose. Those receiving aid shall, however, be subject to all such terms and conditions, as the aid giving authority may impose in the interest of general public.⁵⁹⁶

⁵⁹⁴ AIR 1993 SC 2178; (1993)1 SCC 645, (Supreme Court on Feb.-04-1993)

⁵⁹⁵ *Ibid.*

⁵⁹⁶ *Ibid.*

State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Others (1995):⁵⁹⁷

This writ petition was relate to Articles 21, 41 and 45 of the Constitution of India. The question for consideration is whether the teachers employed in various recognised aided private schools in the State of Himachal Pradesh are entitled to the pay-scales which are being paid to their counter-parts in the Government schools? If so, whether such schools are entitled to receive grant-in-aid to meet 95 per cent of the net approved expenditure?

In this case Supreme Court relying on **Mohini Jain's case**⁵⁹⁸ and held that the right to education is a fundamental right guaranteed under Part III read with Part IV of the Constitution of India. The Court submitted that since the right to education is a fundamental right, school education has a public element in it and the Court can always issue a mandamus to enforce a public duty in matters of education.⁵⁹⁹

Thereafter, Supreme Court was held that, “the right to education being a fundamental right the State of Himachal Pradesh is under a constitutional obligation to provide free education to children till they complete the age of 14 years. The obligation does not end thereafter but it is subject to the limits of its economic capacity and development judicial notice may be taken of the fact, that ordinarily, a child in the country joins school at the age of 5 years. All the children studying in the Middle Schools would be less than 14 years. Therefore the State Government is under an obligation to provide free education to the children studying in aided non-government middle schools”.⁶⁰⁰

⁵⁹⁷*State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Ors.*, (1995)4 SCC 507, (Supreme Court on may-10-1994).

⁵⁹⁸(1992)3 SCC 666

⁵⁹⁹*Ibid.*

⁶⁰⁰*State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Ors.*, (1995)4 SCC 507

M.C. Mehta v. State of Tamil Nadu & Ors. (1996):⁶⁰¹

The Supreme Court observed in this case that to develop the full potential of the children they should be prohibited to do hazardous work and education should be made available to them. In this regard the court held that, the government should formulate programme offering job oriented education so that they may get education and the timings be so adjusted so that their employment is not affected.⁶⁰²

Bandhua Mukti Morcha Etc. v. Union of India and Ors.⁶⁰³ (1997):

This writ petition was related to Article 32 of the Constitution has been filed by way of public interest litigation seeking issue of a writ of mandamus directing the Government to take steps to stop employment of children in Carpet Industry in the State of Uttar Pradesh; to appoint a Committee to investigate into their conditions of employment; and to issue such welfare directives as are appropriate for total prohibition on employment of children below the age of 14 years and directed to give them all facilities like education, health, sanitation, nutritious food, etc.⁶⁰⁴

In this case Supreme Court has observed that, illiteracy has many adverse effects in a democracy governed by rule of law. A free educated citizen could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform. Therefore, education is compulsory. Primary education to the children, in particular, to the child from poor, weaker sections, Dalits and Tribes and minorities is mandatory. The basic education and employment- oriented vocational education should be imparted so as to empower the children with these segments of the society to retrieve them from poverty and, thus, develop basic abilities, skills and capabilities to live meaningful life for economic and social empowerment. Compulsory education, therefore, to these children is one of the principal means and primary duty of

⁶⁰¹ AIR 1997 SC 699, (Supreme Court on Dec.-10-1996)

⁶⁰² *Ibid*

⁶⁰³ (1997)10 SCC 549 (Supreme Court on Feb.-21-1997)

⁶⁰⁴ *Ibid*

the State for stability of the democracy, social integration and to eliminate social tensions. This Court by rightly and harmoniously construing the provision of Part III and IV of the Constitution has made Right to education a basic fundamental right.

The Supreme Court directed to the Government of India to enforce the scheme, laid down in *M.C. Mehta case*⁶⁰⁵ - (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organized or unorganized labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational professional and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.;(4) entrust the responsibilities for implementation of the principles.⁶⁰⁶

T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors. (2002):⁶⁰⁷

In this case Supreme Court held that, the private education is one of the most dynamic and fastest-growing segments of post-secondary education at the turn of the twenty-first century. A combination of unprecedented demand for access to higher education and the inability or unwillingness of the Government to provide the necessary support has brought private higher education to the forefront. Private institutions, with a long history in many countries, are expanding in scope and number, and are becoming increasingly important in parts of the world that relied almost entirely on the public sector.

The expression ‘education’ in the Articles of the Constitution means and includes education at all levels from the primary school level up to the post-graduate level. It includes professional education. The expression ‘educational institutions’ means institutions that impart education, where ‘education’ is as understood hereinabove. It shall be the duty of every unit to provide in the public educational system in towns and

⁶⁰⁵*M.C. Mehta v. State of Tamil Nadu and Others*, AIR1997SC699, (Supreme Court on Dec.-10-1996, Justice Kuldip Singh, Justice B.L. Hansaria and, Justice S.B. Majmudar)

⁶⁰⁶*Ibid*

⁶⁰⁷AIR 2003 SC 355; (2002)8 SCC 481

districts in which a considerable proportion of citizens of other than the language of the unit are residents, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such citizens through the medium of their own language.⁶⁰⁸

Ashoka Kumar Thakur v. Union of India and Ors. (2008):⁶⁰⁹

In this case Supreme Court while deciding the issue of reservation, then Court made a reference to the provisions of Articles 15(3) and 21-A of the Constitution, observing that without Article 21A the other fundamental rights are rendered meaningless. Therefore, there has to be a need to earnestly on implementing Article 21-A. Without education a citizen may never come to know of his other rights. Since there is no corresponding constitutional right to higher education - the fundamental stress has to be on primary and elementary education, so that a proper foundation for higher education can be effectively laid. Hence, we see that education is an issue, which has been treated at length in our Constitution. It is a well-accepted fact that democracy cannot be flawless; but, we can strive to minimize these flaws with proper education. The Government should suitably revise budget allocations for education. The priorities have to be set correctly. The most important fundamental right may be Article 21-A, which, in the larger interest of the nation, must be fully implemented. Without Article 21-A, 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. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.⁶¹⁰

⁶⁰⁸ *Ibid*

⁶⁰⁹ (2008)6SCC 1, (Supreme Court on Apr.-10-2008).

⁶¹⁰ *Ibid*

Election Commission of India v. St. Mary's School and Ors. (2008):⁶¹¹

In this case Supreme Court refused to allow the State to take teachers from the classroom to work in polling places. While the democratic State has a mandate to conduct elections, the mundane demands of instruction superseded the State's need to staff polling places. Indeed, the democratic State may never reach its greatest potential without a citizenry sufficiently educated to understand civil rights and social duties.

Avinash Mehrotra v. Union of India and Others(2009):⁶¹²

This writ petition was important Public Interest Litigation relates to a fire swept through the Lord Krishna Middle School in District Kumbakonam in the city of Madras, Tamil Nadu. The fire started in the school's kitchen while cooks were preparing mid-day meal. In order to protect the rights of life and education guaranteed to all school going children under Articles 21 and 21-A of the Constitution. The problems are that Lord Krishna Middle School is one of the thousands of private schools that have sprung up in response to drastic cuts in government spending on education. This building houses more than 900 students in a crowded, thatched-roof building with a single entrance, a narrow stairway, windowless classrooms and only one entrance and exit. The fire had sparked by dry coconut leaves used as firewood in a nearby makeshift kitchen with thatched-roof. The fire had started when the cooks were preparing mid-day meal under a Mid-day meal scheme popular in Tamil Nadu. It is alleged that the ventilation of the entire school building was extremely poor with only cement-perforated windows. It took sufficient time for the fire fighters on a crane to break these windows and rescue the few children they could with severe burn injuries. The kitchen fire rose so high that the thatched roof of the classrooms caught fire and the blazing roof supported by bamboo poles collapsed on the school children and most of them died on the spot.⁶¹³

⁶¹¹AIR2008SC 655

⁶¹²(2009)6 SCC 398 (Supreme Court on Apr.-13-2009).

⁶¹³*Ibid*

Supreme Court held that right to education is the fundamental right of each and every child to receive education free from fear of security and safety. The children cannot be compelled to receive education from an unsound and unsafe building. Articles 21 and 21-A of the Constitution requires that India's school children receive education in safe schools. No matter where a family seeks to educate its children, the State must ensure that children suffer no harm in exercising their fundamental right and civil duty. States thus bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education.⁶¹⁴

The Court find that Lord Krishna Middle School in District Kumbakonam where 93 children were burnt alive and several similar incidences had happened in the past, therefore, it has become imperative to direct that safety measures as prescribed by the National Building Code of India, 2005 be implemented by all government and private schools functioning in our country. Therefore, Supreme Court held that, the Education Secretaries of each State and Union Territories are directed to file an affidavit of compliance of this order within one month after installation of fire extinguishing equipments. These are –

- i. Before granting recognition or affiliation, the concerned State Governments and Union Territories are directed to ensure that the buildings are safe and secured from every angle and they are constructed according to the safety norms incorporated in the National Building Code of India.
- ii. All existing government and private schools shall install fire extinguishing equipments within a period of six months.
- iii. The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.
- iv. Evaluation of structural aspect of the school may be carried out periodically. We direct that the concerned engineers and officials must strictly follow the National Building Code. The safety certificate be issued only after proper inspection.

⁶¹⁴*Ibid*

Dereliction in duty must attract immediate disciplinary action against the concerned officials.

- v. Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments.

Andhra Kesari Education Society v. Director of School Education and Ors.(1989):⁶¹⁵

In this case, the Court recognised the importance of eligibility of the teachers to appointment fixed by the Legislature, pointing out that, as those persons have to handle with the tiny tots, therefore, the teacher alone could bring out their skills and intellectual activities. He is the engine of the whole educational system. He is a superb instrument in awakening the children to cultural values. He must possess potentiality to deliver enlightened service to the society. His quality should be such as could inspire and motivate into action the benefiter. He must keep himself abreast of ever changing conditions. He is not to perform in wooden and unimaginative way, he must eliminate unwarranted tendencies and attitudes and infuse nobler and national ideas in younger generation, and his involvement in national integration is more important, indeed, indispensable.⁶¹⁶

State of Orissa and Anr. v. Mamata Mohanty (2011):⁶¹⁷

In this case, the Court while considering the similar issue where teachers had been appointed without possessing the eligibility has held that if the appointment order itself is bad in its inception, it cannot be rectified and a person lacking eligibility cannot be appointed unless the statutory provision provides for relaxation of eligibility in a particular statute and order of relaxation has been passed in terms of the said order.

⁶¹⁵AIR 1989 SC 183

⁶¹⁶*Ibid*

⁶¹⁷ (2011)3 SCC 436

State of Tamil Nadu and Ors. v. K. Shyam Sunder and Ors. (2011):⁶¹⁸

In this case, the Court held that, In the post constitutional era, attempts have been made to create an egalitarian society by removing disparity among individuals and in order to do so, education is the most important and effective means. There has been an earnest effort to bring education out of commercialism/mercantilism. The right of a child should not be restricted only to free and compulsory education but should be extended to have quality education without any discrimination on economic, social and cultural grounds.

Baldev Singh and Others v. State of Uttarakhand and others (2011):⁶¹⁹

In this case high court described the object of the RTE Act, 2009 which is, inter alia, to improve the standard of elementary education in our country. The Act strives to give to our children an elementary education through better trained and better qualified teachers. If the Act and the subsequent notification issued by the NCTE raises the scale for these teachers, such an effort is in public interest and not against it. Moreover, such an action on the part of either NCTE or the State Government does not violate or invade any right of the petitioners, much less any fundamental or constitutional right. The High court upheld the validity of the test i.e. TET. Moreover, the conditions and eligibility, etc. for such teachers are being given under a Central statute, which is under Entry 66 of List I of the Union List of Seventh Schedule, the same will have an overriding effect, over any State legislation.

Vishwas Kumar and Anr.v. State of Uttarakhand and Ors. (2011):⁶²⁰

In this case, the petitioners are the candidates for examination known as Teachers Eligibility Test. This examination has now been conducted after Article 21-A has been inserted in Part III of the Constitution of India and Right to Free and Compulsory

⁶¹⁸ (2011)8 SCC 737

⁶¹⁹ writ Pet No. 772 (ss) of 2011, Uttarakhand High Court

⁶²⁰ Writ Pet. No. 1246 (ss) of 2011, Uttarakhand High Court on Sep.-20-2011.

Education having been a fundamental rights. Consequently, Parliament enacted a legislation known as Right to Children to Free and Compulsory Education Act, 2009. Under the RTE Act, the qualifications of a teacher who will now be eligible to teach children in elementary school have to be prescribed by the academic authority of the Central Government under the said Act. Under Section 23 of the RTE Act, 2009 only a person possessing said minimum qualification as laid down by an academic authority authorized by the Central Government which now is National Council of Teacher Education, which is a Central Body shall be eligible to be appointed as a teacher, in an elementary school.

The Court observed the importance of the Article 21-A of the Constitution, and Right Of Children To Free And Compulsory Education Act, 2009 in the following words: “Article 21-A of the constitution and the right to Education Act, it is not just a fundamental right of children to get elementary education but this right has now become a meaningful right for various reasons and more particularly because a children will be imparted elementary education by qualified and trained teachers.”⁶²¹

Satimbla Sharma & Ors. v. St. Paul Sr. Secondary School & Ors. (2011):⁶²²

In this case the Supreme Court find that the RTE Act, 2009 has provisions in Section 23 regarding the qualifications for appointment and terms and conditions of service of teachers and sub-section (3) of Section 23 of the RTE, Act 2009 provides that the salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed. Section 38 of the 2009 Act empowers the appropriate Government to make rules and Section 38(2)(1) of the 2009 Act provides that the appropriate Government, in particular, may make rules prescribing the salary and allowances payable to, and the terms and conditions of service of teachers, under sub-section (3) of section 23. Section 2(a) defines ‘appropriate Government’ as the State Government within whose territory the school is established. Further, the court held that,

⁶²¹ *Ibid*

⁶²² Civil Appeal No. 2676 Of 2010, The Supreme Court On Aug.11-2011

is thus empowered to make rules under sub-section (3) of Section 23 read with Section 38(2)(1) of the RTE Act, 2009 prescribing the salary and allowances payable to, and the terms and conditions of service of, teachers. Article 39(d) of the Constitution provides that the State shall, in particular, direct its policy towards securing that there is equal pay for equal work for both men and women. Respondent should therefore consider making rules under Section 23 read with Section 38(2)(1) of the RTE Act, 2009 prescribing the salary and allowances of teachers keeping in mind Article 39(d) of the Constitution as early as possible.

State of Orissa and Anr. v. Mamata Mohanty (2012):⁶²³

In this case the Court held that, education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds.⁶²⁴

Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr. (2012):⁶²⁵

In this case, the question has arisen for the determination was, what is the intention of the Parliament for the enactment of Article 21-A of the Indian Constitution, and Right

⁶²³ *State of Orissa and Anr. v. Mamata Mohanty* (2012): 1 SCC 762

⁶²⁴ *Maharshi Mahesh Jogi ... v. State Of M.P. & Ors*, Decided on Jul.03-2013 Civil Appeal No.6736 of 2004, Supreme Court of India, Justice, B.S. Chauhan, Fakkir Mohamed, and Kalifulla, available at: <http://indiankanoon.org/doc/4526047>

⁶²⁵ 2012(6)SCC1, 2012(4)SCJ318 (Supreme Court on Apr.-12-2012). This Judgment has delivered by the bench of three Judges – Chief Justice, S.H. Kapadia, Justice, Swatanter Kumar and Justice, Radhakrishnan. The judgement was delivered by majority of Chief Justice S.H. Kapadia and Justice, Swatanter Kumar.

of Children to Free and Compulsory Education (RTE) Act, 2009? Is the Right of Children to Free and Compulsory Education (RTE) Act, 2009 intended to apply to all un-aided and minority schools?⁶²⁶

The Supreme Court held that, we find ourselves in the unenviable position of having to disagree with the views expressed therein concerning the non-applicability of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 to the unaided non-minority schools' and Court fully sets out the various provisions of the RTE Act, 2009 as well as the issues which arise for determination, the core issue concerns the constitutional validity of the 2009 Act.

In this case the Supreme Court held by majority judgement on dated 12.04.2012 that, the Right to free and compulsory education is a fundamental rights for all children of the age of 6 to 14 years under Article 21-A of Constitution and upheld the Constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009 which mandates 25% free seats to the children, belonging to weaker section and disadvantages groups in the all neighbourhood private un-aided schools uniformly across the country.⁶²⁷

In this case Supreme Court held that, Education is a process which engages three actors - one who provides education, one who receives education, and one who is legally responsible for the one who receives education. These actors influence the right to education. The 2009 Act makes the Right of Children to Free and Compulsory Education justiciable. The RTE Act envisages that each child must have access to a neighbourhood school. The Act has been enacted keeping in mind the crucial role of Universal Elementary Education for strengthening the social fabric of democracy through provision

⁶²⁶Various private un-aided institutions had filed petition in the Supreme Court contending that the RTE, Act, 2009 violates the rights of private educational institutions under Article 19[(1)(g)] of the Constitution, which provided autonomy to private managements to run their institutions without governmental interference. A bench comprising Chief Justice S.H. Kapadia and justices K.S. Radhakrishnan and Swatanter Kumar, which had reserved its verdict by majority of two judges Chief Justice S.H. Kapadia and Justice Swatanter Kumar upheld the constitutional validity of Section 12(1)(C) of the RTE, Act, that provides 25% reservation for poor students from economically weaker sections and disadvantaged group of society. The judgement will also be applicable in all schools including private schools, RTE, Act would not apply to Madrasas, Vedic Pathshalas etc.

⁶²⁷2012(6)SCC1, 2012(4)SCJ318 (Supreme Court on Apr.-12-2012).

of equal opportunities to all. The DPSP enumerated in our Constitution lay down that the State shall provide free and compulsory education to all children up to the age of 14 years. The Act provides for right of children to free and compulsory admission, attendance and completion of elementary education in a neighbourhood school. The word 'Free' in the long title to the 2009 Act stands for removal by the State of any financial barrier that prevents a child from completing years of schooling. The word 'Compulsory' stands for compulsion on the State and the parental duty to send children to school. To protect and give effect to this right of the child to education as enshrined in Article 21 and Article 21-A of the Constitution.⁶²⁸

While dealing with scope of Article 21-A, Supreme Court held that, we need to understand the scope of Article 21-A. It provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. Thus, under Article 21-A, the obligation is on the State to provide free and compulsory education to all children of specified age. However, under Article 21-A, the manner in which the said obligation will be discharged by the State has been left to the State to determine by law. Thus, the State may decide to provide free and compulsory education to all children of the specified age through its own schools or through government aided schools or through un-aided private schools.⁶²⁹

Article 21A comes from reading of Articles 41, 45 and 46 and, more particularly, from Article 45 [as it then stood before the Constitution (Eighty-sixth Amendment) Act, 2002]. The scope of Articles 21, 21A, 19(1)(g) and Articles 41, 45 and 46 of the Constitution. At the outset, it may be stated, that fundamental rights have two aspects, they act as fetter on plenary legislative powers and, secondly, they provide conditions for fuller development of our people including their individual dignity. Right to live in Article 21 covers access to education. But unaffordability defeats that access. It defeats the State's endeavour to provide free and compulsory education for all children of the

⁶²⁸ *Ibid*

⁶²⁹ *Ibid*

specified age. To provide for free and compulsory education in Article 45 is not the same thing as to provide free and compulsory education. The word 'for' in Article 45 is a preposition. The word 'education' was read into Article 21 by the judgments of this Court. Under Article 21-A, right is given to the State to provide by law 'free and compulsory education'. Article 21-A contemplates making of a law by the State. Thus, Article 21-A contemplates right to education flowing from the law to be made which is the RTE Act, 2009, which is child centric and not institution centric. Thus, as stated, Article 21-A provides that the State shall provide free and compulsory education to all children of the specified age in such manner as the State may, by law, determine. The 'manner' in which this obligation will be discharged by the State has been left to the State to determine by law. The 2009 Act is thus enacted in terms of Article 21-A. It has been enacted primarily to remove all barriers (including financial barriers) which impede access to education. One more aspect needs to be highlighted. It is not in dispute that education is a recognized head of 'charity'.⁶³⁰

While dealing the Constitutionally validity of the Right Of Children To Free And Compulsory Education Act, 2009 with the principle of reasonableness and right to establish and administer, Articles 29 and 30 of the Indian Constitution, than Supreme Court held that, the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following: (i) a school established, owned or controlled by the appropriate Government or a local authority; (ii) an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; (iii) a school belonging to specified category; and (iv) an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority. However, the RTE Act, 2009 and in particular Sections 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and, consequently, applying the principle of severability, the RTE Act, 2009 shall not apply to

⁶³⁰2012(6) SCC 1, 2012(4) SCJ 318 (Supreme Court on Apr.-12-2012).

such schools. Therefore, admissions given by unaided minority schools prior to the pronouncement of this judgment shall not be reopened.⁶³¹

The Supreme Court opinions expressed by the academicians like an eminent educationist and Professor Murray N. Rothbard command respect and cannot be brushed aside as such because, much more than anything, the State has got a constitutional responsibility to see that our children are given quality education. Provisions of the statute shall not remain a dead letter, remember we are dealing with the lives of our children, a national asset, and the future of the entire country depends upon their upbringing. Our children in the future have to compete with their counter-parts elsewhere in the world at each and every level, both in curricular and extracurricular fields. Quality education and overall development of the child is of prime importance upon which the entire future of our children and the country rests.⁶³²

The Supreme Court observed that the legislation, in its present form, has got many drawbacks. During the course of discussion, the necessity of constituting a proper Regulatory Body was also raised so that it can effectively supervise and monitor the functioning of these schools and also examine whether the children are being provided with not only free and compulsory education, but quality education. The Regulatory authority can also plug the loopholes, take proper and steps for effective implementation of the Act and can also redress the grievances of the children. Supreme Court said that, I am sure that the Government will give serious attention to the above aspect of the matter which are of prime importance since we are dealing with the future of the children of this country.⁶³³

⁶³¹ *Ibid*

⁶³² *Ibid*

⁶³³ *Ibid*

Therefore, finally Supreme Court held that, the Right of Children to Free and Compulsory Education (RTE) Act, 2009 is constitutionally valid, and specified conclusions, these are as follows⁶³⁴ -

1. Article 21-A of the Constitution, casts an obligation on the State to provide free and compulsory education to children of the age of 6 to 14 years and not on un-aided, non-minority and minority educational institutions.
2. Rights of children to free and compulsory education guaranteed under Article 21-A and RTE, Act can be enforced against the schools defined under Section 2(n) of the Act, except un-aided minority and non-minority schools not receiving any kind of aid or grants to meet their expenses from the appropriate governments or local authorities.
3. Section 12[(1)(c)] of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 is read down so far as un-aided, non-minority and minority educational institutions are concerned, holding that it can be given effect to only on the principles of voluntariness, autonomy and consensus and not on compulsion or threat of non-recognition or non-affiliation.
4. No distinction or difference can be drawn between un-aided minority and non-minority schools with regard to appropriation of quota by the State or its reservation policy under Section 12[(1)(c)] of the RTE, Act. Such an appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30(1) of the Constitution or a reasonable restriction within the meaning of Article 19(6) of the Constitution.
5. The Appropriate Government and local authority have to establish neighbourhood schools as provided in Section 6 read with Sections 8 and 9 of the RTE, Act 2009, within the time limit prescribed in the Statute.

⁶³⁴The judgment had decided by Supreme Court on 12 April, 2012. In other words, it has applied from the academic year 2012-13. However, admissions given by un-aided minority schools prior to the pronouncement of this judgment shall not be reopened.

6. Duty imposed on parents or guardians under Section 10 is directory in nature and it is open to them to admit their children in the schools of their choice, not invariably in the neighbourhood schools, subject to availability of seats and meeting their own expenses.
7. Sections 4, 10, 14, 15 and 16 of the RTE, Act are held to be directory in their content and application. The concerned authorities shall exercise such powers in consonance with the directions/guidelines laid down by the Central Government in that behalf.
8. The provisions of Section 21 of the Act, as provided, would not be applicable to the schools covered under sub-Section (iv) of clause (n) of Section 2. They shall also not be applicable to minority institutions, whether aided or un-aided.
9. In exercise of the powers conferred upon the appropriate Government under Section 38 of the RTE Act, the Government shall frame rules for carrying out the purposes of this Act and in particular, the matters stated under sub-Section (2) of Section 38 of the RTE, Act.
10. The directions, guidelines and rules shall be framed by the Central Government, appropriate Government and/or such other competent authority under the provisions of the RTE Act, as expeditiously as possible and, in any case, not later than six months from the date of pronouncement of this judgment.
11. The Supreme Court held that, All the State Governments which have not constituted the State Advisory Council in terms of Section 34 of the RTE, Act shall so constitute the Council within three months from dated 12.04.2012. The Council so constituted shall undertake its requisite functions in accordance with the provisions of Section 34 of the Act and advise the Government in terms of clauses (6), (7) and (8) of this order immediately thereafter.
12. Central Government and State Governments may set up a proper Regulatory Authority for supervision and effective functioning of the Right of Children to Free and Compulsory Education, Act, 2009 and its implementation.

13. Madrasas, Vedic Pathshalas etc. which predominantly provide religious instructions and do not provide for secular education stand outside the purview of the Act.⁶³⁵

Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel & Anr. (2012):⁶³⁶

In this case while deciding the issue of right to education than Supreme Court has mandate earlier order of **Miss. Mohini Jain's case**,⁶³⁷ the Court while dealing with this issue held that without making "right to education" under Article 41 of the Constitution a reality, the fundamental rights under Part III shall remain beyond the reach of the large majority which are illiterate. The State is under an obligation to make an endeavour to provide educational facilities at all levels to its citizens. The right to education, therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution to provide educational institutions at all levels for the benefit of the citizens. The Educational Institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.⁶³⁸

Shiv Kumar Sharma v. State of U.P. Thru Sec. & Ors. (2013):⁶³⁹

In this case question was the appointment of non-qualified teacher under Section 23 (qualification for appointment and terms and conditions of service of teacher) of the right of children to free and compulsory education act, 2009. The High Court held that, the teacher eligibility test (TET) is an essential qualification that has to be possessed by every candidate who seeks appointment as a teacher of elementary education in Classes 1 to 5 as per the government notification, which notification is within the powers of the NCTE under Section 23(1) of the RTE Act, 2009.

⁶³⁵ *Ibid*

⁶³⁶ (2012) 9 SCC 310, Supreme Court on Sep.-14-2012.

⁶³⁷ AIR 1992 SC 1858, (1992)3 SCC 666, Mohini Jain had challenged the notification of the Karnataka Government permitting the private medical colleges in the State of Karnataka to charge exorbitant tuition fees from the students other than those admitted to the 'Government seats'. It was held and declared that charging of capitation fee by the private educational institutions as a consideration for admission wholly illegal and cannot be permitted.

⁶³⁸ *Ibid*

⁶³⁹ Writ Petition No. 12908 of 2013, Allahabad High Court, on May-31-2013), Bench: Justice, Sunil Ambwani, AmreshwarPratapSahi, and Pradeep Kumar Baghel, *available at*: <http://indiankanoon.org/doc/31803044>

The Court approved the phrase ‘minimum qualifications’ occurring in Section 23 (1) of the right of Children to Free and Compulsory Education Act, 2009, mean - whether passing the ‘Teacher’s Eligibility Test’, is a qualification for the purposes of Section 23 (1), and its insistence by the NCTE in the Notification dated 23.8.2010 is in consonance with the powers delegated to the NCTE under Section 23 (1) of the Act. And Court hold that the teacher eligibility test is compulsory for all candidates for appointment of teacher under this Act, 2009.

Environment and Consumer Protection Foundation v. Delhi Administration and Ors. (2013):⁶⁴⁰

This writ petition was related to Articles 32 and 21-A of the Indian Constitution, and Sections 38, 34, 17, 31 of the Right Children to free and compulsory Education Act, 2009. Court’s jurisdiction under Article 32 of the Constitution of India has been invoked by the petitioner, a registered charitable society, seeking various directions to improve the conditions of Government and aided schools and also school run by the local authorities so that the constitutional objective of providing free and compulsory education under Article 21-A of the Constitution of India would be a reality.⁶⁴¹ The Writ Petition was filed in the year 2004 and since then, several interim orders have been passed giving directions to the States and the Union Territories to provide the basic infrastructure facilities like toilet facility, drinking water, class rooms, appointment of teachers and all other facilities so that children can study in a clean and healthy environment. While the matter was pending before this Court, the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009. The Constitutional validity of the RTE Act was challenged before Supreme Court and the Court, vide its Judgment on dated 12.4.2012 in

⁶⁴⁰Writ Petition (Civil) No. 631 of 2004, Supreme Court On Oct.-03-2012.

⁶⁴¹*Ibid*

Society for Unaided Private Schools of Rajasthan v. Union of India and Another,⁶⁴² upheld its validity and gave various directions.⁶⁴³

The Supreme Court directed the Central Government, appropriate Government and other competent authorities functioning under the RTE Act, 2009 to issue proper directions/guidelines for its full implementation within a period of six months from the date of the pronouncement of that judgment. This Court also directed all the State Governments to constitute State Advisory Council within three months from the date of that judgment. Advisory Councils so constituted were directed to discharge their functions in accordance with the provision of Section 34 of the RTE Act and advise the Government in terms of Clauses (6), (7) and (8) of this Court's order. The necessity of constituting a proper Regulatory Authority for effective functioning of the RTE Act, 2009 and its implementation was also highlighted. The Central Government was also directed to frame rules, in exercise of its powers under Section 38 of the RTE Act, for proper implementation of the RTE Act, 2009.

The Court noticed that some of the schools have not provided proper toilet facilities for boys and girls and in some of the schools, it was noticed that there is no provision for drinking water as well. Detailed interim orders were passed by the Court on Apr.-29-2011 and Sep.-22-2011. On Oct.-18-2011, the Court passed the following order - "We have heard the learned counsel for the parties. It is imperative that all the schools must provide toilet facilities. Empirical researches have indicated that wherever toilet facilities are not provided in the schools, parents do not send their children (particularly girls) to schools. It clearly violates the right to free and compulsory education of children guaranteed under Article 21-A of the Constitution. We direct all the States and the Union Territories to ensure that toilet facilities are made available in all the schools on or before Nov.-30-2011. In case it is not possible to have permanent construction of toilets, at least temporary toilets be provided in the schools on or before Nov.-30-2011 and permanent

⁶⁴²2012(6) SCC 1, 2012(4) SCJ 318 (Supreme Court on Apr.-12-2012).

⁶⁴³*Ibid*

toilets be made available by Dec.-31-2011. We direct the Chief Secretaries/Administrators of all the States/Union Territories to file their affidavits on or before Nov.-30-2011.”

Further, the Court directed to the all States/Union Territories to give effect to the various directions already given by this Court like providing toilet facilities for boys and girls, drinking water facilities, sufficient class rooms, appointment of teaching and non-teaching staff etc., if not already provided, within six months from today. We make it clear that these directions are applicable to all the schools, whether State owned or privately owned aided or unaided, minority or nonminority. Finally, Supreme Court said that, “it is clear that if the directions are not fully implemented, it is open to the aggrieved parties to move this Court for appropriate orders.”

National Legal Ser. Auth. v. Union of India & Ors. (2014):⁶⁴⁴

This writ petition has related to the grievances of the members of Trans-gender Community (TGs) who seek a legal declaration of their gender identity than the one assigned to them, male or female, at the time of birth and their prayer is that non-recognition of their gender identity violates Articles 14 and 21 of the Constitution of India. Hijras/Eunuchs, who also fall in that group, claim legal status as a third gender with all legal and constitutional protection. The question was that, the every person of that community has a legal right to decide their sex orientation and to espouse and determine their identity. The TGs are neither treated as male or female, nor given the status of a third gender, they are being deprived of many of the rights and privileges which other persons enjoy as citizens of this country. TGs are deprived of social and cultural participation and hence restricted access to education, health care and public places which deprives them of the Constitutional guarantee of equality before law and

⁶⁴⁴Writ Petition (Civil) No. 400 of 2012, Supreme Court, On Apr.-14-2014.

equal protection of laws. The State cannot discriminate them on the ground of gender, violating Articles 14 to 16 and 21 of the Constitution of India.⁶⁴⁵

In this case Supreme Court observed that, the recognizing TGs as third gender, this Court is not only upholding the rule of law but also advancing justice to the class, so far deprived of their legitimate natural and constitutional rights. It is, therefore, the only just solution which ensures justice not only to TGs but also justice to the society as well. Social justice does not mean equality before law in papers but to translate the spirit of the Constitution, enshrined in the Preamble, the Fundamental Rights and the Directive Principles of State Policy into action, whose arms are long enough to bring within its reach and embrace this right of recognition to the TGs which legitimately belongs to them.⁶⁴⁶

Therefore, gender identification becomes very essential component which is required for enjoying civil rights by this community. It is only with this recognition that many rights attached to the sexual recognition as 'third gender' would be available to this community more meaningfully viz. the right to vote, the right to own property, the right to marry, the right to claim a formal identity through a passport and a ration card, a driver's license, the right to education, employment, health so on. Further, there seems to be no reason why a Trans-gender must be denied of basic human rights which includes Right to life and liberty with dignity, Right to Privacy and freedom of expression, Right to Education and Empowerment, Right against violence, Right against Exploitation and Right against Discrimination. Constitution has fulfilled its duty of providing rights to trans-genders.⁶⁴⁷

The TGs are also citizens of this country. They also have equal right to achieve their full potential as human beings. For this purpose, not only they are entitled to proper education, social assimilation, access to public and other places but employment

⁶⁴⁵ *ibid*

⁶⁴⁶ *Ibid*

⁶⁴⁷ *Ibid*

opportunities as well. Thus, the aforesaid, are Court's reasons for treating TGs as 'third gender' for the purposes of safeguarding and enforcing appropriately their rights guaranteed under the Constitution. Therefore, finally the Supreme Court held and declared that:⁶⁴⁸

1. Hijras, Eunuchs, apart from binary gender, be treated as "third-gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.
2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
3. The Court directed to the Centre and all the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extends all kinds of reservation in cases of admission in educational institutions and for public appointments.
4. Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.
5. Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
6. Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables.
7. Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

⁶⁴⁸ *Ibid*

Pramati Educational & Cultural Trustandors v. Union of India & Ors. (2014):⁶⁴⁹

This writ petition was related to the judgment of **Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr.**⁶⁵⁰ decided by Constitution Bench on dated 12-04-2012, validity of clause (5) of Article 15 of the Constitution inserted by the Constitution (Ninety-third Amendment) Act, 2005 with effect from 20.01.2006 and to the validity of Article 21-A of the Constitution inserted by the Constitution (Eighty-Sixth Amendment) Act, 2002 with effect from 01.04.2010.

In this case Supreme Court hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are Constitutionally valid. Supreme Court also hold that the Right of Children to Free and Compulsory Education (RTE) Act, 2009 is not ultra vires Article 19(1)(g) of the Constitution. Further, the Court held that the RTE Act, 2009 insofar as it applies to minority schools, aided or un-aided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution.

The Supreme Court maintained the all facts of the **Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr.**⁶⁵¹ in his judgment as it holds that the RTE Act, 2009 is applicable to aided minority schools is not correct.

Balaji and Ors. v. State of Maharashtra through the Secretary, School Education and Sports Department and Ors. (2014):⁶⁵²

This writ petition was related to proper implementation of the RTE Act, 2009 i.e. 01-04-2010, and Maharashtra Government has not fulfilled the norms and standards for schools, due to failure of the State Government not to formulate final policy document

⁶⁴⁹Writ Petition (C) No.416 of 2012, Supreme Court on May.-06-2014.

⁶⁵⁰2012(6) SCC 1 (Supreme Court on Apr.-12-2012). Chief Justice, S.H. Kapadia, Swatanter Kumar, and Justice, Radhakrishnan.

⁶⁵¹*Ibid*

⁶⁵² Writ Petition No. 7106 of 2013, Mumbai High Court,Decided on May.-09-2014

within three years from the date of commencement of RTE Act, in the academic year 2013-14.

In this case High Court find that, the State Government and in particular concerned department of education, has not performed its obligation as envisaged and contemplated under the provisions of RTE Act, 2009 in as much as the State Government has not formulated final policy document within three years from the date of commencement of RTE Act i.e. 1.4.2010. State Government and in particular the concerned department has failed in its obligation to formulate final policy document and thereby frustrated the mandate of Article 21-A of the Constitution of India and the provisions of RTE Act and in particular Sections 19 and 23 and Scheduled there under and other provisions of the RTE Act as well.⁶⁵³

After that Court find that, the State government did not make serious efforts and attempts so as to implement the provisions of the RTE Act, 2009 within three years from date of commencement 1.4.2010, and has not paid serious attention as to why Article 21-A has been incorporated in Part III i.e. fundamental rights, in the Constitution of India, and also the Supreme Courts Judgments referred to **Society for Un-aided Private Schools of Rajasthan v. Union of India and Anr.**,⁶⁵⁴ wherein the scope of Article 21-A vis-a-vis the provisions of RTE Act, 2009 has been explained by the Supreme Court wherein the obligation of the Government has been emphasized. Since the State Government has not formulated final policy document, Court directed to the State Government to take immediate steps to perform its obligation in view of the provisions of RTE Act. High Court has reached to the following final conclusions –

- i. It is the failure of the State Government and in particular concerned Education Department, not to formulate final policy document within three years from the commencement of the RTE Act, 2009 on dated 1.4.2010.

⁶⁵³ *Ibid*

⁶⁵⁴ 2012(6) SCC 1; 2012(4) SCJ 318 (Supreme Court on Apr.-12-2012).

- ii. Since the State Government did not formulate final policy document within three years, as contemplated under RTE Act, and in particular keeping in view provisions of Sections 19 and 23 thereof, funds were not released for the academic year 2013-14 by the Central Government.
- iii. The State Government while taking final policy decision in respect of appointments is bound to consider the length of services rendered by the respective petitioners working on the post of Instructors in (a) Art Education, (b) Health and Physical Education and (c) Work Education, mental agony faced by them in not appointing them for the academic year 2013-14 because of failure of State Government in not performing its obligation.
- iv. The State Government keeping in view the provisions of Article 21-A of the Constitution of India and the provisions of RTE Act, Rules there under and the Schedule prescribed, will have to take decision to create permanent infrastructure and also appointments on permanent basis as a long time measures so as to perform its Constitutional and statutory obligations.
- v. The State Government can certainly keep in view and consider to create permanent cadre of part time Instructors in (a) Art Education, (b) Health and Physical Education and (c) Work Education as specified in Section 9 of RTE Act and Rule 20 of Rules 2010, in all Zilla Parishad Schools having class 5th to 7th standards and minimum strength of 100 students in the State of Maharashtra.
- vi. As already observed, it would be open for the State Government while appointing the candidates on the posts of part time Instructors in (a) Art Education, (b) Health and Physical Education and (c) Work Education, or on any other post under RTE Act, the State Government has to inform them that due to inadequate work load in particular schools, they will have to attend other school so as to complete the work hours/work load. The State Government can very well keep in view the policy formulated by the State of Kerala or any other welfare State, as a guiding factor.
- vii. The posts sanctioned by the State Government, as reflected in affidavit in reply filed by the State authorities and in the light of the Government Resolution placed

on record cannot be considered for the particular academic year. Therefore, the State has to make appointments on these sanctioned posts keeping in view long term plan.

Shiv Kumar Pathak and Ors. v. State of U.P. and Ors. (2015):⁶⁵⁵

In this case J., Sudhir Agarwal, observed and directed, the Chief Secretary, U.P. Government to ensure that the children/wards of Government servants, semi-Government servants, local bodies, representatives of people, judiciary and all such persons who receive any perk, benefit or salary etc. from State exchequer or public fund, send their child/children/wards who are in age of receiving primary education, to Primary Schools run by Board. He shall also ensure to make penal provisions for those who violate this condition; for example, if a child is sent to a Primary School not maintained by Board, the amount of fee etc. paid in such privately managed Primary School, an equal amount shall be deposited in the Government funds, every month, so long as such education in other kind of Primary School is continued. This amount collected can be utilised for betterment of schools of Board. Besides, such person, if in service, should also be made to suffer other benefits like increment, promotional avenues for certain period, as the case may be. This is only illustrative. The appropriate provisions can be made by Government so as to ensure that ward(s)/child/children of persons, as detailed above, are compelled necessarily to receive primary education in the Primary Schools run by Board.⁶⁵⁶

Un-aided School Forum & Anr. v. State of Maharashtra & Anr. (2015):⁶⁵⁷

This writ petition has related to the provision of 25% admission seats under in the Right of Children to Free and Compulsory Education Act, 2009. All the schools which are admitting the children for pre-school education in view of provision to subsection (1)(c) of Section 12 of the Act, it is difficult to accept the contention that the provisions of reimbursement is not be applicable to such schools and/or institutions. To interpret

⁶⁵⁵Writ A. No. - 57476 of 2013, Decided On Aug.-18-2015, Allahabad High Court.

⁶⁵⁶*Ibid*

⁶⁵⁷ Writ Petition No. 4457 of 2015, Bombay High Court

otherwise means we are creating two classes - the institutions/schools which admit the students of 25% for providing elementary education, they are entitled for the reimbursement, but the institution and/or schools which are also admitting the children for pre-primary education, and they are disentitled for such reimbursement. The appropriate Government itself permitted them to select the entry level. The whole submission and circulars of the State Government are, therefore, inconsistent and self-destructive. Such two classes, in our view, cannot be created when the provisions are so clear and are read together with the constitutional provisions. Once 25% children belong to the weaker section- disadvantaged class admitted in elementary and/or in pre-school education, such schools/institutions are entitled for the reimbursement as per the law.⁶⁵⁸

In this case High Court held and declared that the, compulsory admission of minimum 25% in class I and/or pre-school at both entry level for the children belonging to specific class/group/section is within the framework of the RTE Act/Rules. The simultaneous two or both entry levels is also permissible. After that, the Court upheld the Constitutionally validity of the case of *Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr.*⁶⁵⁹, the Supreme Court has already interpreted Section 12(1)(c) and (b) read with Section 2(n)(i) to (iv) read with Section 18(3) along with constitutional provision as under covering the pre-school education by the school as under Chapter IV of the RTE Act, 2009 deals with responsibilities of schools and teachers. Section 12(1)(c) Sections (2(n)(iii) mandates that every recognised school imparting elementary education, even if it is an un-aided school, not receiving any kind of aid or grant to meet its expenses from the appropriate Government or the local authority, is obligated to admit in Class I, to the extent at least 25% of the strength of that class, children belonging to weaker section and disadvantaged group in the neighborhood and provide free and compulsory elementary education till its completion. As per the proviso to Section 12(1)(c), if the school is imparting pre-school education, the same regime would apply.

⁶⁵⁸*Ibid*

⁶⁵⁹2012(6) SCC 1; 2012(4) SCJ 318 (Supreme Court on Apr.-12-2012).

The Court observed that, the expression “25% of the strength of that class” under Section 12 (1)(c) of the RTE Act, 2009, means and includes pre-primary school (3 to 6 year), first entry level and also of first standard of elementary (primary school), both the entry level classes to select one out of two levels is impermissible. At every entry level, it is obligation of the school to admit the fixed percentage of children, belonging to the described class. The schools, therefore, who are imparting the education at two levels pre-primary and primary, at both the entry level, they have to admit prescribed percentage of children/students to achieve the purpose and object of the RTE Act.

Thereafter Court held and declared that, the State to constitute advisory council and/or appoint and/or form the other authorities as contemplated under the RTE Act, at the earliest, if not already appointed and/or constituted, and the State Government to consider and decide the issue of providing reimbursement for the vacant reserved seats and issue appropriate Govt. Resolution/circular accordingly.

Vikhe Patil Foundation, Vikhe Patil Memorial School Pune, Through its Trustee & Secretary Dr. Manoj Narwade & Ors. v. UOI and Ors. (2015):⁶⁶⁰

In this case writ petition are imparting pre-preprimary and elementary education in their respective unaided private schools. Some are un-aided minority schools also. The Respondents/State of Maharashtra and its officers are in-charge to control the schools and take effective steps to provide and or to make arrangement for primary and elementary school education till its completion in the State, as contemplated under The Right of Children to Free and Compulsory Education Act, 2009 and The Right of Children to Free and Compulsory.

Education Rules, 2010, The Maharashtra Right of Children to Free and Compulsory Education Rules, 2011 and Maharashtra Right of Children to Free and Compulsory Education (Manner of admission of Minimum 25% children in Class I or Preschool at the entry level for the children belonging to disadvantaged group and weaker section) Rules, 2013 (RTE Act State Rules, 2013). Wherein, the illustrations are related

⁶⁶⁰ Writ Petition No. 4457 of 2015, Decided on Aug-14-2015, Mumbai High Court

to Provision of the Right of Children to the Free and Compulsory Education Act, 2009 to the Petitioners schools under the Provision of Section 12(1)(c) of the Act.⁶⁶¹

The High Court maintained the facts of the **Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr.**⁶⁶², The Court held and declared that the compulsory admission of minimum 25% in class I and/or pre-school at both entry levels for the children belonging to specific class/group/section is within the framework of the RTE Act/Rules. The simultaneous two or both entry levels are also permissible.

Vikas Sankhala and Ors. v. Vikas Kumar Agarwal and Ors. Etc.⁶⁶³ (2016):

This writ petition was related to Section 23 of the RTE Act, 2009 which concerned with the educational and other qualifications that are needed for appointment of the teaching staff. The question has arisen that, whether reserved category candidates, who secured better than general category candidates in recruitment examination of Rajasthan Teacher Eligibility Test (RTET/TET) 2011, can be denied migration to general seats on the basis that they had availed relaxation in TET? The Supreme Court held that answered accordingly –

- i. Those reserved category candidates who secured pass marks on the application of relaxed standards as contained in the extant policy of the Government in its communication dated March 23, 2011 to be treated as having qualified TET examination and, thus, eligible to participate in the selection undertaken by the State Government.
- ii. Migration from reserved category to general category shall be admissible to those reserved category candidates who secured more marks obtained by the last unreserved category candidates who are selected, subject to the condition that such reserved category candidates did not avail any other special concession. It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category.

⁶⁶¹ *Ibid*

⁶⁶² 2012(6) SCC 1.

⁶⁶³ Civil Appeal No. 3545-3549 of 2016 (Supreme Court on Oct.-18-2016)

CHAPTER - 5

EDUCATIONAL POLICIES AND PROGRAMMES OF RIGHT TO EDUCATION OF CHILDREN

Independence for India meant not only a vivisection of her body but also a vivisection of her soul. Education, both Western and Indian, which was an aspect of her soul, also got vivisected. If a part of the Western system of education built up by the British Raj went to Pakistan, a substantial part of education developed in the Indian States, at the time of independence, there were more than five hundred Indian States which varied enormously from each other in its size, importance and status, which opted for merger with India did fill in the gap and became henceforward a part of Indian education.⁶⁶⁴ It must be stated here that apart from the Chiefs' Colleges, education in the Indian States depended upon the whims and caprices of the Indian Princes, many of whom were educated abroad and no uniformity either in standard or in instruction could be expected as was the case with the education in British India.

The idea of compulsory was first put forward in India as early as 1938. The first efforts in this direction were made by missionaries and officials, but Indian themselves took up the demand very soon and heroic attempts to make government accept responsibility for providing compulsory education were made Gokhale between 1920-1912. The Post-war plan of educational development in 1944, proposed a period of 40 years for the realisation of this ideal. Indian public opinion opposed this proposal very strongly on the ground that the period proposed in the plan was far too long. The Kher Committee proposed a revised programme of reaching this goal in 16 years. Even this did not meet the desire of people and there was a general demand that very high priority should be given to the programme of universal elementary education in the national

⁶⁶⁴ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 177 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

development plan and that it should be reached through a phased and shortage programme.⁶⁶⁵

When India achieved her independence, newly emergent nations in Asia, Africa and Latin America were preoccupied with the task of renovating their educational structures to suit national needs and national aspirations. The earlier national institutions could now become a part of the general system and the effort now made was to convert the entire system of the education to the nation pattern.⁶⁶⁶ India made its tryst with destiny on 15th August 1947. Independence meant the important task of re-building the nation and in this education had an important place. The vision of a national system of education seen in 1947 thus got blurred within two decades. It convened two important conferences in January 1948, within a few months from attaining Independence viz.

It is significant therefore that the need to depoliticise the administration of education was stress as early as in 1948 by the Kher Committee at the 18th Conference of the Central Advisory Board of Education (CABE),⁶⁶⁷ and All India Conference of Provincial Ministers of Education.⁶⁶⁸ Thus in January 1948 in his inaugural address to the All India Educational Conference convened by the Union Education Minister observed that, “Whenever conferences were called to form a plan for education in India, the tendency, as a rule, was to maintain the existing system with slight modification. This must not happen now. Great changes have taken place in the country and the educational System must also be in keeping with them. The entire basis of education must be revolutionised.”⁶⁶⁹ At these both Conferences, consideration was given to urgent

⁶⁶⁵ L.K. Panigrahi, *Women And Child Education*, 215 (K.C. Publishers, Chandigarh, 2003)

⁶⁶⁶ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 177 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁶⁶⁷ Sumit Bose and Anne Vaugier Chatterjee, “Primary Education in India Today: Is Decentralization The Way Out?” in Anne Vaugier Chatterjee (Ed.), *Education And Democracy In India*, 132 (Manohar Publishers & Distributors, New Delhi, 2004)

⁶⁶⁸ V.N. Singh, *Education In India: From Independence To Present Day*, 25 (Vista International Publishing House, New Delhi, 2005)

⁶⁶⁹ Pt. Jawaharlal Nehru, he was the first Prime Minister of India

educational problems confronting independent India and some important and far reaching decisions were made including the one of attainment of compulsory basic education.⁶⁷⁰

Nehru's observation was quite in keeping with the forces of the time which saw emergent nations in Asia, Africa and Latin America preoccupied with the task of renovating their educational structures to suit national needs and national aspirations. But the promised revolution in education system in India was not so easy to materialise. India after independence was plagued with a host of pressing problems.⁶⁷¹ The Partition had brought to India refugees from East and West Pakistan - they had to be rehabilitated. The Princely States had to be integrated with the Indian Union. The bureaucracy and the army had to be reorganised as the departure of British officials had left these services depleted. India had to be granted a constitution and made a republic. Plans had to be drawn up for developing the country.⁶⁷²

The era of educational reconstruction inevitably followed in the wake of social and economic reconstruction initiated by the National Government after 1947, education being the chief instrument for reconstruction and transformation of society.⁶⁷³ The first steps taken in the direction of educational reconstruction were the appointment of a series of commissions to survey, study, review and recommend improvements in the different sectors of education.⁶⁷⁴

5. 1. Radhakrishnan Commission (1948-49):

When we look into the problems of University education, In the midst of all these the utmost that could be done in education was to appoint in 1948 a University Commission under the Chairmanship of Dr. S. Radhakrishnan in pursuing of the

⁶⁷⁰ V.N. Singh, *Education In India: From Independence To Present Day*, 25 (Vista International Publishing House, New Delhi, 2005)

⁶⁷¹ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 178 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁶⁷² *Ibid*

⁶⁷³ Dr. R.K. Raghuram, *Recommendations Of Kothari Commission* 8 (Crescent Publishing Corporation, New Delhi, 2009)

⁶⁷⁴ *Ibid*

recommendations of the central advisory board of education and also of the Inter-University board, as reconstruction of university education was considered essential to meet the demand for scientific, technical and other manpower needed for the socio-economic development of the country.⁶⁷⁵ The Commission made important suggestions for improving the standard of university education in the country. The recommendations of the Commission in 1949 were wide - covering all aspects of university education in India.⁶⁷⁶ They emphasised the 10+2 structure at the pre-university stage, correction of the “extreme specialisation” in the courses, development of research to advance the frontiers of knowledge and of professional education in agriculture, commerce, law, medicine, education, science and technology including certain new areas such as business and public administrations and industrial relations and suggested reform of the examination system by assessment of the student’s work throughout the year and introduction of courses on the central problems of the philosophy of religion. They also emphasised the importance of student’s welfare by means of scholarships and stipends, hostel, library and medical facilities and suggested that they should be familiar with three languages - the regional, federal, and english - at the university stage and that English be replaced as early as possible by an Indian language. The Commission was also in favour of the idea of setting up rural universities to meet the need of rural reconstruction in industry, agriculture and various walks of life. The universities should be constituted as autonomous bodies to meet the new responsibilities, a Central University Grant Commission (UGC) be established for allocating grants, and finally, university education be placed in the Concurrent List.⁶⁷⁷

⁶⁷⁵ Government of India, Report: *The Report of the University Education Commission 1948-1949*, Vol. 1 (Ministry of Education, Government of India, New Delhi, 1st Edn., 1950, 1st Reprint Edn., 1962, Publication No. 606).

⁶⁷⁶ *Ibid*

⁶⁷⁷ Government of India, Report: *The Report of the University Education Commission 1948-1949*, Vol. 1 (Ministry of Education, Government of India, New Delhi, 1st Edn., 1950, 1st Reprint Edn., 1962, Publication No. 606).

5.1.1. Education in the Constitution:

Earlier in the same year when the Radhakrishnan Commission submitted its recommendations, on 26 January 1949, Independent India had adopted a Constitution finalized by the Constituent Assembly and the following year on the same date India proclaimed herself a Republic. The Constitution made Education a State Subject and divided the educational responsibility between the Government of India and the State as reproduced below:

1. List I: List of Union Functions:

Entry 63: The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance.

Entry 64: Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.

Entry 65: Union agencies and institutions for -

- d. Professional, vocational or technical training, including the training of police officers; or
- e. The promotion of special studies or research; or
- f. Scientific or technical assistance in the investigation or detection of crime.

Entry 66: Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.⁶⁷⁸

⁶⁷⁸ *Ibid*

2.List II: List of State Functions:

Entry 11: Education including universities, subject to provision of entries 63, 64, 65, and 66 of List I and entry 25 of List III.

3. List III: List of Concurrent Functions:

Entry 25: Vocational and technical training of labour.

The Constitution provided statutory recognition to the demand for the use of Hindi in Devnagri script as the official language of the Indian Union replacing English.⁶⁷⁹ It was further provided that the transition from English to Hindi be gradual and acceptable to all, that English should continue to be used till 1965 for all official purposes of the Union for which it was being used immediately before the adoption of the Constitution while States were authorised to adopt Hindi or any other modern Indian language for their official purposes. The Constitution also provided for the appointment of a Language Commission five years after the adoption of the Constitution. The recommendations of the Language Commission were to be considered by a Parliamentary Committee and the decision about the use of Hindi as the official language was to be taken on the basis of the recommendations of the Official Language Committee. While providing adequate safeguards for the educational and cultural interests of minorities, the Constitution realised the importance of universal primary education for the proper development of democracy.⁶⁸⁰ Thus Article 45 of the Constitution, also one of the important Directive Principles of State Policy, observed that “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 14 years.”⁶⁸¹

⁶⁷⁹ The Constitution of India, Part XVII, Article 343

⁶⁸⁰ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 180 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁶⁸¹ As original Article 45 of the Directive Principles of State Policy of the newly adopted the Constitution of India (before the Eighty-six Amendment Act, 2002) provides that, the provision for free and compulsory education for children, “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.

5.2. Mudaliar Commission (1952-53):

One of the most significant recommendations of the Radhakrishnan Commission was on the reorganization of secondary education as a pre-requisite condition for the development of university education.⁶⁸² In 1952 the Secondary Education Commission was appointed under the Chairmanship of Dr. A.L. Mudaliar which submitted its report in 1953.⁶⁸³ It reduced the total duration of the school course from 12 to 11 years and transferred the control of secondary school leaving examination from the universities to the specially constituted Boards of Secondary Education.⁶⁸⁴ While developing the curricula of the higher secondary course, the Commission sought to diversify it by the establishment of Multipurpose Schools which would provide terminal courses in technology, commerce, agriculture, fine arts and home science. The obvious object was to divert students from university education into different walks of life according to their aptitudes and capabilities.⁶⁸⁵

It is clear from the above that the Mudaliar Commission as well as the Radhakrishnan Commission which met before it dealt exclusively with two areas of education in which the ruling elite groups were interested. Both these sections received large allocations of funds and underwent rapid, un-planned and un-controlled expansion, resulting in deterioration of standards and creation of severe problems of educated unemployment. On the other hand, the Programmes of adult education and liquidation of illiteracy continued to be neglected as in the past. In elementary education, the evils of wastage and stagnation continued unabated as no structural changes like multiple-entry or part-time education was introduced. A perfunctory attempt at introducing basic education on Gandhian ideas was made but it was not successful and practically given up soon. In

⁶⁸² The Radhakrishnan Commission (1948-49) had surveyed the field of secondary education in a passing manner and had admitted that, our secondary education remains the weakest link in our educational machinery and needs urgent reform. This fact was the *raison detre* of an All in India Commission for Secondary Education appointed 1952 under the Chairmanship of Dr. A. LakshmanswamyMudaliar.

⁶⁸³ Government of India, *Report of the Mulaliar Commission, 1952-52* (Ministry of Human Resource Development, New Delhi)

⁶⁸⁴ *Ibid*

⁶⁸⁵ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 181 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

the context of all these developments, the aim of constitutionally providing free and compulsory education for all children up to 14 years of age by 1960 seemed a distant dream now.⁶⁸⁶

5.3. Kothari Commission (1964-1966):

The Kothari Commission regarded attainment of equality as one of the objectives of education.⁶⁸⁷ It highlighted the role of education in bringing about social change – “if this change on a grand scale is to be achieved without violent revolution there is one instrument, and one instrument only that can be used: education.”⁶⁸⁸ In view of the important role of education in the national development and in building up a truly democratic society the Government considered it necessary to survey and examine the entire field of education in order to realise a well-balanced, integrated and adequate system of national education capable of making a powerful contribution to all aspects of national life. To achieve these objectives speedily, the Government of India in October 1964 set up an Education Commission, under Resolution of July 14 1964.⁶⁸⁹

In 1964 M.C. Chagla, the Union Education Minister, appointed the Education Commission under the Chairmanship of Dr. D.S. Kothari, to advise the government on the general principles and policies for the development of education at all stages and in all its aspects so that a national system of education could emerge. In 1966 the Commission in its voluminous report suggested a drastic reconstruction, almost a revolution in education, to meet the problems facing the country in different sectors.⁶⁹⁰ It suggested an internal transformation in education to relate it to life, the needs and aspirations of the people, a qualitative improvement to raise its standards and a

⁶⁸⁶ *Ibid*

⁶⁸⁷ Government of India, Report: *Report of the Education Commission 1964-66* (National Council of Educational Research and Training, Government of India, New Delhi, 1970).

⁶⁸⁸ The Government of India, Report: *Report of the Education Commission 1964-66*, set up a National Education Commission, under Resolution of July 14, 1964 under the Chairmanship of Daulat Singh Kothari, than Chairman of the UGC, consisted of sixteen members. The report was submitted by the commission on 29 June 1966.

⁶⁸⁹ Dr. R.K. Raghuram, *Recommendations of Kothari Commission 9* (Crescent Publishing Corporation, New Delhi, 2009)

⁶⁹⁰ Suresh Chandra Ghosh, *The History of Education In Modern India 1757-2012*, 182 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

quantitative expansion of educational facilities on the basis of manpower needs and equalization of educational opportunities. The internal transformation could be achieved by making science education an integral part of school education and improving its teaching at the university stage.⁶⁹¹

Similarly, work experience should be an integral part of all general education. Vocational education was emphasised both at the lower (11-16 years) and the higher (17-18 years) secondary stage while in higher education about one-third of the total enrolment was expected to be in vocational courses. A common school system with equal access to children from all social strata was suggested and some form of social service was made obligatory for students at all stages. Development of fundamental, social, moral and spiritual values including a provision for some instruction on different religions was emphasised. National consciousness as well as a sense of belonging to the country was sought to be promoted through the adoption of a curricular programme which was both dynamic and elastic at all stages.⁶⁹² While retaining the three language formula of the Radhakrishnan Commission with some modifications, the Kothari Commission recommended the development of all modern Indian languages for use in education as well as in administration in their respective States. While all the three languages should be studied at the lower levels, only two of these were to be compulsory at the higher secondary stage.⁶⁹³

The qualitative improvement could be achieved by a maximum utilisation of the existing facilities. Since resources for up-grading all the institutions were not available, the Commission suggested that at least ten per cent of them should be up-graded to adequate standards during the next ten years - the model would be one secondary school in every community development block, one college in each district and five or six universities at the national level. The Commission accepted 10+2 at the secondary and

⁶⁹¹ *Ibid*

⁶⁹² Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 182-83 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁶⁹³ Government of India, Report: *Report of the Education Commission 1964-66* (National Council of Educational Research and Training, Government of India, New Delhi, 1970).

the higher secondary stages followed by a first degree course of a duration of not less than three years. The Commission also made various recommendations including uniform pay-scales to improve the service conditions of teachers so that the best persons coming out from the education system could be attracted to teaching. It felt that the education facilities could be expanded on a selective basis at the secondary and the higher secondary stages while effective primary education should be provided to all.⁶⁹⁴ Adult illiteracy should be liquidated on a mass or selected scale and part-time courses of about one year's duration for the drop-outs in the 11-14 age group. The Commission visualized that total enrolment would rise from 70 million in 1965 to 170 million in 1985 and educational expenditure from Rs. 6,000 million in 1965 to Rs. 47,000 million in 1985, representing an increase in the proportion of national income devoted to education from 2.9 per cent in 1965 to 6 per cent in 1985.⁶⁹⁵

5.4. National Policy on Education (1968):

The first National Policy on Education (NPE) was formulated as late as in 1968 - almost two decades after the framing of the Constitution.⁶⁹⁶ The National Policy of Education of 1968 marked significant steps in the history of education in post-independence India, a major concern of the Government of India and of the States has been to give increasing attention to education as a factor vital to national progress and security. Problems of educational reconstruction were reviewed by several commissions and committees. Some steps to implement the recommendations of Commissions⁶⁹⁷ were taken; and with the passing of the Resolution on Scientific Policy. Near the end of the third Five Year Plan, a need was felt to hold a comprehensive review of the educational system with a view to initiating a fresh and more determined effort at educational

⁶⁹⁴ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 182-83 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁶⁹⁵ *Ibid*

⁶⁹⁶ Government of India, Report: *Report of The National Policy on Education*, (Ministry of Human Resource Development, New Delhi, 1968), Section 4(1) - The National Education Policy had recommended that, free and compulsory education up to the age of 14 years, and equalization of educational opportunities.

⁶⁹⁷ The recommendations were made by two important commissions – first was the University Education Commission as Radhakrishnan Commission (1948-49), and second was the Secondary Education Commission as Mudailar Commission (1952-53).

reconstruction; and the Kothari Commission (1964-66) was appointed to advise Government on “the national pattern of education and on the general principles and policies for the development of education at all stages and in all aspects.”⁶⁹⁸ It aimed to promote national progress, a sense of common citizenship and culture, and to strengthen national integration.⁶⁹⁹ It laid stress on the need for a radical reconstruction of education system on the broad lines recommendation by education commission is essential for economic and cultural development of the nation, to improve its quality at all stages, and gave much greater attention to science and technology, the cultivation of moral values, and a closer relation between education and the life of the people. The educational system must produce young men and women of character and ability committed to national service and development.⁷⁰⁰

The document on the NPE, 1968 is divided into seventeenth principles. After some preliminary observations in the first, it provides free and compulsory education for all children up to the age of 14 years, and suitable programmes should be developed to reduce the prevailing wastage and stagnation in schools and to ensure that every child who is enrolled in schools successfully completes the schooling. The policy envisages the development of languages - Regional Languages for energetic development of Indian Languages and literature is a ‘sine qua non’ for educational and cultural development, and regional languages are already in use as media of education at the primary and secondary stages. Further, policy suggested the ‘three-language formula’ at the secondary stage, which includes the study of a modern Indian language, preferably one of the southern languages, apart from Hindi and English in the Hindi-speaking States, and of Hindi along with the regional language and English in the Non-Hindi-speaking States. The ‘Hindi’ every effort should be made to promote the development of Hindi. ‘Sanskrit’ considering the special importance to the growth and development of Indian languages

⁶⁹⁸ Government Of India, *National Policy On Education, 1968* (Ministry Of Human recourse Development, New Delhi), available at: <http://mhrd.gov.in>

⁶⁹⁹ Asha Bajpai, *Child Rights In India: Law Policy And Practice*, 342-43 (Oxford University Press, New Delhi, 2008)

⁷⁰⁰ Government Of India, *National Policy On Education, 1968* (Ministry Of Human Resource Development, New Delhi), available at: <http://mhrd.gov.in>

and its unique contribution to the cultural unity of the country, facilities for its teaching at the school and university stages should be offered on a more liberal scale. Finally, special emphasis needs to be laid on the study of 'English' and other international languages. World knowledge is growing at a tremendous pace, especially in science and technology.⁷⁰¹

The National Policy on Education, 1968 suggested the equalisation of educational opportunities for regional imbalances in rural and other backward areas, promotion for social cohesion and national integration the Common School System, education for girls, backward classes and especially for the tribal areas, and educational facilities for the physically and mentally handicapped children. The National Policy on Education, 1968 has also stresses the identification of talent, work-experience and national service including participation in meaningful and challenging programmes of community service and national reconstruction should accordingly become an integral part of education, science education and research should receive high priority, Education for Agriculture and Industry, Production of Books and libraries, major goal of examination, Secondary, University, Part-time Education and Correspondence Courses, and Education of Minorities, etc..⁷⁰²

Since the adoption of the 1968 Policy, there has been considerable expansion in educational facilities all over the country at all levels. More than 90 per cent of the country's rural habitations now have schooling facilities within a radius of one kilometre. There has been sizeable augmentation of facilities at other stages also. Perhaps the most notable development has been the acceptance of a common structure of education throughout the country and the introduction of the 10+2+3 system by most States. In the school curricula, in addition to laying down a common scheme of studies for boys and

⁷⁰¹ Government Of India, Report:*National Policy On Education, 1968* (Ministry Of Human resource Development, New Delhi), available at: <http://mhrd.gov.in>

⁷⁰² Government Of India, Report:*National Policy On Education, 1968* (Ministry Of Human resource Development, New Delhi), available at: <http://mhrd.gov.in>

girls, science and mathematics were incorporated as compulsory subjects and work experience assigned a place of importance.⁷⁰³

The National Policy on Education, 1968 envisages the reconstruction of education on the lines indicated above will need additional outlay. The aim should be gradually to increase the investment in education so as to reach a level of expenditure of 6 per cent of the national income as early as possible. The Government recognises that reconstruction of education is no easy task. Not only are the resources scarce but the problems are exceedingly complex. And finally, implementation of the various parameters of National Policy on Education, 1968 will be reviewed “every five years.”⁷⁰⁴

5.5. The National Policy for Children (1974):

The National Policy for Children, 1974 is the first text about the need and rights of children. The Government of India, after the consideration for the question of evolving a national policy for welfare of children has adopted the national policy for children on 24 August 1974.⁷⁰⁵ The policy recognised that, children are supremely important asset of the nation. It also recognised that, the equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and bring social justice.⁷⁰⁶

The main goals of the National Policy for Children, 1974 were needs of children and our duties were expressed in constitutional provisions for children and National Policy on Education, 1968 which has been adopted by Parliament, gives direction to State

⁷⁰³ Asha Bajpai, *Child Rights In India: Law Policy And Practice*, 342-43 (Oxford University Press, New Delhi, 2008)

⁷⁰⁴ Government of India, Report:*National Policy on Education: 1968* (Ministry of Human Resource Development, New Delhi)

⁷⁰⁵ Government of India, Document:*Government Document No.1-14/74-CDD* (National Policy for Children: August 22, 1974, Department of Social Welfare, Government of India, New Delhi)

⁷⁰⁶ Government of India, *National Policy for Children, 1974* (Department of Social Welfare, Government of India, New Delhi, August 22, 1974), available at: <http://www.childlineindia.org.in>

Policy on the educational needs of children, also that, implementation of the United Nations Declaration of the Rights of the Child, 1959.⁷⁰⁷

The national policy for children and measures envisages that, It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development, and the State shall progressively increase of the such scope, within a judicious time, all children in the country enjoy optimum conditions for their balanced growth, and specific measures shall be objectives are - the State shall take steps to provide free and compulsory education for all children up to the age of fourteen years. Special efforts will be made to reduce the prevailing wastage and stagnation in schools, particularly in the case of girls and children of the weaker sections of the society. The programme of informal education for pre-school children from such sections will also be taken up, and those children, who are not able to take full advantage of formal school education should be provided other forms of education appropriate to their requirements. Further, to ensure equality of opportunity, special assistance shall be provided to all children belonging to the weaker sections, such as children belonging to the Scheduled Castes and Scheduled Tribes, and who, those belonging to the economically weaker sections, both in urban and rural areas. Thereafter, the policy also suggests the amended to existing laws of the interest of children with supreme consideration.⁷⁰⁸

5.6. National Policy on Education (1986):

The National Policy on Education 1986 as amended 1992 was the second policy on education since independence.⁷⁰⁹ It was regarded as a landmark. It redefined

⁷⁰⁷Government of India, *National Policy for Children, 1974* (Department of Social Welfare, Government of India, New Delhi, August 22, 1974), available at: <http://www.childlineindia.org.in>

⁷⁰⁸Government of India, *National Policy for Children, 1974* (Department of Social Welfare, Government of India, New Delhi, August 22, 1974), available at: <http://www.childlineindia.org.in>

⁷⁰⁹The National Policy on Education was adopted by Parliament in May 1986. A committee was set up under the chairmanship of A. Ramamurti in May 1990 to review National Policy on Education and to make recommendations for its modifications. That Committee submitted its report in December 1990. At the request of the Central Advisory Board of Education (CABE) a committee was set up in July 1991 under the chairmanship of N. Janardhana Reddy, Chief Minister of Andhra Pradesh, to consider modifications in NPE taking into

educational priorities and made a fresh attempt to cope with the three strands that have influenced educational policy in India, viz., issues relating to quantity, quality, and equality. The policy gave the highest importance to Universal Primary Education (UPE).⁷¹⁰In January 1985, the Government of India announced that “a New Education Policy” would be formulated soon. In August 1985 after making a careful assessment of the existing developments, the proposals were submitted to the public for a countrywide debate and discussion, and in May 1986 emerged the National Policy on Education after its approval by Parliament.⁷¹¹

The document on the National Policy on Education, 1986 is divided into twelve parts.⁷¹² After some preliminary observations in the first two parts, it discusses in some detail about some of the essential characteristics of a national system of education providing scope for equal access to education to all irrespective of class, caste, creed or sex, and areas including backward, hilly and desert. It envisages a common educational structure like 10+2+3, a common core in the curricular programme at some level, an understanding of the diverse socio-cultural systems of the people while motivating the younger generations for international co-operation and peaceful co-existence.⁷¹³ The “education for equality” observes the new national policy on education therefore stresses the need for removal of disparities and emphasises the steps to be taken to equalise educational opportunity by attending to the specific needs of those who have been denied equality so far.⁷¹⁴

consideration the report of the Ramamurti Committee and other relevant developments having a bearing on the Policy, and to make recommendations regarding modifications to be made in the National Policy on Education (NPE). This Committee submitted its report in January 1992. The report of the Committee was considered by the CABE in its meeting held on 5-6 May, 1992. While broadly endorsing the NPE, CABE has recommended a few changes in the Policy.

⁷¹⁰ Asha Bajpai, *Child Rights In India: Law Policy And Practice*, 343 (Oxford University Press, New Delhi, 2008)

⁷¹¹ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 184 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷¹² Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), available at: <http://mhrd.gov.in>

⁷¹³ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 181 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷¹⁴ Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), Sec. 4.1

Education will be used as an agent of basic change in the status of woman. In order to neutralize the accumulated distortions of the past, there will be a well-conceived edge in favour of women. The National Education System will play a positive, interventionist role in the empowerment of women. It will foster the development of new values through redesigned curricula, textbooks, the training and orientation of teachers, decision-makers and administrators, and the active involvement of educational institutions. This will be an act of faith and social engineering. Women's studies will be promoted as a part of various courses and educational institutions encouraged to take up active programmes to further women's development.⁷¹⁵ The removal of women's illiteracy and obstacles inhibiting their access to, and retention in, elementary education will receive overriding priority, through provision of special support services, setting of time targets, and effective monitoring. Major emphasis will be laid on women's participation in vocational, technical and professional education at different levels.⁷¹⁶

The central focus in the Scheduled Castes educational development is their equalisation with the non-Scheduled Castes population at all stages and levels of education, in all areas and in all the four dimensions - rural male, rural female, urban male and urban female.⁷¹⁷ The measures contemplated for this purpose: (i) Incentives to indigent families to send their children to school regularly till they reach the age of 14; (ii) Pre-matric Scholarship scheme for children of families engaged in occupations such as scavenging, flaying and tanning to be made applicable from class 1st onwards. All children of such families, regardless of incomes, will be covered by this scheme and time bound programmes targeted on them will be undertaken; (iii) Constant micro-planning and verification to ensure that the enrolment, retention and successful completion of courses by SC students do not fall at any stage, and provision of remedial courses to improve their prospects for further education and employment. (iv) Recruitment of teachers from Scheduled Castes; (v) Provision of facilities for SC students in students'

⁷¹⁵*Ibid*, Sec. 4.2

⁷¹⁶*Ibid*, Sec. 4.3

⁷¹⁷*Ibid*, Sec. 4.4

hostels at district headquarters, according to a phased programme; (vi) Location of school buildings, Balwadis and Adult Education Centres in such a way as to facilitate full participation of the Scheduled Castes; (vii) The utilisation of Jawahar Rozgar Yojana resources so as to make substantial educational facilities available to the Scheduled Castes; and⁷¹⁸ (viii) Constant innovation in finding new methods to increase the participation of the Scheduled Castes in the educational process.⁷¹⁹

The education of Scheduled Tribes on par with – (i) Priority will be accorded to opening primary schools in tribal areas. The construction of school buildings will be undertaken in these areas on a priority basis under the normal funds for education, as well as under the Jawahar Rozgar Yojana, Tribal Welfare schemes, etc.⁷²⁰ (ii) The socio-cultural milieu of the STs has its distinctive characteristics Including, in many cases, their own spoken languages. This underlines the need to develop the curricula and devise Instructional materials in tribal languages at the initial stages, with arrangements for switching over to the regional language. (iii) Educated and promising Scheduled Tribe youths will be encouraged and trained to take up teaching in tribal areas; (iv) Residential schools, including Ashram Schools, will be established on a large scale. (v) Incentive schemes will be formulated for the Scheduled Tribes, keeping in view their special needs and life styles. Scholarships for higher education will emphasize technical, professional and para-professional courses. Special remedial courses and other programmes to remove psycho-social impediments will be provided to improve their performance in various courses. (vi) Anganwadis, non-formal and adult education centres will be opened on a priority basis in areas predominantly inhabited by the Scheduled Tribes. (vii) The curriculum at all stages of education will be designed to create an awareness of the rich cultural identity of the tribal people as also of their enormous creative talent.⁷²¹ The education for equality, the handicapped and certain minority groups who are either

⁷¹⁸Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), available at: <http://mhrd.gov.in>

⁷¹⁹*Ibid*, Sec. 4.5

⁷²⁰Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), available at: <http://mhrd.gov.in>

⁷²¹*Ibid*, Sec. 4.6

educationally deprived or backward sections of society, people belonging to rural areas, hill and desert districts, remote and inaccessible areas and islands need special care and incentives.⁷²²

“The whole Nation”, observes the national policy on education “has must pledged itself to the eradication of illiteracy, particularly in the 15-35 age group through various means, with special emphasis on total literacy campaigns. The Central and State Governments, political parties and their mass organisations, the mass media and educational institutions, teachers, students, youth, voluntary agencies, social activist groups, and employers, must reinforce their commitment to mass literacy campaigns, which include literacy and functional knowledge and skills, and awareness among learners about the socio-economic reality and the possibility to change it.”⁷²³ Document seeks to organize programmes on adult education linked with national goals to enable the beneficiaries to participate in the development programme of the country.⁷²⁴

The activities which foster and promote the all-round balanced development of the child in the age group of 0-6 years in all dimensions - physical, mental, social, emotional, and moral - have been collectively described in NPE 1986 as early childhood care and education (ECCE). These components, care and education, are essential, since either by itself is inadequate. ECCE is the birth right of every child.⁷²⁵ The early childhood care and education – the national policy on children specially emphasises investment in the development of young child, particularly children from sections of the population in which first generation learners predominate.⁷²⁶ Therefore, recognising the holistic nature of child development, viz., nutrition, health and social, mental, physical, moral and emotional development, Early Childhood Care and Education will receive high priority

⁷²² Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 184 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷²³ Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), Sec. 4.11

⁷²⁴ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 184 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷²⁵ Asha Bajpai, *Child Rights In India: Law Policy And Practice*, 343 (Oxford University Press, New Delhi, 2008)

⁷²⁶ Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), Sec. 5.1

and be suitably integrated with the Integrated Child Development Services programme, wherever possible.⁷²⁷ A full integration of child care and pre-primary education will be brought about, both as a feeder and a strengthening factor for primary education and for human resource development in general. In continuation of this stage, the school health programme will be strengthened.⁷²⁸

The National Policy on Education 1986 has explicitly recognized the importance of early childhood care and education (ECCE) as a crucial input not only for human development but also for universalization of elementary education and women's development. It has, therefore, emphasized the need for large scale investment in the development of the young child, both through the government and through voluntary organizations. It has recommended a holistic approach of providing ECCE programmes which should aim at fostering nutrition, health, and social, physical, mental, moral, and emotional development of the child. In this context the policy has clearly recommended that ECCE programmes should be 'child-oriented, focused plan and the individual of the child. Formal methods and introduction of the three rupees will be discouraged at this stage.⁷²⁹

Consistent with the thrust of the national policy, early childhood education programmes are being qualitatively and quantitatively strengthened both in the voluntary and in the government sectors. While early childhood education per se is being provided to children in the 3-6 age groups under these schemes, there exist wide diversities in terms of curriculum, infrastructure, financial allocations, staff quality, clientele, etc. These diversities are evident not only in different schemes but often within the same scheme from one region to another. Often, what is practised in the name of pre-school education is not necessarily what has been envisaged in the national policy. Most early childhood care and education programmes, based on curriculum, have become a

⁷²⁷ Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), Sec. 5.2

⁷²⁸ *Ibid.*, Sec. 5.4

⁷²⁹ Asha Bajpai, *Child Rights In India: Law Policy And Practice*, 343 (Oxford University Press, New Delhi, 2008)

downward extension of primary schools, wherein the basic philosophy and methodology of early childhood education are being generally ignored.⁷³⁰ The new thrust” in elementary education will be three aspects on (i) universal access and enrolment, (ii) universal retention of children up to 14 years of age, and (iii) a substantially improve the quality of education to enable all children to achieve essential levels of learning.⁷³¹

This effort will be fully co-ordinated with the network of non-formal system so that by 1990 all children attaining the age of 11 years will have had five years of schooling and by 1995 all children up to 14 years of age will be provided free and compulsory education. In secondary education talented children will be provided opportunities to proceed at a faster pace by means of pace-setting schools with full scope for innovation and experimentation. Courses on vocational education will ordinarily be provided after the secondary stage, but keeping the scheme flexible, these may also be made available after class VIII. The Vocational education will be a distinct stream, intended to prepare students for identified occupations spanning several areas of activity. By 1990 vocational courses are to cover 10 per cent, and by 1995, 25 per cent of the higher secondary students.⁷³²

The document makes a series of observations on cultural perspective, value education, languages, books and libraries, media and educational technology, work experience, education and environment, mathematics teaching, science education, sports and physical education, the role of youth, and proposes to re-cast the examination system so as to ensure a method of assessment that is a valid and reliable measure of a student’s overall development and a powerful instrument for teaching and learning. Since these and many other ‘new tasks’ of education cannot be performed in ‘a state of disorder’ the first task is to make the system ‘work.’ “All teachers should teach and all students study.” The strategy of the New Education Policy in this respect consists of (a) better deal to teachers

⁷³⁰ *Ibid*

⁷³¹ Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), Sec. 5.5

⁷³² Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 185 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

with greater accountability; (b) provision of improved students' service and insistence on observance of acceptable norms of behaviour; (c) provision of better facilities to institutions; and (d) creation of a system of performance appraisals of institutions according to standards and norms set at the National or State levels.⁷³³

How is this system going to be managed? Since Education is a Concurrent Subject now as per the Constitutional Amendment of 1976, it is expected that a meaningful partnership will be formed between the States and the Union Government in managing it. The guiding considerations will be: (a) evolving a long term planning and management perspective of education and its integration with the country's development and manpower needs; (b) decentralization and the creation of a spirit of autonomy for educational institutions; (c) giving pre-eminence to people's involvement, including association of non-government agencies and voluntary effort; (d) inducting more women in the planning and management of education; and (e) establishing the principle of accountability in relation to given objectives and norms. As far as the financial aspect of the system is concerned, the government proposes to gradually increase the expenditure on education till it "uniformly exceeds 6 per cent of the National Income." Additional sources, to the extent possible, will be raised partly by mobilising donations from the beneficiary communities and partly by raising fees at the higher levels of education while effecting some saving by the efficient use of facilities.⁷³⁴ And finally, implementation of the various parameters of the New National Policy on Education, 1986 will be reviewed every five years.⁷³⁵

Reviewing of the educational policy "every five years" was a decision taken by the British Government as a sequel to the Report of the "Indian Education Commission" in 1882 and was first implemented in 1886, exactly hundred years ago from the date of the

⁷³³ *Ibid*

⁷³⁴ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 186 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷³⁵ Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992)

promulgation of the National Policy on Education.⁷³⁶ While this aspect of the New Education Policy is not certainly new, the question may now be asked as to how new are the contents of the New Education Policy? The answer to the question can only be provided by reviewing the past developments in education and for this purpose we need not go beyond 1947—the year when India achieved her independence. India’s educational policy, immediately after her independence, was based on the structure provided by Sir John Sargent, Educational Adviser to the British Government, in his “Post-War Plan of Educational Development in India” in 1944. The object of the Plan was to achieve for India in 1984 the same educational standard as it had then existed in England. It had provided for the liquidation of illiteracy, universal elementary education and higher education for student out of every twenty that completed the secondary school and a certain amount of vocational, technical and professional education. It also provided for compulsory physical education, milk and mid-day meals for under nourished children and special education for the physically and mentally handicapped.

5.6.1. Comparative Study of National Policy on Education, 1968 and National Policy on Education, 1986:

How new is this New National Education Policy 1986? It is interesting to note that the framers of the New NPE have never cared to answer this question. They have never bothered to explain anywhere in the long policy statement in what sense the present policy is new or how different it is from the 1968 policy resolution. A comparative study of the New NPE, 1986 with that of the 1968 National Policy on Education reveals that the former has directly borrowed many of its ideas from the recommendations of the Kothari Commission which provided the basis for the 1968 National Policy on Education. In some places there are also direct acknowledgements of its indebtedness to the 1968 Policy.⁷³⁷ For example, on the subject of the languages which always remains one of the most sensitive issues in any Education Policy in India, the New National

⁷³⁶ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 186 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷³⁷ *Ibid*

Education Policy, 1986 observes: “The Education Policy of 1968 had examined the question of the development of languages in great detail; its essential provision can hardly be improved upon and are as relevant as today.” Similarly on the subject of raising resources or making investments in education, the National Policy on Education, 1986 says: “The National Policy on Education, 1968, had laid down that investment on education be gradually increased to reach a level of expenditure of 6 per cent of the National income as early as possible It will be ensured that from the Eighth Five Year Plan onwards it will uniformly exceed 6 per cent of the National Income.”⁷³⁸

The New National Policy on Education, 1986 thus does not appear to be new in many aspects of its policy. Its indebtedness goes beyond the 1968 of National Policy on Education, as for example, the idea of setting up rural universities is directly taken from the Radhakrishnan Commission of 1948-49. It may be mentioned here that the subject of Model School or pace setting school of the New National Policy on Education, 1986 which has been seen as undesirably favouring a privileged few against many academicians by its critiques is not a new concept at all.

The idea of the Model School is older than the education system itself which emerged in Modern India in 1854. It is an idea which first found favour with James Thomason, the Governor of the North Western Provinces, in 1849 when he decided to introduce a scheme of vernacular education by means of establishing a school in every village and every district to remove the appalling ignorance of the people in understanding the new revenue settlement in the North Western Provinces. The scheme was successful - it was extended to the rest of British India before it finally became a part of the plan of the Education Despatch of 1854. Similarly the idea of autonomous colleges which has been in the air since the days of the Kothari Commission and is now an

⁷³⁸ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 187-88 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

important aspect of the new policy is also older than the structure of the Indian education system itself.⁷³⁹

If the New National Policy on Education, 1986 is not “new” in themes and ideas, it is certainly “new” in the emphasis it has placed on its implementation and the directions it has issued for the purpose. Immediately after its approval in the Budget session in 1986, a programme of Action was prepared and presented for approval in the Monsoon session of the Parliament.⁷⁴⁰ The 1968 National Policy on Education was taken so half-heartedly and its implementation was made so casually that a decade after the policy had been propagated, J.P. Naik, was led to remark: “The stresses and strains of the education system have continued to grow so that the educational scene in the country in 1978 is not certainly better and is probably a little more complicated and difficult than in 1966.”⁷⁴¹ It is also new in the way it has emerged. The 1968 policy was based on the recommendations of the Kothari Commission which took nearly two years to finalise them. The proposals were formulated by the concerned Ministry officials under guidance from the ruling party immediately after its coming to power in December 1984/January 1985 with a massive majority in Parliament. They were ready by August 1985 and were then submitted to the politicians, academicians and administrators for their reactions. The final policy emerged, out of the discussions that followed, in May 1986.⁷⁴²

5.6.2. Implementation of the National Policy on Education, 1986:

However, the years immediately after the formulation of the National Policy on Education in 1986 saw the start of an energetic implementation of many of its important programmes and illogically enough all seemed to be well with education in the country.⁷⁴³ Following the policy statement in 1986 on improving learning conditions, a

⁷³⁹ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 188 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷⁴⁰ *Ibid.*

⁷⁴¹ J. P. Naik a Member, Secretary of the Kothari Commission (1964-66)

⁷⁴² Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 189 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷⁴³ *Id.* at 196

number of national level programmes were launched which have continued to contribute to improvement of school conditions in the 1990s.⁷⁴⁴ Thus after intensive discussion with various agencies schemes like ‘Operation Blackboard’, launched in 1987 and continued and expanded in the 1990s, is one major programme under which learning conditions have been created and expanded to improve the quality of schooling at the primary stage. The ‘Operation Blackboard’ has a wide coverage throughout the country.⁷⁴⁵

Further, District Institutes of Education and Training, Vocational Education and Technical Education were finalised. While the ‘Navodaya Vidyalaya’ Scheme was implemented by opening 205 model schools in several important places of the country, a national core curriculum was finalised by the National Council of Educational Research and Training in consultation with the State Governments.⁷⁴⁶ The Schemes on Non-Formal Education were also finalised and the summer of 1986 saw nearly two lakh college students involved in functional literacy programmes on a voluntary basis. With financial help from the Centre, various State Governments and Union Territories implemented the scheme of free education for girls’ up to the higher secondary stage.⁷⁴⁷ In higher education centralised agencies like National Assessment and Accreditation Council, National Council for Higher Education, National Council for Teacher Education, All India Council for Technical Education were set up improve its tone and quality while a National Eligibility Test (NET) was introduced by the University Grant Commission to regular the entry of candidates into the teaching profession at institute of higher learning.

5.7. Ramamurti Committee (1990):

The scheduled time for the review of the National Policy on Education, 1986 was five years after its introduction, that is, in 1992. In a resolution appointing the ‘Acharya Ramamurti Committee’ on 7 May 1990, the Government of India attempted an

⁷⁴⁴ Asha Bajpai, *Child Rights In India: Law Policy And Practice*, 345 (Oxford University Press, New Delhi, 2008)

⁷⁴⁵ *Ibid.*

⁷⁴⁶ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 196 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

⁷⁴⁷ *Ibid.*

explanation for hastening the review so much before the expiry of the stipulated period of five years. Ramamurti Committee was concerns earlier expressed by the New Education Policy, 1986 except the right to work which was then sought to be enshrined in the constitution. While the Challenge of Education felt that, the present scenario is an indication of the failure of the education system, the Education Policy stressed the need to make education a forceful tool for its two roles combative and positive. However, the events during the four years since 1986 had shown that it had failed in its missions as “the situation has grown much worse. Everywhere there is economic discontent, cultural decay, and social disintegration. The youth are in revolt. Violence is fast becoming a way of life... The nation is faced today with a crisis of many dimensions. Its very survival is threatened. In the total crisis of the nation, along with Politics, Business, and Religion, Education has its full share”.⁷⁴⁸

5.7.1. Committee Recommendations:

The Ramamurti Committee submitted its Report on 26 December, 1990 and has recommended that, “the nation is in peril” at the moment and the only way to save it from an impending disaster was to make education an integral part of national development through participation which “must go beyond government departments and reach the people in ‘Villages’ and ‘Muhallas’. While there should be understanding and coordination among departments, there should be active participation among the people themselves.” This could be achieved by treating the village itself as a unit for an integrated programme of education democracy and development.

The Panchayati Raj Bill, 1990, so observes the Ramamurti Committee, “Proposes that each village will have a ‘Gramsabha’ composed of all the adults in the village, male and female. It will have wide Powers and functions. As a representative of the village this ‘Gramsabha’ may be asked to prepare a plan of development including education for the village with its own priorities. As part of the village plan, each family will have its own

⁷⁴⁸ Government of India, Report: *Report Of The Committee For Review Of National Policy On Education 1986*, (Government of India, New Delhi, 26 December, 1990)

small plan. The 'Gramsabha' plan provides for each family means of livelihood - land for agriculture, cattle for dairying, tools for crafts, or other means of gainful employment. The 'Gramsabha' itself will be responsible for implementing the plan. As for resources, the funds available for all the different development and education schemes may be pooled and placed at the disposal of the 'Gramsabha' which may form its own committees to look after different activities. As the work progresses and development mindedness grows and problems arise the village people will realise that without education and training, progress is not possible. Writing the muster rolls, keeping records, handling money, measuring dug earth, calculating wages, repairing the pumping set or implements, protecting crops, increasing the yield of milk, first-aid to simple injuries, and a lot of other problems will create a situation in which there will be a compelling demand for know how for information, for literacy, functional and general, and training in a number of skills." Thus the village would become a school where "those who are educated will teach; those who have skill will train; those who have experience will guide and train" - and in such a scheme co-related to productive work in a natural and social environment, the engineer, the doctor, the accountant and mechanic, the social worker and others, retired or serving, "all have their place and will create an example of participatory education for life through life."

The Ramamurti Committee also delineated how the children of the villagers would be educated. They would have formal education in a regular village school called 'Gramshala'. The children while assisting their parents in their work could easily take a few hours off to attend a formal and graded education at the 'Gramshala' according to their convenience. The 'Gramshala' would hold separate classes for young men and adults in the evening devoted to a discussion of their common problems and the acquisition of literacy. The nearest high school should be equipped with a science laboratory and a workshop for special courses in subjects like mechanical skills, functioning of the 'Grainsabha' and Panchayat, development planning, Anthyodaya mobilization and use of resources, amounting, and a number of other related subjects.

Thus, the scheme of Ramamurti Committee of education villages have been assigned an essential role for India lives in its villages and no vision of future India can be greater than to rebuild its half a million villages. It is the villages that hold the key to the country's problems. It is here that "our producers live, voters live, the poor and the illiterate live", and therefore, the first step in any educational reconstruction in the country should begin with few selected homogeneous Scheduled Caste, Scheduled Tribe and Other Backward Villages in the first phase.⁷⁴⁹

The whole thrust of educational reforms as suggested by the Ramamurti Committee has refreshed on evolving a policy of planned decentralization. For the Ramamurti Committee, decentralization does not mean merely the devolution of certain functions from the Centre to the lower levels of administration. It means a clear transfer of power from the former to the latter and is concerned with the role of the State vis-a-vis the Civil Society. As a matter of fact, the three key-points in the Ramamurti Committee's thinking on education have been Universalisation, Vocationalisation and Decentralisation drawn from the "great tradition of India, the experiences and experiments of pioneers in our own country and abroad and great thinkers like Gandhi, Tagore and others." The most redeeming feature of the recommendations of the Ramamurti Committee is the implication that an educational programme should develop on the requirements of the society as has been evident in the participatory education in the village.⁷⁵⁰

The second most important redeeming feature is the implication that educational activity of the government could not be an isolated programme - it must be interrelated to other departments of the government to be a successful one. Ramamurti Committee says that, "in a country like ours, with vast areas of backwardness, economic, social, educational, development, democracy, and education have to go together. They have to be woven in an integrated programme of transformation and reconstruction. Peaceful

⁷⁴⁹Suresh Chandra Ghosh, *The History of Education in Modern India 1757-2012*, 200 (Orient BlackSwan Pvt. Ltd. New Delhi, 2013).

⁷⁵⁰ Ibid.

transformation is an organic process in which economy and education cannot work in isolation with each other. Take, for example, the right to work. Even if it is enshrined in the constitution, it is the economy alone that can create opportunities for employment; education can only empower people for work. This is the principal reason why, despite growing unemployment, vocational education has not become popular. The economy failed to create jobs so vocational training became useless.”

Thirdly, this also means by implication from the preceding paragraph that educational activity could not be left to the initiative and judgment of specialists at the desk, controlled and guided by those far removed from where people live and work. Education co-related to life has to be linked to clearly define social objectives and comprehensive strategies and this can only be done by decentralizing educational administration to such an extent that each village and ‘Muhallas’ could participate in it. This way it could not only reduce the dependence of the people upon the State alone to bring about the much needed educational and social transformation but also would reduce the “growing alienation between the masses and the elite in all spheres of national life.”⁷⁵¹

5.8. Saikia Committee (1997):

In the 1996 General Election the Congress Party failed to return to power and following a 13-day stint of the Bharti Janta Parti Government at the Centre, a United Front Government with Congress support from outside was formed under Deve Gowda. The United Front Government went a step further towards universalisation of elementary education by appointing a Committee of State Education Ministers under the Chairmanship of the Minister of State for Education, Muhi Ram Saikia, in August 1996 to report on it.⁷⁵²

⁷⁵¹ Ibid.

⁷⁵² Government of India, Report: *Report of the Committee of State Education Ministers on Implications of the Proposal of Make Elementary Education A Fundamental Right, 1997* (Ministry Of Human Resource Development Department of Education, Government of India New Delhi, 1997), available at: <http://www.teindia.nic.in/mhrd>

The Saikia Committee which submitted its report in January 1997 pointed out that compulsion was not the only answer to achieve universalisation of elementary education and the Government had to motivate both parents and children, involve communities and build up public opinion in its favour so that elementary education could be universalised by 2000 A.D. with that end in view the Committee unanimously endorsed the proposal of the United Front Government to amend the Constitution through legislation to make elementary education up to 14 years of age a Fundamental Right. Simultaneously, an explicit provision should be made in the Constitution to make it a Fundamental Duty of every citizen who was a parent to provide opportunities for elementary education to all children up to 14 years of age.⁷⁵³

The United Front Government not only prepared the Bill on the subject but introduced it in Parliament for debate and, approval. However, the United Front Government did not last long to ensure the passage of the Bill though as a token beginning it allocated Rs. 35 crore out of Rs. 40,000 crore needed over a period of five years to implement the legislation when passed to make the right to free and compulsory elementary education a Fundamental Right.⁷⁵⁴

5.9. The Government Programmes and Schemes:

5.9.1. National Bal Bhavan:

The National Bal Bhavan (NBB), was established by the Government of India in 1956 at the initiative of Jawahar Lal Nehru. An autonomous institution fully funded by the Department of Education, the NBB has been contributing towards enhancing the creativity amongst children in the age-group 5-16 years especially from the weaker sections of the society. The children can pursue activities of their choice such as creative arts, performing arts, environment, astronomy, photography, integrated activities, physical activities, science-related activities, etc. in a joyful manner. It has been expanded

⁷⁵³Suresh Chandra Ghosh, *The History of Education in Modern India 1757-2012*, 206-7 (Orient BlackSwan Pvt. Ltd. New Delhi, 2013).

⁷⁵⁴Suresh Chandra Ghosh, *The History of Education in Modern India 1757-2012*, 207 (Orient BlackSwan Pvt. Ltd. New Delhi, 2013).

to other States and Union Territories also. The programmes are so designed as to explore the inner potential of a child and give him opportunities for expression of ideas through various media. NBB thus aims at the all-round growth of a child in a free and happy environment and helps them develop a scientific displeasure.⁷⁵⁵

Presently in year 2014-15, there are 175 Bal Bhavans and Bal Kendras in different States/Union Territories which are affiliated to the NBB, New Delhi.⁷⁵⁶ In order to facilitate and reach out to a larger number of children, there are 52 Bal Bhavan Kendras in different areas of Delhi, in which, two Rural Bal Bhavans in Srinagar and Mandi village in Delhi. Keeping in view the nature of activities of this organisation and with a view to project the unique national identity to this institution, Bal Bhavan Society of India has been renamed as National Nil Bhavan during last year. The NBB has thus been functioning as a Resource Centre to enhance skills of teachers in identifying and nurturing creativity of children and providing opportunities to children directly to further their creativity; and as a nodal agency for providing guidelines, academic support and technical know-how to affiliated Bal Bhavan centre.⁷⁵⁷

A Children's Creativity Centre - the first International center on the pattern of NBB is also functioning in Mauritius under Ministry of External Affairs Every year children take annual membership of NBB and Jawahar Bal Bhavan, Mandi and 52 Bal Bhavan Kendras of Delhi. This year (2014-15) 5319 children took membership in NBB, 383 in Jawahar Bal Bhavan, Mandi and 13076 in 52 Bal Kendras of Delhi.⁷⁵⁸ NBB organizes programmes at local, zonal, national and international levels. Thousands of children participate in

⁷⁵⁵ L.K. Panigrahi, *Women and Child Education*, 233 (K.C. Publishers Chandigarh, 2003)

⁷⁵⁶ Government Of India, Report: *Annual Report 2014-15, Part I* (Department Of School Education & Literacy Department Of Higher Education Ministry Of Human Resource Development Government Of India), available at: <http://mhrd.gov.in>

⁷⁵⁷ V.N. Singh, *Education In India: From Independence To Present Day*, 46 (Vista International Publishing House, Delhi, 2005)

⁷⁵⁸ Government Of India, Report: *Annual Report 2014-15, Part I* (Department Of School Education & Literacy Department Of Higher Education Ministry Of Human Resource Development Government Of India)

these programmes. Several special workshops on different themes and topics are also organized throughout the year.⁷⁵⁹

5.9.2. Operation Blackboard:

In pursuance of the National Education Policy, 1986, centrally sponsored scheme of Operation Blackboard (OB) was launched in 1987 to address the task of providing basic educational facilities to all primary schools, with the aim of improving the human and physical resources available in primary schools of the country existing as on 30 September 1986.⁷⁶⁰ The Scheme was centrally sponsored, with active collaboration of the government in States and Union territories, aimed at providing the following essential facilities in each primary school of the country.⁷⁶¹ The scheme consisted of mainly three components -

- Provision of at least two teachers, one of them a woman as far as possible, in every primary school (Teacher Component).
- Provision of essential teaching-learning material including black boards, maps, charts, a small laboratory, and some equipment for work experience (Equipment Component).
- The scheme was planned to be implemented in a phased manner 20 per cent of the blocks and municipal areas were to be covered in 1987-88, 30 per cent in 1988-89, and 50 per cent in 1989-90 (Eighth Five-Year Plan Policy).

The scheme was reviewed; the scope of Operation Blackboard was modified and enlarged in 1992 to include the following sub schemes –

- Continuation of on-going Operation Blackboard to over the entire remaining primary schools especially those in Scheduled Castes and Scheduled Tribes areas;

⁷⁵⁹ *Ibid.*

⁷⁶⁰ Government of India, Report: *Ninth Five Year Plan - Human and Social Development*, Vol. 2 (Ministry of Planning Commission, New Delhi), available at: <http://planningcommission.gov.in>

⁷⁶¹ M.S. Yadav and Meenakshi Bhardwaj, *Learning Conditions for Primary Education*, (National Institute of Educational Planning and Administration, Ministry Of Human Resources Development, New Delhi, 2000)

- Expending the scope of OB to provide three teachers and three rooms to primary schools wherever enrolment warranted them; and
- Expending Operation Blackboard to upper primary schools.

The scheme was intended to improve school publicity and advocacy for universalization of environment, enhance retention and learning achievement of children by providing minimum essential facilities in all primary schools. Thus the scheme seeks to bring about both quantitative and qualitative improvement in primary education. Hundred per cent central assistance is provided for appointment of an additional teacher in single teacher schools. Central assistance has been fully provided.⁷⁶²

For the construction of buildings, the State governments were expected to utilize resources available under the on-going rural employment programmes, provided by the Finance Commission or any other source. In 1990, it was decided that the central assistance under the rural employment scheme, Jawahar Rozgar Yojana (JRY), would supplement the State resources on buildings. In 1993, construction of school buildings was made a high-priority item under the newly-introduced Employment Assurance Scheme (EAS) in selected blocks and in 120 backward districts identified under the JRY. These funds were made available by the ministry of rural areas and employment. Separate district specified projects had to be formulated for the purpose.⁷⁶³ The construction of school building is the responsibility of the State Governments. However, in consultation with the Department of Education, the Ministry of Rural Areas and Employment has worked out a formula to make available the funds for construction of school buildings under Operation Blackboard scheme. According to this formula 48 per cent of the funds for construction are provided by the Ministry of Rural Areas and

⁷⁶² L.K. Panigrahi, *Women and Child Education*, 232 (K.C. Publishers Chandigarh, 2003)

⁷⁶³ M.S. Yadav and Meenakshi Bhardwaj, *Learning Conditions for Primary Education*, (National Institute of Educational Planning and Administration, Ministry Of Human Resources Development, New Delhi, 2000)

Employment under JRYs, if the States raise 40 per cent non-JRY and 12 per cent JRYs State share.⁷⁶⁴

5.9.3. District Institutes of Education and Training:

The centrally sponsored scheme pursuant to the National Education Policy, 1986 on teacher education, restructuring and reorganization of teacher education, such as, the District Institutes of Education and Training (DIET) was approved in October 1987. The Draft guidelines for the applying the District Institutes of Education and Training constituent in same year and has, together with certain subsequent circulars, formed the basis for its implementation so far. The government support had been sanctioned under the scheme for setting up a total of 216 District Institutes of Education and Training in the country.⁷⁶⁵

Placed as they are working in difficult circumstances it is perhaps impractical to expect high levels of performance from all the teachers without external support and monitoring. It is with this in view that the National Policy on Education, 1986 recommended de-centralizing the technical and academic support mechanism by establishing a District Institute of Education and Training (DIET) in each district exclusively to cater to the development needs of elementary education of the particular district. The country has moved ahead considerably in this process of de-centralization of academic support to educators.⁷⁶⁶

The establishment of a DIET in each district following the NPE-1986 was a major step in taking the support system nearer to the field. During the last ten years more than 400 such district level institutions have been established. This process of decentralisation has been further extended under the externally aided Education for All (EFA) projects through the establishment of Block Resource Centres (BRCs) and Cluster Resource Centres (CRCs). The main function of these sub-district level institutions is capacity

⁷⁶⁴ L.K. Panigrahi, *Women and Child Education*, 232 (K.C. Publishers Chandigarh, 2003)

⁷⁶⁵ District Institutes of Education and Training, *available at*: <http://www.educationforallindia.com/page112.html>

⁷⁶⁶ L.K. Panigrahi, *Women and Child Education*, 244 (K.C. Publishers Chandigarh, 2003)

building among teachers. The partnership between government bodies and non-governmental organisations (NGOs) with field experience in teacher training is another important feature of the in-service teacher training programmes in the recent years.⁷⁶⁷

For example, The Rajiv Gandhi Shiksha Mission which implements district primary education programme (DPEP) in Madhya Pradesh has been taking the help of 'Ekalavya' NGOs. Attempts are being made in other states also to work in collaboration with NGOs for teacher training and other related activities. Even with the establishment of an extensive institutional network, continuous upgradation of knowledge and skills cannot be done effectively in view of the perpetually expanding system of schools and teachers. With this in view, a major move has been made in the 1990s to use modern technology and distance education mechanisms to reach out to the school teachers on a continuous basis.⁷⁶⁸

5.9.4. Non-formal Education:

The scheme of Non-formal Education (NFE), introduced in 1977-78 on a pilot basis and expanded in subsequent years, focused on out of school children in the 6-14 age group who have remained outside the formal system due to socio-economic and cultural reasons.⁷⁶⁹ The Non-formal Education (NFE) programme in achievement of the National Policy on Education 1986, the Central Government provides help for the establishment of NFE centres. Support has given to the extent of 60 per cent of the expenditure sustained on Centres established by State Governments and 100 per cent for Centres established by voluntary organisations.⁷⁷⁰ The NEE programme caters to the learning needs of children in the age group of 6 to 14 years, who remain outside the formal system of education for a variety of reasons. These include dropout of the formal schools, children from habitations without schools, children who assist in performing domestic chores like

⁷⁶⁷ *Ibid*

⁷⁶⁸ *Id.* at 244-45

⁷⁶⁹ Government of India, Report: *Tenth Five Year Plan – Sectoral Policies and Programmes, 2002-2007*, -Vol. 2, 29 (Planning Commission, Government of India, New Delhi), available at: <http://planningcommission.gov.in>

⁷⁷⁰ Government of India, Report: *Ninth Five Year Plan - Human and Social Development*, Vol. 2 (Planning Commission, Government of India, New Delhi), available at: <http://planningcommission.gov.in>

fetching fuel, fodder, water, attending to siblings, grazing cattle, etc. and girls who are unable to attend formal schools. The programme has been revised and strengthened during the 1990. Though the original scheme was meant only for 10 educationally backward States, it has been extended to cover urban slums, hilly, tribal and desert areas and projects for working children in other states also. The programme is characterized by flexible features that facilitate spread of basic education among traditionally disadvantaged sections of population.⁷⁷¹ Some of the important features are:

- Condensed course of about two years' duration for lower primary and three years for upper primary level.
- Part-time instruction at a time and place convenient to learners in small groups.
- Village community provides the space and other facilities for running the NFE centre.⁷⁷²
- Part-time honorary instructors/supervisor locally recruited and trained.
- Emphasis on flexibility and decentralization of management.
- Use of curriculum and teaching learning material comparable to the formal system and relevant to local environment and learners, needs.
- Testing and certification of NEF students enable their entry into the formal system.

Centres run by the State Government and exclusively meant for girls are eligible for 90 per cent assistance. At present 2.79 lakh Centres 2.40 lakh of the State Governments and 39000 run by voluntary agencies are functioning. The enrolment during 1996-97 was estimated to be 70 lakh.⁷⁷³

⁷⁷¹ L.K. Panigrahi, *Women and Child Education*, 246 (K.C. Publishers Chandigarh, 2003)

⁷⁷² L.K. Panigrahi, *Women and Child Education*, 246 (K.C. Publishers Chandigarh, 2003)

⁷⁷³ Government of India, Report: *Ninth Five Year Plan - Human and Social Development*, Vol. 2 (Ministry of Planning Commission, New Delhi), available at: <http://planningcommission.gov.in>

5.9.5. Minimum Levels of Learning:

India is one of the few developing countries which took initiative in 1991 to lay down Minimum Levels Learning (MLL) to be achieved at the primary stage. This new approach integrates various components of curriculum, classroom translation, evaluation and teacher orientation.⁷⁷⁴ The MLL programme was introduced with the objective of specifying competencies which all primary school students should attain at mastery level in Language, Mathematics and Environmental studies and to develop curricula and text books in relation to these.⁷⁷⁵ The first phase was implemented through voluntary organisations, research institutions, and DIETs, etc..The results of these projects show significant improvement in learning attainments of school children. It has now been decided to upscale the MLL programme through institutional mechanism throughout the country. The MLL approach has been introduced in 50,000 schools in different States. It is now possible to direct effort and resources to schools where the levels of learning have fallen below the prescribed ones.⁷⁷⁶

5.9.6. Shiksha Karmi Project:

Shiksha Karmi Project (SKP) was launched in 1987 in Rajasthan on the basis of agreement signed between Swedish International Development Co-operation Agency (SIDA) and the Government of India.⁷⁷⁷ According to the specific agreement between the Government of India and the Government of Sweden, Phase I of the Shiksha Karmi Project was up to 30 June 1994, and Phase II of the SKP was up to June 1997 which was subsequently extended to June 1998. During Phase I, SIDA and the Government of Rajasthan shared expenditure in the ratio of 9:1, respectively During Phase II the cost

⁷⁷⁴ L.K. Panigrahi, *Women and Child Education*, 227 (K.C. Publishers Chandigarh, 2003)

⁷⁷⁵ Government of India, Report: *Ninth Five Year Plan - Human and Social Development*, Vol. 2 (Ministry of Planning Commission, New Delhi), available at: <http://planningcommission.gov.in>

⁷⁷⁶ *Ibid.*

⁷⁷⁷ Report: *EFA Global Monitoring Report, Education For All 2000-2015: Achievements And Challenges*, 185 (UNESCO Publishing, 2015)

sharing between SIDA and the Government of Rajasthan was revised in the proportion of 50:50. The Shiksha Karmi Project work on the following assumptions⁷⁷⁸ -

- That ‘before teacher’ teacher belonging to local community can work effectively to reach every child in a locality.
- That if person is willing to work as a social worker, the lack of formal training recruitment can be made up by intensive in service education and training, and
- That education must have community support and local ownership in order to meet the needs of the deprived sections of the rural areas.

Provision for the Swedish International Development Co-operation Agency share has been made in the Central Plan Budget which was subsequently reimbursable by SIDA on the basis of actual expenditure incurred by the Rajasthan Shiksha Karmi Board (RSKB) through which the Shiksha Karmi Project is being implemented. The project aims at universalisation and qualitative improvement of primary education in remote and socio-economically backward villages in Rajasthan with primary attention given to girls. The project identifies teacher absence as a major obstacle in achieving the goal of Universalisation of Elementary Education. It was realised that a primary school in remote villages, with the teacher not residing there, often tended to become dysfunctional, and parents as well as children failed to relate to such an institution, leading to high dropout rates. Under SKP, regular teachers are replaced by local teachers who are less qualified but specially trained.⁷⁷⁹

A Shiksha Karmi is a local person with minimum educational qualification of Class VIII for men and Class V for women. To overcome the basic lack of qualification, Shiksha Karmis are given intensive training through induction programme as well as periodic refresher courses. The project is being implemented by the Government of

⁷⁷⁸ V.N. Singh, *Education In India: From Independence To Present Day*, 139-40 (Vista International Publishing House, Delhi, 2005)

⁷⁷⁹ L.K. Panigrahi, *Women and Child Education*, 235 (K.C. Publishers Chandigarh, 2003)

Rajasthan Shiksha Karmi Board (RSKB) with the assistance of voluntary agencies.⁷⁸⁰ The RSKB has a Governing Council and an Executive Council. These bodies are represented through two representatives of this Department. Non-Governmental Organisations (NGOs) and the community play a pivotal role in the implementation of the Shiksha Karmi Project. The Shiksha Karmi Project has emerged as a unique instrument of human resource development. It has enabled rural youth with inherent talent and potential to blossom into confident para-professionals with self-respect and dignity. There has been six-fold increase in the enrolment of children in the schools taken over by the project.⁷⁸¹

5.9.7. Lok Jumbish Project:

The second externally-aided Lok Jumbish Project (LJP) for basic education was launched in Rajasthan. It is innovative project aimed at the universalisation of elementary education together with qualitative improvement in remote and socially back ward village with a primary focus on gender.⁷⁸² The project address some of the major obstacles in achieving UEE, namely – teacher absenteeism, high dropout rate, working children, uninteresting teaching methods, lack of contextual learning materials, low motivation and competence of teachers, a centralized and inflexible approach etc.. The LJP had three core components:⁷⁸³

- i. The quality of learning;
- ii. The community involvement; and
- iii. The management of education.

Many of its ideas were drawn from SKP and its predecessors, and, like SKP, it attracted financial support from the Government of Sweden, but on a much larger scale.

⁷⁸⁰ *Id.* at 237

⁷⁸¹ *Ibid.*

⁷⁸² V.N. Singh, *Education In India: From Independence To Present Day*, 186 (Vista International Publishing House, Delhi, 2005)

⁷⁸³ Angela W. Little, *Access To Elementary Education In India: Politics, Policies And Progress - Create Pathways To Access, Research Monograph, No. 44*, 29 (The Institute of Education, University of London, UK, September, 2010), available at: <http://www.files.eric.edu.gov>

Like the large scale Andhra Pradesh Primary Education Project before it LJP was another example of a three way relationship between the central government, the State government and the government of Sweden.⁷⁸⁴ The LJP gave substance to the 1992 when National Policy of Education, 1986 the Government of India recognises that reconstruction of education is no easy task. Not only are the resources scarce but the problems are exceedingly complex. Considering the key role which education, science and research play in developing the material and human resources of the country, the Government of India will, in addition to undertaking programmes in the Central sector, assist the State Governments for the development of programmes of national importance where coordinated action on the part of the States and the Centre is called for.⁷⁸⁵

The LJP has been able to set up innovative management structures incorporating the principles of decentralization and delegation of authority as well as building partnership with local communities and voluntary sector. The project has also made a positive contribution to quality improvement through the development of improved Minimum Learning Levels (MLL) based textbook for classes I – IV, which are also being used in all school in Rajasthan.⁷⁸⁶

The three component of LJP envisaged for improvements in the quality of learning was not especially radical, even if it posed implementation challenges. It involved the training of teachers and teacher educators, a curriculum and pedagogy reform led by the framework of MLL, and a system for professional support. The Programme for Community Mobilisation was more radical and involved the mobilization of the community through public debate, the sharing of information and knowledge to create informed decisions and village household surveys to establish the numbers of children not attending schools and the reasons for non-attendance. Mobilisation involved the establishment in the village of a core group who became an activating agency for the

⁷⁸⁴ *Ibid.*

⁷⁸⁵ Government Of India, Report: *National Policy On Education 1986*, 45 (Ministry Of Human resource Development, New Delhi, 1986)

⁷⁸⁶ V.N. Singh, *Education In India: From Independence To Present Day*, 186 (Vista International Publishing House, Delhi, 2005)

village, the involvement of women's groups in education decision making and the involvement of male and female adults in the design of school buildings, construction and maintenance.⁷⁸⁷

5.9.8. District Primary Education Programme:

In 1990 there was the emergence of large multi-state programmes for Education for All (EFA) under banner of the District Primary Education Programme (DEEP). DEEP promotes and supports the development of participatory processes in planning and management, increased gender awareness, and enhance teacher effectiveness through inputs into teacher training and decentralized management. The programme covers several district and various States, which include district where the female literacy rate is less than the national average. A joyful learning methodology is used by teachers that have helped to attract and retain children, including girls, in school.⁷⁸⁸

The District Primary Education Programme was launched as a Centrally Sponsored Scheme in November 1994. The first phase was launched in 42 districts of seven States - Assam, Haryana, Karnataka, Kerala, Maharashtra, Tamil Nadu and Madhya Pradesh. The programme was extended to 17 more districts of Orissa, Himachal Pradesh, Andhra Pradesh and Gujarat. It was planned to cover 120 districts by the end of the Eighth Plan. The programme aims at operationalizing strategies required for achieving the goal of universal elementary education through specific planning and target setting at the district level. The intervention is based on the concept of decentralized management, community mobilization and contextual and research based inputs.⁷⁸⁹ At its peak, the programme was being implemented in 272 districts of 18 States and it is now continuing in 129 districts of nine States in 2004. It has been funded jointly by the World

⁷⁸⁷ Lok Jumbish Assessment, Lok Jumbish – Learning Together: A Joint Assessment Of Lok Jumbish – A Basic Education For All Programme In Rajasthan (Report Of SIDA and Government Of India and Rajasthan, 1993)

⁷⁸⁸ Asha Bajpai, Child Rights In India: Law Policy And Practice, 349 (Oxford University Press, New Delhi, 2008)

⁷⁸⁹ Government of India, Report: *Ninth Five Year Plan - Human and Social Development*, Vol. 2 (Ministry of Planning Commission, New Delhi), available at: <http://planningcommission.gov.in>

Bank, European Commission, UK Department of International Development, Government of Netherlands and UNICEF.⁷⁹⁰

5.9.9. Mahila Samakhya Programme:

The Mahila Samakhya Programme (MSP) programme was launched in 1989 to translate the goals mentioned in the National Policy on Education, 1986 into action. The programme was initially started with Dutch assistance.⁷⁹¹ The programme was launched in 1991 in 10 districts of U.P., Gujarat and Karnataka. It now covers 5000 villages in 35 districts of seven States. An evaluation, conducted in 1993, indicated that the project had laid the foundation for empowerment of women at grassroots level.⁷⁹² From 2003-04, the programme is also funded by the Government of India from domestic resources. The MSP recognises the centrality of education in empowering women to achieve equality. Adopting an innovative approach, which emphasises the process rather than mere fulfillment of targets, it seeks to bring about a change in women's perception about themselves and the perception of society with regard to women's traditional roles.⁷⁹³

Under this programme, education is understood as a process of learning to question, critically analyzing issues and problems and seeking solutions. The MSP endeavors to create an environment for women to learn at their own pace, set their own priorities and seek knowledge and information to make informed choices. The MSP has generated a demand for literacy and education for women and girls. It has thereby strengthened women's abilities to effectively participate in village-level educational processes. This programme has provided specialized inputs for vocational and skill development, as well as for the educational needs of girls in general and adolescent girls

⁷⁹⁰ Government Of India, Report: *Annual Report 2004-05*, 4 (Ministry Of Human Resource Development, New Delhi, 2005), available at: <http://mhrd.gov.in>

⁷⁹¹ Government of India, Report: *Annual Report 2004-05*, 76 (Ministry of Human Resource Development, New Delhi, 2005), available at: <http://mhrd.gov.in>

⁷⁹² Government of India, Report: *Ninth Five Year Plan - Human and Social Development*, Vol. 2 (Ministry of Planning Commission, New Delhi), available at: <http://planningcommission.gov.in>

⁷⁹³ Government of India, Report: *Annual Report 2004-05*, 76 (Ministry of Human Resource Development, New Delhi, 2005), available at: <http://mhrd.gov.in>

in particular. The Mahila Samakhya programme envisages to developing gender sensitive pedagogical and learning material.⁷⁹⁴

5.9.10. National Literacy Mission:

The National Literacy Mission (NLM) was set up in May 1988, following an objective assessment of the strengths and weaknesses of the earlier programmes, and to accord a new sense of urgency, seriousness and emphasis with fixed goals, clear time frame and age specific target groups. Emphasis was laid not on mere enrolment of learners but on attainment of certain predetermined norms and parameters of literacy, numeracy, functionality and awareness along with institutionalization of Post Literacy and Continuing Education in a big way.⁷⁹⁵

The goal of National Literacy Mission is to attain a sustainable threshold level of 75 per cent by 2007 by imparting functional literacy to non-literates in the age group of 15-35 years, which is the productive and reproductive age group and constitutes a major segment of the work force. Besides this age group, persons outside this age limit are not excluded from the programme; particularly children in the age group of 9-14 years who are also dropouts. Apart from predetermined levels of reading, writing and numeracy with comprehension, functional literacy includes imbibing values of national integration, conservation of environment, women's equality, observance of small family norms, etc. Literacy, as enunciated in NLM is not an end in itself but has to be an active and potent instrument of change ensuring achievement of these social objectives and creation of a learning society. The acquisition of functional literacy results in empowerment and a definite improvement in the quality of life.⁷⁹⁶

⁷⁹⁴ Government of India, Report: *Annual Report 2004-05*, 76 (Ministry of Human Resource Development, New Delhi, 2005), available at: <http://mhrd.gov.in>

⁷⁹⁵ Government Of India, Report: *Annual Report 2004-05*, 8 (Department of School Education & Literacy, Department of Higher Education, Ministry of Human Resource Development, New Delhi, 2005), available at: <http://mhrd.gov.in>

⁷⁹⁶ *Ibid.*

The revised parameters and enhanced norms of financial assistance of the schemes under National Literacy Mission have also been extended for implementation during the Tenth Plan. The main features of the revised schemes include an integrated approach to literacy, amalgamating all features of literacy and post literacy phases. Zilla Saksharata Samities will continue to oversee and run literacy programmes with freedom to synergise their strengths with those of local youth clubs, Mahila Mandals, voluntary agencies, Panchayati Raj institutions, small-scale industries, cooperative societies, etc. The expansion of the Scheme of Continuing Education, encompassing removal of residual illiteracy, individual interest programmes, skill development, rural libraries, etc., has been given due priority. The State Resource Centres and NGOs continue to be strengthened, with expanded role of their activities in furthering the objectives of NLM. Similarly, Jan Shikshan Sansthas were strengthened to continue with their activities extending to rural areas also and to function as Repository of Vocational/Skill development programmes in the district.⁷⁹⁷

5.9.11. Kasturba Gandhi Balika Vidyalaya:

The Kasturba Gandhi Balika Vidyalaya (KGBV) Scheme was launched in August 2004. The KGBV are residential upper primary schools for girls from Scheduled Castes, Scheduled Tribes, Other Backward Classes, and Muslim Minority Communities and Below Poverty Line (BPL) girls. KGBVs are set up educational backward blocks where schools are at great distances and are a challenge to the security of girls, and where female literacy was below the national average and gender gap in literacy was more than the national average. This often compels girls to discontinue their education.⁷⁹⁸

The KGBVs reach out to adolescent girls who are unable to go to regular schools to out of school girls in the age of above 10 years, who are unable to complete primary

⁷⁹⁷ Government Of India, Report: *Annual Report 2004-05*, 9 (Department of School Education & Literacy, Department of Higher Education, Ministry of Human Resource Development, New Delhi, 2005), available at: <http://mhrd.gov.in>

⁷⁹⁸ Government of India, Report: *Annual Report 2014-15*, 19-20 (Department of School Education & Literacy, Department of Higher Education, Ministry of Human Resource Development, Government of India, New Delhi, 2015), available at: <http://mhrd.gov.in>

school and younger girls of migratory populations in difficult areas of scattered habitations that do not qualify for primary/upper primary schools. KGBVs provide for a minimum reservation of 75% seats for girls from Scheduled Castes, Scheduled Tribes, Other Backward Classes and Muslim Minority Communities and Below Poverty Line, and 25% to girls from families that live below the poverty line.⁷⁹⁹

5.9.12. Sarva Siksha Abhiyan:

The main vehicle at present for providing elementary education to all children is a comprehensive programme called Sarva Siksha Abhiyan (SSA), which was launched in 2000-01. SSA is a key programme through which goals of elementary education sector are going to be met. It is a significant step towards providing elementary education to all children in the age group of 6-14 years by 2010.⁸⁰⁰ SSA has been built upon the experience of several primary education programmes that preceded it, including the District Primary Education Programme (DPEP), Shiksha Karmi Project (SKP) and the Lok Jumbish Project (LJP). It is a partnership programme between the Central and State Governments, which seeks to improve the performance of the school system through a community-owned approach, with specific focus on the provision of quality education.⁸⁰¹

The Sarva Siksha Abhiyan is a time bound initiative of the Central Government, in partnership with the States, the local Government and the community for achieving the goal of Universalisation of Elementary Education (UEE). States have established independent implementation societies for SSA under the chairmanship of their respective Chief Ministers/Education Ministers. The Abhiyan seeks to bring about convergence of the existing institutional effort for elementary education at the State and district level. The programme seeks functional decentralization right down to the school level in order to improve community participation. The programme would cover the entire country. The

⁷⁹⁹ *Ibid.*

⁸⁰⁰ Government Of India, Report: *Annual Report 2004-05*, 4 (Department of School Education and Literacy, Department of Higher Education, Ministry Of Human Resource Development, Government of India, New Delhi, 2005), available at: <http://mhrd.gov.in>

⁸⁰¹ *Ibid*

duration of the programme in every district will depend upon the District Elementary Education Plan (DEEP) reflecting the specific needs of each District.⁸⁰²

5.9.13. Mid-Day-Meal Scheme:

The programme of Nutritional Support to Primary Education, popularly known as the Mid-Day-Meals Scheme (MDM), was launched on 15 August 1995; the programme provides three Kilograms of food grains per month to each primary school student. The programme is being implemented in all the States. The scheme is expected to cover 5.54 crore children by 1996-97.⁸⁰³ This programme aims to give a boost to the universalisation of primary education by increasing enrolment, retention and attendance and to imprint the nutritional status of students in, the primary classes 1 to 5. From 1997-98 onwards, the programme has covered all the children studying in primary classes in the Government, local body and government-aided schools. This is one of the largest school nutrition programmes in the world today.⁸⁰⁴

The programme was extended to children studying in Education Guarantee Scheme (EGS) and other alternative learning centres in October 2002. Central support was provided by way of supply of free food grains through the Food Corporation of India 100 gm. per child per school day where cooked meals were served and 3 kg per student per month where food grains were distributed. Nevertheless all States were expected to move rapidly towards provision of cooked meals under the programme; many States were facing difficulty in providing cooked meals to children due to financial constraints. To overcome this problem and in pursuance of policy pronouncements made in the President's address to Parliament in June 2004 and Finance Minister's Budget Speech 2004-05, the scheme has been revised with effect from September 2004. Under the

⁸⁰² Government of India, Report: *Tenth Five Year Plan 2002-2007 – Sectoral policies and Programmes Vol. 2*, 17 (Planning Commission, Government of India, New Delhi), available at: <http://planningcommission.gov.in>

⁸⁰³ Government of India, Report: *Ninth Five Year Plan - Human and Social Development*, Vol. 2 (Ministry of Planning Commission, New Delhi), available at: <http://planningcommission.gov.in>

⁸⁰⁴ L.K. Panigrahi, *Women and Child Education*, 233 (K.C. Publishers Chandigarh, 2003)

revised Scheme, the Central Government is providing assistance to the States to meet the cooking cost also Re. 1 per child, per school day.⁸⁰⁵

The Scheme was extended during year 2008-09 to cover all children of upper primary classes and the name of the Scheme was changed as “National Programme of MDM in Schools”. The MDM Scheme covers all school children studying in 1st to 8th classes in Government and Government-aided Schools, Special Training Centres (STC) and Madrasas & Maqtabas supported under SSA. The scheme is being revised from time to time in its content and coverage. The main objectives of the MDM Scheme are to address two of the pressing problems for majority of children in India, viz. hunger and education by:⁸⁰⁶ -

- (i.) Improving the nutritional status of children studying in classes 1st to 8th in Government and Government-aided Schools, STC and Madrasas & Maqtabas supported under SSA.
- (ii.) Encouraging poor children, belonging to disadvantaged sections, to attend school more regularly and help them concentrate on classroom activities.
- (iii.) Providing nutritional support to children of elementary stage in drought-affected areas during summer vacation.

There are some reasons for promoting MDM scheme to provide elementary education for every child up to the age of 14 years, by preventing classroom hunger, promoting school participation, facilitating healthy growth of children, intrinsic educational value, fostering social equality, enhancing gender equity, and also psychological benefits, as follows⁸⁰⁷ -

⁸⁰⁵ Government Of India, Report: *Annual Report 2004-05*, 5 (Department of School Education and Literacy, Department of Higher Education, Ministry Of Human Resource Development, Government of India, New Delhi, 2005), available at: <http://mhrd.gov.in>

⁸⁰⁶ Government Of India, Report: *Annual Report 2014-15 Part I*, 43-44 (Department of School Education and Literacy, Department of Higher Education, Ministry Of Human Resource Development, Government of India, New Delhi, 2015), available at: <http://mhrd.gov.in>

⁸⁰⁷ *Ibid.*

- (i.) Many children belonging to disadvantaged sections of society reach school with an empty stomach. Even children, who have a meal before they leave for school, get hungry by the afternoon and are not able to concentrate. Mid-day meal can help children from families which cannot afford a lunch box or are staying far away from schools, to overcome “classroom hunger”.
- (ii.) The MDM schemes have big effect on school participation, not just in terms of getting more children enrolled in the registers but also in terms of regular pupil attendance on a daily basis.
- (iii.) Mid-day meal can also act as a regular source of “supplementary nutrition” for children and facilitate their healthy growth.
- (iv.) A well-organized mid-day meal can be used as an opportunity to impart various good habits to children, and to educate them about the importance of clean water, good hygiene and other related matters.
- (v.) Mid-day meal can help spread egalitarian values, as children from various social backgrounds learn to sit together and share a common meal. In particular, mid-day meal can help to break the barriers of caste and class among school children. Appointing cooks from scheduled Castes and Scheduled Tribes communities is another way of teaching children to overcome caste prejudices.
- (vi.) The gender gap in school participation tends to narrow, as the MDM Scheme helps erode the barriers that prevent girls from going to school. The MDM Scheme also provides a useful source of employment for women and helps liberate working women from the burden of cooking at home during the day. In these and other ways, women and girl children have a special stake in MDM Scheme.
- (vii.) Physiological deprivation leads to low self-esteem, consequent insecurity, anxiety and stress. The MDM Scheme can help address these and facilitate cognitive, emotional and social development.

5.10. Educational Development in Five-Year Plans:

Planning Commission was established in 1950 to oversee the development of Five Year Development Plans that embraced programmes and funding for economic and social objectives, including education.⁸⁰⁸ The Five Year Development Plans combined submissions from the states with national priorities. Subsequently the states developed annual plans based on the Five Year Development Plans.⁸⁰⁹ When India was proclaimed a Republic, a decision to develop the country in a planned way was taken. With that end in view, a Planning Commission was created at the Centre and was entrusted with the task of drawing five year plans covering all aspects of national development including education. The first year plan began in 1950-51 with Rs. 153 crores as an outlay on education, which represented 7.8 per cent of the total plan outlay.⁸¹⁰

5.10.1. Sixth Five Year Plan (1980-85):

The six development plan was run to 1980-85. The high quality of education, and maintain national development goal was the necessity in this plan. The approach in this Plan was considered by a concern for the all-round development of children, especially those children, who were belong to underprivileged sections and who suffer serious concerns such as poverty and hunger. The universalisation elementary education for children was proposed in this plan, especially in the educationally backward and socially disadvantaged groups of the society, and those children who were not attended the school. In this Sixth Plan was highest priority to the minimum needs programme for children education. The approach of universalisation of elementary education was - intensified use of existing facilities, and new facilities were socio economically and

⁸⁰⁸ Report Government of India, *Education for All towards Quality with Equality India 7* (Ministry of Human Resource Development, Government of India, National University of Educational Planning and Administration, New Delhi, 1st Edn. August, 2014)

⁸⁰⁹ Angela W. Little, *Access To Elementary Education In India: Politics, Policies And Progress 7* (Create Pathways To Access Research Monograph No. 44, The Institute Of Education, University Of London, UK), available at: <http://www.confabjournals.com>

⁸¹⁰ Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 180-81 (Orient BlackSwan, Pvt. Ltd., New Delhi, 4th edn., 2013)

backward sections of society. The non-formal learning programmes have organised.⁸¹¹ Apart from this various programmes were launched for elementary education for children, in this plan.

5.10.2. Seventh Five Year Plan (1985-92):

Education has an important role in any development strategy, particularly in a country with a large population. Education develops basic skills and abilities and fosters a value system conducive to, and in support of, national development goals, both long-term and immediate. In a world where knowledge is increasing at an exponential rate, the task of education in the diffusion of new knowledge and, at the same time, in the preservation and promotion of what is basic to India's culture and ethos, are complex and challenging. It is, therefore, appropriate that the commencement of the Seventh Plan coincides with a comprehensive review of the Education Policy.⁸¹² The main areas of Seventh Plan for re-orientation of the education system were following:

- i. Achievement of universal elementary education;
- ii. Eradication of illiteracy in the age group 15-35 years;
- iii. Vocationalisation and skill training programmes at different levels of education;
- iv. Upgradation of standards and modernisation at all stages of education with effective links with the world of work and with special emphasis on science and environment and on value orientation;
- v. Provision of facilities for education of high quality and excellence in every district of the country; and
- vi. Removal of obsolescence and modernisation of technical education.

Further, the major strategies for achieving these objectives would include effective decentralized planning and organizational reforms, promotion of non-formal and open

⁸¹¹ Government of India, Report: *Six Five Year Plan - Education, Education*, (Ministry of Planning Commission, New Delhi), available at <http://planningcommission.gov.in>

⁸¹² Government of India, Report: *Seventh Five Year Plan - Education, Culture And Sports, Vol. 2* (Ministry of Planning Commission, New Delhi), available at <http://planningcommission.gov.in>

learning systems, adoption of low cost alternatives and optimum use of resources, forging of beneficial linkages with industry and development agencies, and mobilization of community resources and societal involvement. Elementary education prime priority was given to realise universalisation of elementary education for children in the age group of 6 to 14 years by 1990; It was a part of the ‘minimum needs programme’. The emphasis shifted from mere enrolment to retention of pupils in schools and to the accomplishment by them of basic elements of learning. The objective has achieved through a combination of formal and non-formal methods, focused gradually on the needs of girls and of children belonging to the economically and socially weaker sections of society.⁸¹³

5.10.3. Eighth Five Year Plan (1992-97):

Education was the catalytic factor, which lead to human resource development comprising better health and nutrition, improved socio-economic opportunities and more friendly and beneficial natural environment for all. There was already enough evidence in India to show that high literacy rates, especially high female literacy rates. Though the country has not so far achieved the goals of universalisation of elementary education and eradication of adult illiteracy, the 1991 census results reveal a literacy rate of over 52 per cent, with a higher rate of growth for female literacy.⁸¹⁴

The thrust areas of Eighth Plan were - Universalisation of elementary education, eradication of illiteracy in the age group of 15 to 35 years, and strengthening of vocational education. Utilisation of formal, non-formal and open channels of learning was the strategy for this purpose. The aim has imparted a similar strength and momentum to the universal primary education programme with a definite edge in its favour. The main strategy of eighth plan for achieving the targets was as –

- i. Adoption of the decentralized approach to educational planning and management at all levels through Panchayat Raj institutions;

⁸¹³ *Ibid*

⁸¹⁴ Government of India, Report: *Eighth Five Year Plan - Education, Culture And Sports*, Vol. 2 (Ministry of Planning Commission, New Delhi), *available at*: planningcommission.gov.in

- ii. Combining this approach with a convergence model of rural development involving integrated utilization of all possible resources available at Panchayat, Block and District level for activities relating to elementary education/literacy, child care/development, women's socio-economic empowerment and rural health programmes;
- iii. Large scale participation of voluntary agencies; and
- iv. Development of innovative and cost effective complementary programmes including open learning system supported by distance education techniques.

The elementary education was the priority of Eighth Plan, such as⁸¹⁵ -

- i. Early Childhood Education (ECE) would be expanded by attaching pre-primary classes to selected primary schools. Voluntary agencies and other NGOs would be encouraged and provided financial assistance by reorganizing the scheme of ECE. Integrated Child Development Scheme (ICDS) model would be supplemented by Balwadis, Creches and Vikas Wadis.
- ii. Primary schools or alternatives to primary schools like non-formal centres etc. would be provided to every child within a walking distance of one kilometer, with suitable adjustment for special cases. Voluntary agencies, factories, cooperatives etc. would be encouraged to set up part-time primary schools to serve several groups of children belonging to hilly, desert, marshy, forest areas and nomadic tribes, seasonal migrants, urban poor etc. with freedom to adjust the number of school days, instructional hours and appoint teachers on contract basis.
- iii. Innovative programmes like Shiksha Karmi which have given good results in an experimental project in Rajasthan would be expanded. Besides, a range of activities that suit the requirements of specific groups of learners, who are usually left out of the ambit of large scale projects, would be taken up.
- iv. Opening of night schools in urban areas, pre-primary and lower primary centres for children of age group of 3 to 9 years; 'halftime' instructors and special projects

⁸¹⁵ *Ibid*

to tackle educational problems of areas with concentration of child labour would be tried out.

- v. Open schools would involve themselves in the post-primary stage education on an experimental basis to provide wider access to children who are working or not in a position to attend regular schools due to socio-economic or any other reasons.
- vi. Special efforts will be made to increase enrolment rates and improve participation rates at the upper primary stage especially in respect of girls. Hereafter, though ensuring effective universal access to all children at the primary stage, the infrastructure at the upper primary stage will have to be considerably expanded.
- vii. Besides expansion of school facilities, there will be need to improve the quality of education by providing existing schools with sufficient facilities. Therefore, the 'Operation Blackboard' scheme will not only be continued and completed during the Eighth Plan in relation to primary schools but also extended to upper primary schools.
- viii. In order to expedite universalisation of middle stage education and increase the enrolment of girls, the ratio between primary and upper primary schools would be brought down from the existing 1:4 to at least 1:3 with the ultimate aim of 1:2.
- ix. Apart from expanding Tribal Sub Plan (TSP) and Special Component Plan (SCP), special measures are required for promotion of education of SCs/STs. The existing scheme of residential ashram schools will be expanded to cover classes from I to X and scholarship schemes for talented children at the secondary level would be expanded. Appropriate incentives will be provided to all educationally backward sections of society, particularly in rural areas, and hill and desert, remote and inaccessible areas and islands will be provided adequate institutional infrastructure.⁸¹⁶

⁸¹⁶*Ibid.*

5.10.4. Ninth Five Year Plan (1997-02):

Education is the most vital asset in human development. Education strongly influences improvement in health, hygiene, demographic profile, productivity and practically all that is connected with the quality of life. The Special Action Plan of Prime Minister stressed the need for expansion and improvement of social infrastructure in the field of education.⁸¹⁷ This goal was further elaborated in the National Agenda, which states: “We were committed to a total eradication of illiteracy. We were formulate and implement plans to gradually increase the governmental and non-governmental spending on education up to 6% of the GDP; this to provide education for all, and implement the constitutional provision of making primary education free and compulsory up to fifth class. The aim of ninth plan was to move towards equal access to and opportunity of educational standards up to the school leaving stage, and strive to improve the quality of education at all levels from primary schools to universities level.”⁸¹⁸

The Ninth Five Year Plan was formulated in the light of these objectives of elementary education various emerging factors as –

- i. The national goal of providing primary education as a universal basic service,
- ii. The Supreme Court decision of *Unni Krishnan, J.P. & Others v. State of Andhra Pradesh and Others* (1993) declaring education to be a fundamental right for children up to 14 years of age,
- iii. The need to operationalize programmes through Panchayati Raj Institutions and Urban Local Bodies,
- iv. The legal embargo on child labour,
- v. The provisions of the Persons with Disabilities Act, 1995, and
- vi. Heightened awareness of human rights violations in respect of women, children and persons from disadvantaged sections of society. It is also realized that a large

⁸¹⁷ Government of India, Report: Ninth Five Year Plan - Human and Social Development, Vol. 2 (Ministry of Planning Commission, New Delhi), available at: <http://planningcommission.gov.in>

⁸¹⁸ *Ibid.*

number of out of school children, who figure neither in school enrolments nor in the calculations of identifiable child labour, are to be provided access to schooling.

Further, it is equally necessary that the problem of universal elementary education and literacy is tackled through a strong social movement with clearly perceived goals and involving the State and Central Governments, Panchayati Raj Institutions, Urban Local Bodies, voluntary agencies, social action groups, the media and every supportive element in society.⁸¹⁹

5.10.5. Tenth Five Year Plan (2002-07):

Tenth five year plan (2002-07), the revised scheme of the national literacy mission included an integrated approach to literacy amalgating all the features the literacy programmes with freedom to synergies their strength with those of the local youth clubs, voluntary agencies, small-scale industries, co-operative societies, Mahila Mandal and the Panchayati Raj institution while the financial and administrative powers have been delegated to the States literacy missions. Therefore, the goals, targets and strategies for the tenth plan in respect to elementary education were as follows:⁸²⁰

Universal Access - All children of the age of 6 to 14 years should have access to primary schools, upper primary schools or their alternatives within a walking distance of one km and three km respectively. All children of the age of 3 to 6 years must have universal access to early childhood care and education centres. Need based expansion of upper primary education facilities, particularly for the disadvantaged sections. There should be one upper primary school for every two primary schools. All schools should have buildings, toilets, drinking water, electricity, playgrounds, blackboards and other basic facilities. There must be provision of one classroom for every teacher at the elementary stage.

⁸¹⁹ Government of India, Report: *Ninth Five Year Plan - Human and Social Development*, Vol. 2 (Ministry of Planning Commission, New Delhi), available at: <http://planningcommission.gov.in>

⁸²⁰ Government of India, Report: *Tenth Five Year Plan 2002-2007 - Sectoral Policies and Programmes Vol. 2*, 32 (Planning Commission, Government of India, New Delhi), available at: <http://planningcommission.gov.in>

Universal Enrolment - Enrolment of all children in schools or alternative arrangements by 2003, and all children to complete five years of primary schooling by 2007.

Universal Retention - Universal retention in the primary stage by 2007, and Dropout rate to be reduced to less than 10 per cent for grades VI - VIII by 2007.

Universal Achievement - Improve the quality of education in all respects to ensure reasonable learning outcomes at the elementary level, especially in literacy, numeric and in life skills.

Equity - Bridge all gender and social gaps in enrolment, retention and learning achievement in the primary stage by 2007 and reduce the gap to 5 per cent in the upper primary stage by 2007, and Special interventions and strategies to include girls, SC/ST children, working children, children with special needs, urban deprived children, children from minority groups, children below the poverty line, migratory children and children in the hardest to reach groups.

The strategies for universalisation of elementary education and interventions during the Tenth Plan were mainly guided by three major considerations: (a) magnitude of the task; (b) present challenges; and (c) the existing administrative and policy framework and the one that ⁸²¹was in place during the Plan period.

5.10.6. Eleventh Five Year Plan (2007-12):

The key goal of eleventh five year plan was that, the Constitution of India was amended in 2002 to make elementary education a justiciable Fundamental Right. However, 7.1 million children being out of school and over 50% dropping out at elementary level are matters of serious concern. SSA was, therefore, reoriented meet the challenges of equity, retention, and high-quality education. It was required a strong rights

⁸²¹ Government of India, Report: *Tenth Five Year Plan 2002-2007 - Sectoral Policies and Programmes Vol. 2*, 33 (Planning Commission, Government of India, New Delhi), available at: <http://planningcommission.gov.in>

orientation within the programme. It is necessary to consider passing appropriate legislation for this purpose. SSA was restructured into a National Mission for Quality Elementary Education to ensure minimum norms and standards for both government and private schools.⁸²² It was difficult to build upon the gains of SSA. It is important to focus on good quality education of common standards, pedagogy, and syllabi to ensure minimum learning levels. The following targets and strategies in elementary education were set up for elementary education in the Eleventh Plan.⁸²³ These are -

- i. Universal enrolment of all children under the age of 6 to 14 years.
- ii. Significant improvement in quality and standards with the final objective to achieve standards of the Central Board of Secondary Education (CBSE) pattern.
- iii. All gender, social, and regional gaps in enrolments to be eliminated by 2011–12.
- iv. One year pre-school education for children entering primary school.
- v. Drop-out at primary level to be eliminated and the dropout rate at the elementary level to be reduced from over 50% to 20% by 2011–12.
- vi. Universalized mid-day-meals at elementary level by 2008–09.
- vii. Universal coverage of Information and Communication Technology, at upper primary school by 2011–12.
- viii. Significant improvement in learning conditions with emphasis on learning basic skills, verbal and quantitative.
- ix. All EGS centres to be converted into regular primary schools.
- x. All States and Union Territories to adopt National Council for Education Research and Training, Quality Monitoring Tools.
- xi. Strengthened Block Resource Centres and Cluster Resource Centres - 1 Cluster Resource Centres for every 10 schools and 5 resource teachers per Block Resource Centres.

⁸²² Government of India, Report: *Eleventh Five Year Plan: 2007-2012 - Education*, 8 (Planning Commission, Government of India, New Delhi), available at: <http://planningcommission.gov.in>

⁸²³ *Id.* at 9

Thereafter, in the Eleventh Plan, the quality of education imparted in the primary and upper primary school were improved through a range of coherent, integrated, and comprehensive strategies with clearly defined goals that help in measuring progress.⁸²⁴ The reduce drop-out rates in elementary education from 52.2 per cent in 2003-04 to 20 per cent by 2011-12; develop minimum standards of educational attainment in elementary school, and through regular testing monitor effectiveness of education to ensure quality; increase literacy rate for persons of age 7 years and above to 85 per cent; lower gender gap in literacy to 10 percentage points; increase the percentage of each cohort going to higher education from the present 10 per cent to 15 per cent by the end of the Eleventh Plan.⁸²⁵

5.10.7. Twelfth Five Year Plan (2012-17):

Notwithstanding numerous improvements during the eleventh five year plan, education in India faces several challenges. The number of schools that do not comply with the Right to Free and Compulsory Education Children (RTE) ACT, 2009 norms for the required pupil teacher ratio is fairly high. There are still a large number of schools which do not have these minimum facilities. The biggest concern in elementary education is the poor level of student learning - both scholastic and co scholastic/non-cognitive. The twelfth five year plan needs to address these challenges in an integrated and holistic manner. The four main priorities for Education Policy have been access, equity, quality and governance. The twelfth five year plan will continue to priorities these four areas, but will place the greatest emphasis on improving learning outcomes at all levels.⁸²⁶ The six core elements of the driving principles and strategy for the twelfth five year plan are:

- i. All stages of education need to be viewed in an integrated manner, through the perspective of lifelong learning and education;

⁸²⁴ *Ibid.*

⁸²⁵ *Ibid.*

⁸²⁶ Government of India, Report: *Twelfth Five Year Plan 2012-2017 - Social Sectors, Vol. III*, 49-51 (Planning Commission, Government of India, New Delhi), available at: <http://planningcommission.gov.in>

- ii. Strengthening the quality of teaching - learning processes requires comprehensive concerted large scale efforts with simultaneous attention to how these processes translate into better outcomes;
- iii. Motivation, capacity and accountability of teachers for improving learning outcomes at all levels must be focused upon;
- iv. Governance of educational institutions requires an institutional focus on quality based on principles of autonomy, accountability and performance; this may involve fundamentally re-defining the recruitment criteria, eligibility of teachers and merit-based processes of recruitment in these institutions;
- v. Within a common national legal and policy framework, innovations and diversity of approaches will be encouraged in matters of curricula, pedagogies and community engagements in order to respond to the diversity of learner groups, regional/social contexts and various stages/forms of institutional and human development in the educational sector; and
- vi. It is imperative to strengthen the monitoring and accountability mechanisms of stakeholders in school education including community and parents as envisaged under the Right of Children to Free and Compulsory Education (RTE) Act, 2009.⁸²⁷

The twelfth five year plan strategies need to respond to these challenges and drive towards achieving the outcome targets laid out for the Plan. The twelfth five year plan is targets for children school education and literacy, these are as follows:

- i. Ensure universal access and, in keeping with letter and spirit of the RTE Act, 2009 provide good quality free and compulsory education to all children of the age of 6 to 14 years;
- ii. Improving attendance and reduce drop-out-rates at the elementary level to below 10 per cent and lower the percentage of out-of-school children at the elementary

⁸²⁷*Id.* at 50

level to below 2 per cent for all socio-economic and minority groups and in all States/Union Territories;

- iii. Increasing enrolments at higher levels of education and raise the Gross-Enrolment-Ratio at the secondary level to over 90 per cent, at the higher secondary level to over 65 per cent;
- iv. Raising the overall literacy rate to over 80 per cent and reducing the gender gap in literacy to less than 10 per cent;
- v. Providing at least one year of well-supported/well-resourced pre-school education in primary schools to all children, particularly those in educationally backward blocks; and
- vi. Improving learning outcomes that are measured, monitored and reported independently at all levels of school education with a special focus on ensuring that all children master basic reading and numeracy skills by class 2nd and skills of critical thinking, expression and problem solving by class 5th.

5.11. Initiatives Taken by MHRD in 12th Five Years Plan (2012-17):

The twelfth five year plan sets stress on the role of education and states that education is the most significant pedal for socio-economic and political transformation; it places an extraordinary emphasis on the expansion of education, on significantly improving the quality of education and on ensuring that educational opportunities are available to all sections of the society.⁸²⁸ Education is essential for all and is fundamental to their all-round development, material and spiritual. Education has continued to evolve, diversify and extend its reach and coverage since the dawn of human history.⁸²⁹ The department of school education and literacy has its eyes set on the “universalisation of education” and making better citizens to our children, to fulfill this purpose, various new schemes and initiatives are taken up regularly. Education in India requires a fresh

⁸²⁸ Government of India, Report: *Annual Report 2013-14,2* (Department of School Education and Literacy, Department of Higher Education, Ministry of Human Resource Development, Government of India), *available at:* <http://mhrd.gov.in>

⁸²⁹*Id.* at 6

approach to meet its challenges.⁸³⁰ In this respect, key initiatives/programmes are as follows.

5.11.1. Saakshar Bharat Mission:

The fully centrally sponsored programme, ‘Saakshar Bharat Mission’ is the new variant of the National Literacy Mission. Firstly, the scheme was in operation till 31 March 2012, the Saakshar Bharat Mission has been included in the twelfth five year plan. The main focus of this mission is on women, scheduled castes, scheduled tribes, minorities and other disadvantaged and weaker sections of the societies. The Mission has four wide objectives, specifically that⁸³¹ - (a) Impart functional literacy and numeracy to non-literate and non-numerate adults. (b) Enable the neo-literate adults to continue their learning beyond basic literacy and acquire equivalency to formal educational system. (c) Impart none and neo-literates relevant skill development programmes to improve their earning and living conditions. (d) Promote a learning society by providing opportunities to neo-literate adults for continuing education.⁸³²

5.11.2. Padhe Bharat Badhe Bharat:

The programme “Padhe Bharat Badhe Bharat” was launched on 26 August, 2014 to improve learning outcomes. The program focuses on language development to create interest in reading and writing in comprehension & teaching mathematics in a way that develops liking and understanding during the early years of schooling, particularly in class I and II.⁸³³

⁸³⁰ Government of India, Report: *Annual Report 2014-15*, Part I (Department of School Education & Literacy, Department of Higher Education, Ministry of Human Resource Development, Government of India), available at: <http://mhrd.gov.in>

⁸³¹ Government of India, Report: *Annual Report 2013-14*, 8 (Department of School Education and Literacy, Department of Higher Education, Ministry of Human Resource Development, Government of India), available at: <http://mhrd.gov.in>

⁸³² *Ibid.*

⁸³³ Government of India, Report: *Annual Report 2014-15*, Part I, 7 (Department of School Education & Literacy, Department of Higher Education, Ministry of Human Resource Development, Government of India), available at: <http://mhrd.gov.in>

5.11.3. Saransh:

According to this plan, the Central Board of Secondary Education (CBSE) has launched an on-line facility titled ‘Saransh’ on 2 November, 2014 for affiliated & CBSE schools. It helps the schools to look at their performance at an aggregate level and at the level of each student. All performance matrices are presented through numbers as well as in charts/graphs for easy understanding. The ‘Saransh’ helps schools compare their performance vis-à-vis all CBSE schools at various levels.⁸³⁴

5.11.4. Tithi Bhojan - Mid-Day Meal Scheme:

MDMS has a big effect on school participation, not just in terms of getting more children enrolled but also in terms of regular pupil attendance. The Central Government has ordered to the State Governments to consider the concept of TithiBhojan for mid-day meal in a suitable manner, to encourage local community participation in the programme.⁸³⁵

5.11.5. Udaan:

The Scheme is dedicated to the development of girl child education, so as to promote the admission of girl students. The aim is to address the teaching gap between school education and engineering entrance examinations. It seeks to enhance the enrolment of girl students in prestigious technical education institutions through incentives & academic support.

5.11.6. School Report Card:

Report cards of schools across the country based on Unified District Information System for Education (UDISE), which is annually updated by States through its schools-

⁸³⁴ Government of India, Report: *Annual Report 2014-15*, Part I, 7 (Department of School Education & Literacy, Department of Higher Education, Ministry of Human Resource Development, Government of India), available at: <http://mhrd.gov.in>

⁸³⁵ Government of India, Report: *Annual Report: 2014-15*, Part I, 7 (Department of School Education & Literacy, Department of Higher Education, Ministry of Human Resource Development, Government Of India)

covering all aspects of school and its functions. UDISE media campaign was launched for the first time in September 2014, to generate awareness amongst stakeholders and also ensure participation of schools specially the private ones.⁸³⁶

5.11.7. National Education Policy Consultations:

The National Policy on Education, 1986, as amended in 1992, has been the guiding document for the policies of the Central Government in the education sector. The education scenario has seen colossal changes. The New Education Policy is framing through a consultative process using offline and online methods.⁸³⁷

5.11.8. Bal Sansad:

The Ministry of Parliamentary Affairs, Govt. of India has launched Youth Parliament Scheme in order to make the students understand parliamentary procedures and working of parliament, form opinion about public issues, train them in techniques of group discussion, develop abilities to arrive at decision, develop respect and tolerance for views of others, develop leadership and other desirable qualities.⁸³⁸

5.12. National Policy for Children (2013):

India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions for children. The Directive Principles of State Policy specifically guide the State in securing the tender age of children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity. The State is responsible for ensuring that childhood is protected from exploitation and moral and material abandonment.

⁸³⁶ Government Of India, Report: *Annual Report: 2014-15*, Part I, 11 (Department Of School Education & Literacy Department Of Higher Education Ministry Of Human Resource Development Government Of India)

⁸³⁷ Government Of India, Report: *Annual Report: 2014-15*, Part I, 14 (Department Of School Education & Literacy Department Of Higher Education Ministry Of Human Resource Development Government Of India)

⁸³⁸ Government Of India, Report: *Annual Report: 2014-15*, Part I, 15 (Department Of School Education & Literacy Department Of Higher Education Ministry Of Human Resource Development Government Of India)

Declaring its children as the nation's "supremely important asset" in the National Policy for Children, 1974 and the National Charter for Children, 2003 adopted on 9th February 2004, underlined the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation. To affirm the Government's commitment to the rights based approach in addressing the continuing and emerging challenges in the situation of children, the Government of India hereby adopts this Resolution in April 26, 2013 on the National Policy for Children, 2013.⁸³⁹

The preamble of document recognised that, "a child is any person below the age of eighteen years; childhood is an integral part of life with a value of its own; children are not a homogenous group and their different needs need different responses, especially the multi-dimensional vulnerabilities experienced by children in different circumstances; a long term, sustainable, multi-Sectoral, integrated and inclusive approach is necessary for the overall and harmonious development and protection of children." Thereafter, reaffirming that, "every child is unique and a supremely important national asset; special measures and affirmative action are required to diminish or eliminate conditions that cause discrimination, all children have the right to grow in a family environment, in an atmosphere of happiness, love and understanding; families are to be supported by a strong social safety net in caring for and nurturing their children." The Government of India reiterates its commitment to safeguard, inform, include, support and empower all children. The State is committed to take affirmative measures to promote and safeguard the right of all children to live and grow with equity, dignity, security and freedom, especially those marginalised or disadvantaged; to ensure that all children have equal opportunities; and that no custom, tradition, cultural or religious practice is allowed to

⁸³⁹Government of India, *The National Policy for Children, 2013 - No. 16-1/2012-CW-I*(Ministry of Women and Child Development, Government of India, New Delhi, 2013).Its adopted on 26th April 2013, and published in the Gazette of India Part I, Sec. 1.

violate or restrict or prevent children from enjoying their rights. Therefore, all actions and initiatives of the national, State and local government in all sectors must respect and uphold the principles and provisions of the national policy for children, 2013.⁸⁴⁰

The document on the National Policy for Children, after some preliminary observations, it provides guiding principles that, the every child has the right to life, survival, development, education, protection and participation⁸⁴¹, and key priorities survival, health, nutrition, development, education, protection and participation are the undeniable rights of every child and are the key priorities of Policy.⁸⁴²The document mandates, the State shall take all necessary measures to address key causes and determinants of child mortality through interventions based on continuum of care, with emphasis on nutrition, safe drinking water sanitation and health education; and further, ensure availability of essential services, supports and provisions for nutritive attainment in a life cycle approach, including infant and young child feeding practices, special focus on adolescent girls and other vulnerable groups, and special measures for the health, care and nutrition, including nutrition education, of expectant and nursing mothers.⁸⁴³

The policy has discusses in some detail about of the essential characteristics on the national system of education and development that, “every child has equal right to learning, knowledge and education; the State recognises its responsibility to secure this right for every child, with due regard for special needs, through access, provision and promotion of required environment, information, infrastructure, services and supports, towards the development of the child are fullest potential”.⁸⁴⁴

The document mandates, the State shall take all necessary measures to - Provide universal and equitable access to quality Early Childhood Care and Education for optimal development and active learning capacity of all children below six years of age; ensure

⁸⁴⁰*Ibid.*

⁸⁴¹ The National Policy for Children, 2013 Section 3(iii)

⁸⁴²*Ibid*, Section 4

⁸⁴³*Ibid*, Section 4.4

⁸⁴⁴*Ibid*, Section 4.5

that every child in the age group of 6-14 years is in school and enjoys the fundamental right to education as enshrined in the Constitution Promote affordable and accessible quality education up to the secondary level for all children. Thereafter, Provide services to children with special needs in regular schools and ensure that these are inclusive and have all facilities such as trained teachers and special educators, appropriate pedagogy and education material, barrier-free access for mobility, functional toilets and co-curricular activities towards the development of child's fullest potential and autonomy and sense of dignity and self-worth. Further that, facilitate concerted efforts by local governments, non-governmental organisations/community based organisations to map gaps in availability of educational services, especially in backward, child labour intensive areas, areas of civil unrest, and in situations of emergency, and efforts for addressing them.⁸⁴⁵ And finally, implementation of the various parameters of the national policy for children, 2013 will be comprehensive reviewed once in five years in consultation with all stakeholders, including children.

5.13. National Policy Education (2015):

The National Policy on Education (NPE) 1986, as amended in 1992, has been the guiding document for the policies of the Government of India in the field of education. The NPE, 1986, which was modified in 1992 envisages, inter alia , a national education system to bring about consistency in education, making adult education programmes a mass movement, providing universal access, ensuring retention and improving quality in elementary education, special emphasis on education of girls, establishment of pace setting schools, like Navodaya Vidyalayas in each district, etc. and starting more Open Universities in the States, strengthening of the All India Council of Technical Education (AICTE), encouraging sports, physical education, yoga and adoption of an effective evaluation method.⁸⁴⁶

⁸⁴⁵ *Ibid*, Section 4.6

⁸⁴⁶ Government of India, *Manual For Grass Root Level Consultations on New Education Policy 3* (Ministry of Human Resource Development, government of India, New Delhi), available at: <http://mhrd.gov.in>

The Government of India has started the consultation process for the formulation New Education Policy to meet the changing dynamics of the requirement of population with respect to quality education, innovation and research, aiming to make India a knowledge super power by preparing its students with the essential skills and knowledge and to eliminate the shortage of manpower in science, technology, academics and industry. A multiple level consultative processes involving all participants, such as, educationists, teachers, and students across all levels are foreseen.⁸⁴⁷ The online consultation process has been launched on dated 26 July, 2014 by Prime Minister (Sri. Narendra Modi) of India on the portal www.MyGov.in.⁸⁴⁸

The objective of the consultation process is to ensure that an inclusive, participatory and holistic approach is undertaken, which takes into consideration expert opinions, field experiences, empirical research, etc. Usually, earlier Commissions for driving Education Policy have undertaken a common approach which included the following:⁸⁴⁹

- Top down approach for consultation over a period of two to three years.
- A time bound, grass-root consultative process is proposed.
- Each group was based on a thematic topic.
- Online consultation and complete transparency of consultation process through [MyGov.in](http://www.MyGov.in).
- Objective is to ensure an inclusive, participatory and holistic approach.

⁸⁴⁷ Lok shabha, Press Information Bureau, Government of India, New Education Policy (Government of India, New Delhi, April 22, 2015), *available at*: <http://www.pib.nic.in>

⁸⁴⁸ Government of India, Portal: Ministry of Human Resource Development Portal, *available at*: www.MyGov.in

⁸⁴⁹ Government of India, *Manual For Grass Root Level Consultations on New Education Policy*3(Ministry of Human Resource Development, government of India, New Delhi),*available at*: <http://mhrd.gov.in>

There are total 33 themes have been identified for the consultations of New Education Policy, in which 13 themes related to school education for consultation on New Education Policy, these are⁸⁵⁰ -

- (i.) Ensuring learning outcomes in elementary education.
- (ii.) Extending out reach of the secondary including senior secondary education.
- (iii.) Strengthening of the vocational education.
- (iv.) Reforming school examination systems.
- (v.) Re-vamping the teacher education for quality teachers.
- (vi.) Accelerating rural literacy with special emphasis on women, scheduled castes/scheduled tribes, minorities through adult education and national open schooling systems.
- (vii.) Promotion of Information and Communication Technology Systems (ICTS) in schools and adult education.
- (viii.) New knowledge, pedagogies and approaches for teaching of science, mathematics and technology in school education to improve learning outcomes of students.
- (ix.) School standards, school assessment and school management systems.
- (x.) Enabling inclusive education, such education of scheduled castes/scheduled tribes, girls, minorities and children with special needs.
- (xi.) The promotion of Languages in education.
- (xii.) Comprehensive education, such as ethics, physical education, arts & crafts, life skills.
- (xiii.) Focusing on children health.

5.13.1. The Report of the New National Policy Education (2016):

The National Policy on Education 2016 is the third National Policy on Education since independence. The Committee for Evolution of the New Education Policy was

⁸⁵⁰ Government of India, *Themes and questions for Policy Consultation on School Education 2* (Ministry of Human Resource Development, Government of India), available at: <http://mhrd.gov.in>

constituted by Ministry of Human Resource Development (MHRD) on 24 November 2015, in amendment of the earlier New Education Policy, 2015 on 31 October 2015, and entrusted with the task of formulating a Draft National Education Policy, 2016. The Committee commenced work in the first week of November 2015.

The 2016 National Policy on Education, which is being formulated nearly three decades since the last Policy, recognizes the criticality of Education as the most important vehicle for social, economic and political transformation. It reiterates the role of education in inculcating values, and to provide skills and competencies for the citizens, and in enabling him to contribute to the nation's well-being; strengthens democracy by empowering citizens; acts as an integrative force in society, and fosters social cohesion and national identity. One cannot over emphasize the role of Education as the key catalyst for promoting socio-economic mobility in building an equitable and just society. It is an established fact that an education system built on the premises of quality and equity is central to sustainable success in the emerging knowledge economy. Education is a powerful tool for preparing our citizens in the knowledge society. Education will amalgamate globalization with localization, enabling our children and youth to become world citizens, with their roots deeply embedded in Indian culture and traditions.⁸⁵¹

Right to Education was recognized by the United Nations as fundamental to man – indeed as the UN was being established, India had argued vehemently in favour of education as a fundamental right. The 1968 and 1986-1992 National Education policies in India recognized education as a precondition for development and set out three critical issues in those policies – equity, accessibility and quality. In the last twenty years, the educational scenario has seen major changes and new concepts such as rights-based approach to elementary education, student entitlement, shift in emphasis from literacy and basic education to secondary, higher, technical and professional education, the endeavour to extend universalization to secondary education, reshape the higher

⁸⁵¹ Government Of India, Report: *Report Of The Committee For Evaluation Of The New Education Policy: National Policy On Education, 2016* (Ministry Of Human Resource Development, Government Of India, 2016)

education scenario. Recent developments include a new impetus to skill development through vocational education in the context of the emergence of new technologies in a rapidly expanding economy in a globalised environment, need for innovative ways of student financing, addressing challenges of globalization and liberalization, recognition of multi-disciplinary and inter-disciplinary nature of learning and knowledge, efficient use of public resources and encouraging ways of enhancing private investment and funding.⁸⁵²

About 65% of India's population today is less than 35 years old. A huge demographic dividend will be available, if India revamps the education sector. Not doing so will have serious consequences for the country. Many studies have shown that if a child is provided good quality education and health care in the early years of schooling, it enhances his/her ability to lead a more meaningful and productive life. Children in India have the necessary intelligence and potential; what they need are opportunities to access quality education.

The focus of the proposed New National Policy on Education, 2016 is on improving the quality of education and restoring its credibility. It seeks to create conditions to improve the quality of teaching, learning and assessment, and promote transparency in the management of education. The core objectives of education in the coming years should encompass four essential components – i.e. building values, awareness, knowledge and skills. The New National Policy on Education has tried to address the deficiencies and challenges faced by our education system, particularly the urgent need to improve quality of learning across all sectors.⁸⁵³

The Need for National Commitments is education must be given the highest priority. It is the duty of Central and State Governments to provide necessary resources and create conditions that are favourable for the process of teaching and learning to

⁸⁵² Government Of India, Report: *Report Of The Committee For Evaluation Of The New Education Policy: National Policy On Education, 2016* (Ministry Of Human Resource Development, Government Of India, 2016)

⁸⁵³ Government Of India, Report: *Report Of The Committee For Evaluation Of The New Education Policy: National Policy On Education, 2016* (Ministry Of Human Resource Development, Government Of India, 2016)

flourish. Every opportunity needs to be provided to young persons to get good quality education and acquire skills that lead to employment and entrepreneurship. The basic education infrastructure already exists in India. The Indian child is as resourceful and intelligent as any in the world. New technologies are now available. Governments at the Centre and the States only need to understand the catalytic role they have to play in fostering an atmosphere that enables students to think, to learn, and contribute to the country's development. For two-thirds of mankind's history, India as one of the oldest and most glorious living civilizations in the world dominated the world scene in every respect –in philosophy, economics, trade, culture as well as in education. If India does the things now required to be done, in 15 to 20 years Indian Education can be transformed. The rest of the 21st century could then belong to India.⁸⁵⁴

The document on the National Policy on Education, 2016 is divided into nine chapters. After some preliminary observations in the first two chapters, it discusses in some detail about some of the essential characteristics of a national system of education providing scope and need for national commitment on education. Chapter third discussed the context and objectives of the New National Policy on Education, 2016. It includes the inculcation of values through education, and constitutional & legal provisions relating to education such as fundamental rights; religious instruction; non-discrimination in education; rights of minorities; education for weaker sections; provisions with regard to languages; right to education. Further, it includes the provisions earlier National Policies on Education, and the State of education in India such as elementary education; quality of education; secondary & higher secondary education; and higher education.⁸⁵⁵

The chapter fourth discussed the need for a New National Policy on Education, and chapter fifth is related to governance in education and includes administration and management of education, use of ICT for improving quality of education, need for

⁸⁵⁴ Government Of India, Report: *Report Of The Committee For Evaluation Of The New Education Policy: National Policy On Education, 2016* (Ministry Of Human Resource Development, Government Of India, 2016)

⁸⁵⁵ Government Of India, Report: *Report Of The Committee For Evaluation Of The New Education Policy: National Policy On Education, 2016* (Ministry Of Human Resource Development, Government Of India, 2016)

special academic and other support to children from socially and economically weaker sections, etc.

The document on the National Policy on Education, 2016 chapter **six** contains various issues related to school education and recommendations to amend the Right of Children to Free and Compulsory Education Act, 2009. The preponderance of small schools not only affects the quality of teaching and learning but also makes school education inequitable and expensive in terms of per-pupil expenditure. Such schools are neither academically nor financially viable. The National Policy on Education seeks to shift the focus of development of school education from physical expansion to consolidation of the existing school system. Schools with low enrolment and inadequate infrastructure should be, wherever possible converted to composite schools. Mergers will lead to the provision of better infrastructure, teacher availability and efficient re-deployment. It will be feasible then to position full-time Principals. Consolidation will help improve the availability of computer and science laboratories and provide better facilities for sports and extra-curricular activities. MHRD and the States should together evolve common guidelines for merger and consolidation, without diluting the spirit of easy access laid down by the RTE Act. It is important to have minimum acceptable standards in school education across all levels in terms of provisions and student outcomes.⁸⁵⁶

Pre-primary education has been a neglected area in the education sector. Government schools do not provide pre-primary education as schools generally start only from class I. The Integrated Child Development Services (ICDS) program was intended to provide early childhood education but this has not happened in practice. Pre-Primary schools have proliferated in the private sector and are located mostly in the urban and peri urban areas. One of the reasons parents prefer private schools, is the availability of pre-primary sections. It is universally accepted that early childhood up to the age of six,

⁸⁵⁶ Government Of India, Report: *Report Of The Committee For Evaluation Of The New Education Policy: National Policy On Education, 2016* (Ministry Of Human Resource Development, Government Of India, 2016)

is a period of remarkable brain development when the foundations for cumulative lifelong learning are laid. Children in the age group of 3 to 5 show intense and lively curiosity and experiment with objects found in the surrounding environment. An education program specially geared to this age group needs to be formulated for all children.⁸⁵⁷

The RTE Act 2009 provides that “no child shall be required to pass any board examination till completion of elementary education.” As a consequence of the No Detention Policy, no child can be held back or expelled from school until the end of class VIII, when he attends the age of 14 years. The RTE Act has provided that all private and unaided schools should compulsorily admit at the entry level at least 25% children belonging to weaker sections and disadvantaged groups. The cost of educating such children is borne by the government according to the prescribed norms. This provision has been questioned by many sponsors and management of these schools. There was reluctance on the part of many States to implement this provision till forced to do so by judicial intervention. There have been procedural problems regarding modalities of admission and reimbursement of cost.⁸⁵⁸ Chapter seven discussed the issues affecting quality of higher education, role of state in management of higher educational institutions, and need to revamp the regulatory regime, etc. Chapter eighth discusses the reforming and strengthening national level institutions. And finally, chapter nine discusses the Summary of Recommendations – Evolution of the National Policy on Education 2016.⁸⁵⁹

⁸⁵⁷ Government Of India, Report: *Report Of The Committee For Evaluation Of The New Education Policy: National Policy On Education, 2016* (Ministry Of Human Resource Development, Government Of India, 2016)

⁸⁵⁸ Government Of India, Report: *Report Of The Committee For Evaluation Of The New Education Policy: National Policy On Education, 2016* (Ministry Of Human Resource Development, Government Of India, 2016)

⁸⁵⁹ *Ibid.*

CHAPTER - 6

CRITICAL ANALYSIS OF THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

“An illiterate and ignorant nation can never make any solid progress and must fall back in the race for life.” --- (G.K. Gokhale, 1866 - 1915)⁸⁶⁰

“Everyone has the 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. Further, 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 the maintenance of peace. Therefore, Parents have a prior right to choose the kind of education that shall be given to their children.” --- (UDHR)⁸⁶¹

Education is basic requirement for success of democracy and progress of country. The universalisation of primary education is a provision to provide free educational opportunities to all children of the society irrespective of caste, creed and sex. Education

⁸⁶⁰Gopal Krishna Gokhale (May 9, 1866 - February 19, 1915) was one of the social and political leaders during the Indian Independence Movement against the British Empire in India. He was the **President of the Indian National Congress; he also served in the Imperial Legislative Council and founded the famed Servants of India Society.**

⁸⁶¹ Universal Declaration of Human Rights 1948, it adopted by General Assembly resolution 217A (III) of 10 December, 1948. Since 1948, it has been translated into more than 200 languages and remains one of the best known and most often cited human rights documents in the world. Over the years, the Declaration has been used in the defense and advancement of people's rights. Its principles have been enshrined in and continue to inspire national legislation and the constitutions of many newly independent states. References to the Declaration have been made in charters and resolutions of regional inter-governmental organizations as well as in treaties and resolutions adopted by the United Nations system. *available at:*<http://www.un.org/rights/50/carta>

today remains liberation - a tool for the betterment of our civil institutions, the protection of our civil liberties, and the path to an informed and questioning citizenry.⁸⁶²

Education occupies an important place in our Constitution and culture. There has been emphasis on free and compulsory education for children in this country for a long time. There is a very strong historical perspective. The Hunter Commission in 1882-83, almost 125 years ago, recommended Universal Education in India. It proposed to make education compulsory for the children.⁸⁶³

The Government of India Act, 1935 provided that “education should be made free and compulsory for both boys and girls.” About a hundred years ago, Shri Gopal Krishna Gokhale, urged the Imperial Legislative Assembly, while debating in a bill in Imperial Legislation Council in 1911, Gokhale, strongly advocated that elementary education should be both compulsory and free.⁸⁶⁴ About 90 years later the Constitution of India was amended to enshrine the Right to Education as a fundamental right.

Ever since independence, India has undertaken several initiatives, different commissions and committee have given suggestion to achieve universalization of elementary education, which has yielded mixed results. The right to education legislation in India has seen a chequered history in evolving from a directive principle to a fundamental right. In 1950 the Constitution articulated its commitment to education through its Directive Principles of State Policy. It was first step towards right to education was taken right after Independence in 1950 when the Constitution (Art. 45) by way of a directive principle promised free and compulsory education within 10 years.⁸⁶⁵ The Kothari Commission on Education set up by the Government of India in

⁸⁶² *Avinash Mehrotra v. Union of India and Others*, (2009)6 SCC 398

⁸⁶³ *Avinash Mehrotra v. Union of India and Others*, (2009)6 SCC 398 (This case has decided by Supreme Court on dated Apr.-13-2009, Justice, Dalveer Bhandari, and Justice Lokeshwar Singh Panta)

⁸⁶⁴ *Ibid.*

⁸⁶⁵ The Constitution of India, as original Article 45 of the Directive Principles of State Policy of the newly adopted the Constitution of India (before the Eighty-six Amendment Act, 2002) provides that, the provision for free and compulsory education for children, “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.

(1964-66)⁸⁶⁶ strongly recommended free and compulsory education for children up to the age of 14 years. The Commission observed that there is no other way for the poor to climb their way out of this predicament.⁸⁶⁷ The Constitution directs both burdens to achieve one end: the compulsory education of children, free from the fetters of cost, parental obstruction, or State inaction. The two Articles 21-A and 45 also balance the relative burdens on parents and the State. The Parents sacrifice for the education of their children, by sending them to school for hours of the day, but only with a commensurate sacrifice of the State's resources. The right to education, then, is more than a human or fundamental right. It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society.

The Right of Children to Free and Compulsory Education (RTE) Act, 2009 was enacted following the insertion of Article 21-A by the Constitution (Eighty-sixth Amendment) Act, 2002. Article 21-A provides for free and compulsory education to all children of the age 6 to 14 years and also casts an obligation on the State to provide and ensure admission, attendance and completion of elementary education in such a manner that the State may, by law, determine. The present Act a rough draft bill was composed in year, 2005. It received much opposition due to its mandatory provision to provide 25 per cent reservation for disadvantage children and weaker section of the society in private un-aided schools.

The Constitution (Eighty-sixth Amendment) Act, 2002 was followed by multiple rounds of discussions (tabling of the Right of Children To Free And Compulsory Education Bill⁸⁶⁸ by the NDA and UPA Governments), which made education a

⁸⁶⁶Government of India, Report: *Report of the Education Commission 1964-66* (National Council of Educational Research and Training, Government of India, New Delhi, 1970).

⁸⁶⁷The Government of India, Report: *Report of the Kothari Commission 1964-66*, set up a National Education Commission, under Resolution of July 14, 1964 under the Chairmanship of Daulat Singh Kothari, than Chairman of the UGC, consisted of sixteen members. The report was submitted by the commission on 29 June 1966.

⁸⁶⁸Government of India, The Right of Children to Free and Compulsory Education Bill, 2008(Bill No. LXV of 2008), Rajya Sabha Document No.GMGIPMRND-4264RS(S-5)-10-12-2008 (Minister of Human Resource Development, Government of India, New Delhi, 2008).

fundamental right for children in the age group of six to fourteen years.⁸⁶⁹ The Act was introduced in Rajya Sabha in December 2008. Nearly six years after the amendment is clear by the Cabinet. The Bill was approved by Cabinet on 2 July 2009. The Bill was again introduced in the Rajya Sabha which passed the Bill on 20.7.2009 and in Lok Sabha on 4.8.2009 and received the assent of the President on 26.8.2009 and was published in the Gazette of India on 27.8.2009.⁸⁷⁰

The Right of Children to Free and Compulsory Education (RTE) Act, 2009 came into effect in the whole of India except the State of Jammu and Kashmir w.e.f. 1.4.2010. The provisions of this Act are intended not only to guarantee right to free and compulsory education to children, but it also envisages imparting of quality education by providing required infrastructure and compliance of specified norms and standards in the schools. The Preamble states that the 2009 Act stands enacted inter alia to provide for free and compulsory education to all children of the age of 6 to 14 years.

The RTE Act is divided into seven chapters and a schedule, consisting of norms and standards for a school, such as provision of two trained teachers for every sixty students at the primary level. India now becomes, according to UNESCO'S⁸⁷¹ one of the twenty-one countries including China, Cuba, and Switzerland where the duration of free, compulsory education is eight years. This is the sixth maximum duration of free, compulsory education in the world, while the minimum period, of four years, is followed by Iran, Bangladesh, Myanmar, Madagascar and Equatorial Guinea. Chile has the maximum period of free, compulsory education of fifteen years, followed by Netherlands, Germany, Italy, Belgium, Peru and Anguila which have twelve years. Some

⁸⁶⁹ The Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009).

⁸⁷⁰ Received the Assent of the President on the Aug.-26-2009 And Act Published in the Gazette of India (Extr.) Part II, Sec. 1, Aug.-27-2009, 1-13pp., The Act came into force on 01 April, 2010 as a fundamental right in India.

⁸⁷¹ Report: *Education for All: Global Monitoring 2010* (UNESCO'S Publication)

of the countries offer legal guarantees, while 56 countries including USA, Pakistan, Sri Lanka, South Africa, Singapore and Monaco do not offer any such legal guarantees.⁸⁷²

The Act was to be given the status of a Fundamental Right. This could not be done immediately as the Ministry Of Human Resource Development (MHRD) officials took more than four months after August 2009 to work out the cost of implementation of the Act, which ultimately turned out to be Rs. 1.71 lakh crore for five years, a huge sum, but modest, given the scale of operation involved; thereafter the Act was notified for implementation from 1 April 2010.

In an address to the nation on 1 April 2010, Prime Minister Manmohan Singh, Spoke about “I am what I am today because of education”, Today, our Government comes before you to redeem the pledge of giving all our children the right to elementary education. The Right of Children to Free and Compulsory Education Act, enacted by Parliament in August 2009, has come into force today. The Fundamental Right to Education, as incorporated in our Constitution under Article 21-A, has also become operative from today. We are a Nation of young people. The health, education and creative abilities of our children and young people will determine the well-being and strength of our Nation. Education is the key to progress. It empowers the individual. It enables a nation. It is the belief of our government that if we nurture our children and young people with the right education, India's future as a strong and prosperous country is secure. We are committed to ensuring that all children, irrespective of gender and social category, have access to education.⁸⁷³

He spoke as an illustration of power of education, he cited his own example: “I was born to a family of modest means. In my childhood I had to walk a long distance to

⁸⁷²Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 251 (Orient Blackswan Private Limited, New Delhi, 4thedn., 2013).

⁸⁷³ Editorial, “Education Now a Fundamental Right - India may boast about its young generation and booming economy but 40 per cent of the population is still illiterate. On Thursday, the PM enforced the historic Right to Education Act, ensuring that all children, irrespective of gender and social category have right to education”. Prime Minister Manmohan Singh (Speech) “I AM WHAT I AM TODAY BECAUSE OF EDUCATION”*The Times of India*, Apr. 2, 2010, available at: <http://epaper.timesofindia.com>

go to school. I read under the dim light of a kerosene lamp. I am what I am today because of education. I want every Indian child, girl and boy, to be so touched by the light of education. I want every Indian to dream of a better future and live that dream.”⁸⁷⁴ Most people who have risen from a poor or middle-class background to positions of trust and responsibility will fully agree with him. And in the context of globalisation, India’s growth story could hit a roadblock if a majority of our youth remain out of schools and are not equipped with employable skills. The RTE Act seems to be a step in the right direction.⁸⁷⁵

Now at present, according to UNESCO’S 166 countries have ratified the Convention against Discrimination in Education (1960) and or the International Covenant on Economic, Social and Cultural Rights (1966). However, 136 countries have safeguarded the right to education in their constitution. Inter alia 166 countries have legal provisions for free education, and 183 countries have legal provisions for compulsory education in the world. Further, UNESCO declared that 121 million children and adolescents have never started school or have dropped out.⁸⁷⁶

6.1. The Right of Children to Free and Compulsory Education Act, 2009:⁸⁷⁷

It is an Act to provide for free and compulsory education to all children of the age of six to fourteen years. Be it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:-

⁸⁷⁴Editorial, “Learning leap for India” *The New Indian Express*, Apr. 2, 2010.

⁸⁷⁵Suresh Chandra Ghosh, *The History Of Education In Modern India 1757-2012*, 252 (Orient Blackswan Private Limited, New Delhi, 4thedn., 2013).

⁸⁷⁶ UNESCO: *UNESCO Global Database on the Right to Education*, available at:<http://www.unesco.org>

⁸⁷⁷ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), The following Act of received the assent of the President on the 26th August, 2009 and Act published in the gazette of India (Extraordinary) Part II Section 1 dated 27-8-2009, 1-13pp., [and (as amended Act No. 30 of 2012), The following (Amendment) Act of received the assent of the President on the 19th June, 2012 and Act published in the gazette of India (Extraordinary) Part II Section 1 dated 20-06-2012, 1-3pp.]. The Act came into force on 01 April, 2010 as a fundamental right in India. India became one of the 135th Countries to make education a fundamental right of every child when RTE Act 2009 was enforced. The RTE, Act shall extent to the whole of India except the State of Jammu and Kashmir.

6.1.1. The Statement of Objects and Reasons:

The Statement of Objects and Reasons of the Right of Children to Free and Compulsory Education Act, 2009 recognises one of the most profound underlying principles contained in the Constitution, viz. The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic.

Other, and equally significant principle that it recognises, is that, in order to ensure equal opportunities to all citizens, it is necessary that elementary education is provided to one and all. Keeping in view this spirit, obligation was imposed upon the State, as per Article 41, read with Article 45, of the Constitution to make effective provisions for securing the right to education, among other. Thus, it is one of the Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years.

In order to make it a reality, the Supreme Court in the case of **Unni Krishnan, J.P. and Ors. etc. v. State of Andhra Pradesh & Ors.etc.**⁸⁷⁸ stretched the limits of Article 45 by reading right to free education as a fundamental right of children up to the age of 14 years so as to enable the children up to the age of 14 years to receive the education as a matter of right. The Law Commission (One Hundred-sixty-fifth) Report⁸⁷⁹ also supported it by making recommendation to the Parliament to make suitable amendment in the Constitution. Realising its Constitutional commitment, the Parliament obliged, and Article 21-A was added vide the Constitution (Eighty-sixth Amendment) Act, 2002 in the following manner:

⁸⁷⁸ AIR 1993 SC 2178; (1993)1 SCC 645; [1993]1 SCR 594, (decided by Supreme Court on dated Feb.-04-1993, Justice, L.M. Sharma; S. Ratnavel Pandian; S. Mohan; B.P. Jeevan Reddy and; Justice, S.)

⁸⁷⁹ Government of India, Report: *One Hundred Sixty Fifth Report On Free And Compulsory Education For Children 1998*, (Law Commission of India, Ministry of Law, Justice and Company Affairs, Government of India, New Delhi, 1998). The Report has submitted by Justice B.P. Jeevan Reddy Chairman, Law Commission of India in vide letter on dated 19.11.1998. Justice B.P. Jeevan Reddy was the Supreme Court Justice and then he decided the case of *Unni Krishnan, J.P. and Ors. etc. v. State of Andhra Pradesh & Ors.etc.*, (Feb.-04-1993, Supreme Court of India).

Article 21-A, the Right to Education as inserted by the Constitution (Eighty-sixth Amendment)⁸⁸⁰ Act, 2002, 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.

Simultaneously, Article 45 of the Constitution was also substituted with the following - Provision for early childhood care and education to children below the age of six years. The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Notwithstanding the aforesaid provisions in the Constitution and significant spatial and numerical expansion of elementary schools in the country, goal of universal elementary education continued to allude us. It was found that number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. It was also noticed that the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

Consequently, having regard to the aforesaid harsh realities, the Right of Children to Free and Compulsory Education Bill, 2008⁸⁸¹ was proposed by Parliament to be enacted the Right of Children to Free and Compulsory Education Act, 2009 with following objects in mind:

- (a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

⁸⁸⁰The Constitution (Eighty-Six Amendment) Act, 2002 (Act No. 65 of 2002). The bill was passed and received the assent of the President on 12-12-2002 and Act was published in the Gazette of India (Extraordinary) Part II. Sec. 1, on dated 13-12-2002.

⁸⁸¹ The Right of Children to Free and Compulsory Education (Bill No. LXV of 2008) Bill, 2008, the Rajya Sabha Document No.GMGIPMRND-4264RS(S-5)-10-12-2008 (Minister of Human Resource Development, Government of India, New Delhi, 2008).

- (b) **‘compulsory education’** casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;
- (c) **‘free education’** means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay and kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;
- (d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and
- (e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

2. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

3. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in Article 21-A of the Constitution.

4. The Act seeks to achieve above this objective.

6.1.2.Introduction of the RTE Act, 2009:

The Right of Children to Free and Compulsory Education Act, 2009 received the assent of the President of India on dated August 26, 2009 and came into force on April 1, 2010. It provides for free and compulsory education to all children of up the age of six to fourteen years. It shall extend to the whole of India except the State of Jammu and Kashmir. Section 2 of the Act deals with the various definitions unless the context otherwise required. Chapter second deals with right to free and compulsory education for

every child of the age of 6 to 14 years. The chapter third deals with duties of appropriate government, local authority and parents, and chapter fourth deals with responsibilities of schools and teachers. Further, chapter fifth deals with curriculum and completion of elementary education, chapter sixth deals with protection of right of children. Thereafter, finally chapter seventh deals with various miscellaneous. Article 21-A of the Constitution of India was inserted by the Constitution (Eighty-sixth Amendment) Act, 2002 and the said Article deals with Right to Education which says 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 45 of the Constitution of India deals with provision for early childhood care and education to children below the age of six years.

In **University of Delhi and Anr. v. Rananath**,⁸⁸² Supreme Court was held that education is enlightenment. It is the one that lends dignity to a man. Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development.

In **Brown v. Board of Education of Topeka**,⁸⁸³ the United State Supreme Court emphasized on the concept of education as today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is the very foundation of good citizenship. It is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is

⁸⁸²AIR 1963 SC 1873, (Supreme Court onApr.-01-1963, Justice, K.C. Das Gupta, K.N. Wanchoo, and P.B. Gajendragadkar).

⁸⁸³*Brown v. Board of Education of Topeka*,US Supreme Court Report 98 Law. Ed. 347 U.S. 483, 873 (1954), available at: <http://www.legalcrystal.com/98896>. In this case the fact was that, Segregation of white and Negro children in the public schools fully based on race because state laws was permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment, 1868 -- even though the physical facilities and other "tangible" factors of white and Negro schools may be equal. Whenever the court found that, segregation in public education has a detrimental effect upon Negro children, but denied relief on the ground that the Negro and white schools were substantially equal with respect to buildings, transportation, curricula, and educational qualifications of teachers.

denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

In **Bandhua Mukti Morcha v. Union of India and Ors.**,⁸⁸⁴ Supreme Court held that, the 'right to live' with 'human dignity' enshrined in Article 21 derives its life breath the Directive Principles of State Policy in Articles 39, 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, unities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

Miss. Mohini Jain v. State of Karnataka and Others,⁸⁸⁵ the Supreme Court has interpreted the 'life' in Article 21 of the Constitution of India that is 'right to live' with human dignity. The 'Right to life' is the compendious expression for all those rights which are basic to the dignified enjoyment of life. Thus, ruled the Court that, "the right to education flows directly from right to life" and that the right to education being concomitant to the fundamental rights, "the State is under a constructional mandate to provide educational facilities at all levels for the benefit of the citizens. **Unni Krishnan, J.P. and Others v. State of Andhra Pradesh and Others**,⁸⁸⁶ the Supreme Court held that, every citizen has a 'right to education' under the Constitution. Right to education is a fundamental right; it flows directly from 'right to life.' In other words, 'right to

⁸⁸⁴ AIR 1984 802, (1984)2 SCR 67 (Supreme Court on Dec.-16-1983, Justice P.N. Bhagwati, R.S. Pathak, and AmarendraNath Sen).

⁸⁸⁵ AIR 1992 SC 1858; (1992)3 SCC 666, Mohini Jain had challenged the notification of the Karnataka Government permitting the private medical colleges in the State of Karnataka to charge exorbitant tuition fees from the students other than those admitted to the 'Government seats'. It was held and declared that charging of capitation fee by the private educational institutions as a consideration for admission wholly illegal and cannot be permitted, (Supreme Court on Jul.-30-1992, Judges - Kuldip Singh, and R.M. Sahai).

⁸⁸⁶ AIR 1993 SC 2178; (1993)1 SCC 645.

education' is concomitant to the fundamental rights enshrined in Article 21 under part III of the Constitution. Education is freely available only to children until complete the age of 14 years.

In the case of **Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr.**,⁸⁸⁷ The Supreme Court upheld the constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009 in this case. Further, in **Pramati Educational & Cultural Trust and Ors. v. Union of India & Ors.**,⁸⁸⁸ In this case Supreme Court hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-Sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are Constitutionally valid. Supreme Court also holds that the Right of Children to Free and Compulsory Education (RTE) Act, 2009 is not ultra vires Article 19(1) (g) of the Constitution. Further, Supreme Court maintained the all facts of the **Society for Un-aided Private Schools of Rajasthan v. Union of India & Anr.**⁸⁸⁹

In **State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Others**,⁸⁹⁰ it was held that, “the right to education being a fundamental right the State of Himachal Pradesh is under a constitutional obligation to provide free education to children till they complete the age of 14 years. The obligation does not end thereafter but it is subject to the limits of its economic capacity and development judicial notice may be taken of the fact, that ordinarily, a child in the country joins school at the age of 5 years. All the children studying in the Middle Schools would be less than 14

⁸⁸⁷2012(6)SCC1, 2012(4)SCJ318 (Supreme Court on Apr.-12-2012), This Judgment has delivered by the bench of three Judges, S.H. Kapadia, Swatanter Kumar, and Radhakrishnan, JJ.

⁸⁸⁸ The Supreme Court Writ Petition (C) No.416 of 2012, Decided On May.-06-2014, Justice R.M. Lodha, A.K. Patnaik, SudhansuJyotiMukhopadhaya, Dipak Misra, and Fakkir Mohamed Ibrahim Kalifulla, *available at*: legalcystal.com/1139115

⁸⁸⁹2012(6)SCC1, 2012(4)SCJ318 (Supreme Court on Apr.-12-2012).

⁸⁹⁰*State of H.P. v. H.P. State Recognised & Aided Schools Managing Committees and Ors.*, (1995)4 SCC 507, (Supreme Court on may-10-1994, Justice Kuldip Singh, R.M. Sahai and; B.L. Hansaria).

years. Therefore the State Government is under an obligation to provide free education to the children studying in aided non-government middle schools”.

6.1.3. Salient Provisions of the RTE, Act, 2009:

The Right to Free and Compulsory Education Act, 2009, provides a legal guarantee by the Government of India for a justiciable right to free and compulsory education for children between the ages of 6-14 years equitable quality to all. This Act came into force in April 1, 2010 and trunks from the Fundamental right to education as laid down under Article 21-A of the Constitution. For the implementation of RTE Act the Central and State governments are responsible. The salient provisions of the Act are as follows:

- Provides free and compulsory education for every child of the age of 6 to 14 years, in a neighbourhood school till completion of elementary education.
- Provides for every child above six years of age, the right to admission in a class appropriate to his or her age even if the child has not been admitted before in any school or though admitted, could not complete his or her elementary education.
- Provides for every child, the right to seek transfer to any other school from a school where there is no provision for completion of elementary education.
- Provides duty for the appropriate Government and the local authority to establish school, where it is not so established, within a period of three years from the commencement of the Act.
- Seeks to provide for financial and other responsibilities of the Central Government and the State Governments and for developing by the Central Government of a national curriculum and the standards for training of teachers.
- Provides the duty of appropriate government and local authority as every parents or guardian to admit his or her child to an elementary education in the neighbourhood school and ensure compulsory admission, attendance and

completion of elementary education by every child of the age of six to fourteen years.

- To ensure availability of admission in a neighbourhood school and good quality elementary education of every child of the age of six to fourteen years.
- Provides duty of every parents or guardian to admit or cause to be admitted his or her child or ward to an elementary education in the neighbourhood school.
- Appropriate government make necessary arrangement for providing free pre-school education for the children of the age of three to six years.
- Provides school's responsibility of providing free and compulsory education and unaided private schools shall admit twenty five per cent children to Class – 1 from among children belonging to weaker sections and disadvantaged groups for continued education of such children till completion of elementary education.
- Prohibition of capitation fee and screening in admission procedure and for punishment for contravention of these provisions.
- It provides prohibition of denial of admission of a child for lack of age proof and denial of admission to a child, irrespective of the time in the academic year.
- It prohibits the holding back in any class or expulsion of a child from school till the completion of elementary education.
- Prohibition of physical punishment and mental harassment and school shall be liable to disciplinary action under the service rule applicable for the contravention of this provision.
- Provides norms and standards of schools for recognition, withdrawal of recognition and imposition of fine in case of contravention.
- Provides the powers of Central Government to amend norms and standards for a school are provided for in the Schedule.
- Provides to spell out the constitution and functions of a school management committee.

- It articulates a provision for a school development plan by the school management committee.
- Ensure the qualifications for appointment and terms and conditions of service of teachers.
- It seeks to provide for duties of teachers, disciplinary action against them and redressal of their grievances.
- Seeks to ensure for maintenance of pupil - teacher ratio by appropriate governments and local authorities as specified in the Schedule.
- It ensure for filling up of vacancies of teachers by appointing authority in schools.
- It seeks the prohibition of deployment of teachers for non-educational purposes, except for decennial population census, disaster relief, elections to local authority, State Legislature and Parliament.
- It prohibits of private tuition and private teaching activities by teachers.
- Seeks to provide for curriculum and evaluation procedure for elementary education to be laid down by an academic authority to be specified by the appropriate government.
- It prohibits detention or failing of any pupil in any class till completion of elementary education.
- Provides for certain additional functions to be performed and powers to be exercised by the National and State Commissions for Protection of Child Rights in pursuance of the provisions of this Act.
- It relates for redressal of grievances to the rights of the child under the legislation.
- Seeks to provide for the constitution of a State Advisory Council (SAC) to advise the State Governments on implementation of the provisions of the RTE Act, 2009.
- It gives the power to the appropriate Government to issue guidelines and directions to, make rules for purpose of implementation of the provisions of the RTE Act.

- It provides the prohibitions for the suit or legal proceedings against the Central Government, State Government and National Commission for Protection of Child Rights (NCPCR), State Commission for Protection of Child Rights (SCPCR), the local authority, School Management Committee (SMC) or any rules or order made there under.

6.1.4. Scope of the RTE Act, 2009:

The RTE Act, 2009 divided into seven chapters; namely preliminary; right to free and compulsory education; duties of appropriate government, local authority and parents; responsibilities of schools and teachers; curriculum and completion of elementary education; protection of right of children; and the last chapter is miscellaneous. The RTE Act contains 39 sections also, these are describing here -

- Section 1 deals with short title, extent and commencement.
- Section 2 deals with definition unless the context otherwise required.
- Section 3 mandates right of child to free and compulsory education,
- Section 4 deals with special provisions for children not admitted to, or who have not completed elementary education.
- Section 5 tells about right of transfer to other school.
- Section 6 imposes duty on appropriate Government and local authority to establish school.
- Section 7 of the Act deals with sharing of financial and other responsibilities.
- Section 8 imposes duties on appropriate government.
- Section 9 inter alia provides the duties of the local authority.
- Section 10 imposes duty on every parent or guardian, and
- Section 11 imposes duty on appropriate government to provide for pre-school education.
- Section 12 deals with extent of school's responsibility for free and compulsory education.

- Section 13 mandates that no capitation fee and screening procedure for admission.
- Section 14 deals with prohibition of proof of age for admission.
- Section 15 deals with prohibition of denial of admission.
- Section 16 provides prohibition of holding back and expulsion.
- Section 17 deals with prohibition of physical punishment and mental harassment to child.
- Section 18 mandates that no School to be established without obtaining certificate of recognition.
- Section 19 mandates the norms and standards for school.
- Section 20 gives power to appropriate government to amend Schedule .
- Section 21 deals with school management committee.
- Section 22 mandates to prepare school development plan.
- Section 23 deals with the qualifications for appointment and terms and conditions of service of teachers.
- Section 24 provides duties of teachers and redressal of grievances.
- Section deals with pupil-teacher ratio.
- Section 26 deals with filling up vacancies of teachers.
- Section 27 deals with prohibition of deployment of teachers for non-educational purposes.
- Section 28 deals with prohibition of private tuition by teacher.
- Section 29 provides curriculum and evaluation procedure.
- Section 30 deals with examination and completion certificate.
- Section 31 mandates to monitoring of child's right to education.
- Section 32 provides redressal of grievances.
- Section 33 deals with constitution of national advisory council.
- Section 34 deals with constitution of state advisory council,
- Section 35 gave power to appropriate government to issue directions.
- Section 36 deals with previous sanction for prosecution.

- Section 37 provides the protection of action taken in good faith.
- Section 38 gave power to appropriate government to make rules.
- Section 39 gave power to central government to remove difficulties.⁸⁹¹

6.2. Analysis of the RTE Act, 2009:

First of all, we have to understand the scope of Article 21-A of the Constitution, before the RTE Act. Article 21-A provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.⁸⁹² Therefore, under the Article 21-A, the obligation is on the State to provide free and compulsory education to all children of specified age. However, under this Article, the manner in which the said obligation will be discharged by the State has been left to the State to determine by law. Hence, the State may decide to provide free and compulsory education to all children of the specified age through its own schools or through government aided or un-aided private schools.

The RTE Act, 2009 makes the right of children to free and compulsory education justiciable. Education is a process which engages voluminous players like, one who provides education, such as - teacher, owner of school, and parents, second who receives education, such as – child, and third who is legally responsible for the one who receives education, such as - parents, legal guardians, society and the State. These actors influence the right to education. Therefore the scope of the RTE Act should be describe in following manner –

The RTE Act 2009 came into force on April 1, 2010, which is a historic day for the people of India. For the first time in the history of India, a law was brought into force by a speech of Prime Minister (Manmohan Singh) in his speech, stated that, “ we are committed to ensuring that all children, respective of gender and social category, have

⁸⁹¹ Ins. by Act No. 30 of 2012

⁸⁹²The Constitution of India, art.21-A.

access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India.”⁸⁹³

The preliminary chapter first says that the RTE Act, 2009 shall extend to the whole of India except the State of Jammu Kashmir. Section 2 of the Act deals with the various definitions unless the context otherwise required.

Section 3(1) of the RTE, Act 2009 deals with right of child to free and compulsory education to every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till the completion of elementary education.⁸⁹⁴ The word ‘neighbourhood school’ did not define in definition clause under Section 2 of RTE Act, whereas the word ‘neighbourhood school’ means area or limits in respect of children in classes from 1st to 5th within a walking distance of 1 Km. and in respect of children in classes from 6th to 8th within a walking distance of 3 Km. from his or her residence⁸⁹⁵ inter alia as elaborated in the Kothari Commission report⁸⁹⁶, whereby the neighbourhood school is meant to be a common space, where all children without any type of discrimination as religion, race, caste, gender and place of birth. It is therefore meant to be a site for inclusion, so that the school becomes a common space for education. This notion has been adopted in the RTE, Act. There is no restriction in RTE, Act for the choice of the child to take admission in a school which may not be in the neighbourhood of the child’s residence. In short, the Act does not compelled to seek admission only in the school in his or her neighbourhood. The term ‘free education’ means that Section 3(2) mandates, no child, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and

⁸⁹³Prime Minister of India (Dr. Manmohan Singh), Address to the Nation on the Fundamental Rights of Children to Elementary Education” *The Hindu*, Apr. 2, 2010.

⁸⁹⁴ RTE Act, 2009 (Act No. 35 of 2009), s. 3 of sub-clause (1).

⁸⁹⁵The Rights of Children to Free and Compulsory Education Rules, 2010, Ministry of Human Resource Development (Department of School Education and Literacy) Notification No. G.S.R. 301 (E) Dated 8th April 2010, Published In The Gazette Of India (Extraordinary) Part II Section 3 (i) Dated 9-4-2010 Pages 22-44, Clause 6.

⁸⁹⁶ Government of India, Report: *Kothari Commission Report: 1964-1966*, set up a National Education Commission, under Resolution of July 14, 1964 under the Chairmanship of D. S. Kothari, than Chairman of the UGC, consisted of sixteen members and report was submitted by the commission on 29 June 1966. (National Council of Educational Research and Training, Government of India, New Delhi, 1970)

completing elementary education.⁸⁹⁷ The term ‘free education’ has inclusive in extent of school’s responsibility for free and compulsory education.⁸⁹⁸ A disable child also has the same rights to pursue free and compulsory elementary education.⁸⁹⁹ Section 3(3) inter alia provides, that a child with “multiple disabilities” referred to in clause (h) and a child with “severe disability” referred to in clause (o) of Section 2 of the National Trust For Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities (NTWPACPMRMD) Act, 1999 (44 Of 1999) may also have the right to opt for home-based education.⁹⁰⁰

Further, Section 4 provides, children above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, than, he or she shall be admitted in a class appropriate to his or her age.⁹⁰¹ Fulfilment of Section a majority of not admitted in school children belong to ‘disadvantaged group’ as Scheduled Castes, Scheduled Tribes, Muslim minorities, migrants, children with special needs, urban deprived children, working children, street children, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or many other factor as children in difficult circumstances, for example, those living in difficult territory, children from displaced families and areas affected by conflict of State, etc.⁹⁰²

⁸⁹⁷ RTE Act, 2009 (Act No. 35 of 2009), s. 3 of sub-clause (2).

⁸⁹⁸ RTE Act, 2009 (Act No. 35 of 2009), s. 12.

⁸⁹⁹ RTE Act, 2009 (Act No. 35 of 2009), s. 3 of sub-clause (3) Ins. by RTE Act, 2009 (Act No. 30 of 2012), which provides “A child with disability referred to in sub-clause (A) of clause (ee) of Section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of Section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

⁹⁰⁰ Ins. by RTE Act, 2009 (Act No. 30 of 2012), which Replaced by the RTE Act, 2009 (Act No. 30 of 2012), Prior to its omission as follows: “Provided that “a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1995 (Act No.1 of 1996) shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act”.

⁹⁰¹ RTE Act, 2009 (Act No. 35 of 2009), s. 4.

⁹⁰² RTE Act, 2009 (Act No. 35 of 2009), s. 2(d).

Section 4 of the RTE Act enables these children not admitted in school to be admitted in school according to his or her age in appropriate class and complete elementary education. The objective of admission in appropriate class according to age taken to save them from the shame and dishonour of sitting in school with younger children, because when older children are compelled to sit in a class younger than their age, they affect to be harassed, insulted, suffer lower self-confidence and subsequently drop out.

Section 4 of the RTE Act inter alia provides that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed.⁹⁰³ Thus, Section 4 of the RTE Act enables a child admitted to an age appropriate class to be given Special Training to enable him or her to compete with other children. Section 4 of the RTE Act provides further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.⁹⁰⁴ Thus, the basis for the provision that allows the child to be provided free and compulsory education even beyond the age of fourteen years.

Section 5(1) deals with the situation as right to transfer to other school where there is no provision for completion of elementary education, then, in such an event, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2, for completing his or her elementary education.⁹⁰⁵ Section 5(2) inter alia provides, where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary

⁹⁰³ RTE Act, 2009 (Act No. 35 of 2009), s. 4.

⁹⁰⁴ RTE Act, 2009 (Act No. 35 of 2009), Section 4, Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

⁹⁰⁵ *Ibid.*, s. 5(1)

education. Section 5(3) *inter alia* provides for seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate; thus, Section 5 of the Act, provides children the right to seek transfer from a Government or Government aided school to another such school in order to complete elementary education and for immediate issue of Transfer Certificate to a child seeking admission to another school. It provides that delay in producing Transfer Certificate shall not be a reason for denying or delaying admission in another school. This provision should lead to States instituting reform to remove procedural barriers to obtaining Transfer Certificates.

Chapter third of the RTE, Act, 2009 provides duties of appropriate government, local authority and parents. Section 6 imposes an obligation on the appropriate government and local authority to establish a school within such areas or limits of neighbourhood, as may be prescribed, where it is not so established, within three years from the commencement of the 2009 Act.⁹⁰⁶ The word ‘commencement’ means a day when it came into force i.e. April 1, 2010. Thus, the deadline for the establishment of neighbourhood school was 31st March 2013. The emphasis is on providing ‘neighbourhood school’ facility to the children at the Gram Panchayat level.

Section 7 of the Act, says that, The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act,⁹⁰⁷ and shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.⁹⁰⁸ Thus, this Section provides financial and other responsibilities of the Central Government and the State Governments for carrying out the provisions of the proposed Act. Further, provides the

⁹⁰⁶*Ibid.*, s. 6(1)

⁹⁰⁷*Ibid.*, s. 7(1)

⁹⁰⁸*Ibid.*, s. 7(2)

formulation of a National Curriculum Framework. The Central Government has notified the NCERT as the designated authority for this purpose.⁹⁰⁹

Section 8 imposes duties on appropriate government to provide free and compulsory elementary education to every child, in a neighbourhood school.⁹¹⁰ The word ‘compulsory education’ means, an obligation on the appropriate Government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education. It further provides that when a child is not admitted to a school which is established under Section 2(n) of the Act, than such child or his or her parents will not be entitled to claim reimbursement of the cost of elementary education. further, it provides the duties of the appropriate Government to ensure availability in neighbourhood school⁹¹¹inter alia that children belonging to weaker sections and disadvantaged groups are not discriminated against and prevented from pursuing and completing elementary education, that admission, attendance and completion of elementary education by every child is monitored, that school building, teaching staff and learning equipment are provided, good quality elementary education conforming to norms and standards is provided, curriculum and courses of study are prescribed in a timely manner, and teachers are trained.⁹¹²

Section 9 inter alia provides the duties of the local authority to ensure that it provides free and compulsory elementary education to every child,⁹¹³ in a neighbourhood school. Further, provides the duties of the local authority to ensure *inter alia* that children belonging to weaker sections and disadvantaged groups are not discriminated against and prevented from pursuing and completing elementary education,⁹¹⁴ maintain records of children up the age of 14 years residing within its jurisdiction,⁹¹⁵ ensure and monitor

⁹⁰⁹*Ibid.*, s. 7(6)

⁹¹⁰*Ibid.*, s. 8(a)

⁹¹¹*Ibid.*, s. 8(b)

⁹¹²*Ibid.* ss. 8(c), (d), (e), (f), (g), (h), (i)

⁹¹³*Ibid.* s. 9(a)

⁹¹⁴*Ibid.* s. 9(c)

⁹¹⁵*Ibid.* s. 9(d)

admission, attendance and completion of elementary education by every child,⁹¹⁶ providing infrastructure including school building, teaching staff and learning equipment,⁹¹⁷ and providing special training facility specified in Section 4 of the Act,⁹¹⁸ and good quality elementary education conforming to norms and standards is provided,⁹¹⁹ Ensure timely prescribing of curriculum and course of study,⁹²⁰ provide training facility for teachers,⁹²¹ ensure admission of migrant's children⁹²² monitor funding of schools within its jurisdiction,⁹²³ decide on the academic calendar.⁹²⁴

Section 10 imposes duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school. Thus, this provision casts a moral responsibility on every parent or guardian to admit their children or wards to school, and ensure that children are not deprived of their right to elementary education. Therefore, Section 10 of RTE Act should be read together with the responsibility of the appropriate Government and local authority to provide free and compulsory elementary education in a neighbourhood school.

Section 11 inter alia provides with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

Chapter fourth of the RTE, Act provides for responsibilities of schools and teachers. Section 12 imposes an Extent of school's responsibility for free and compulsory education, for purpose of this RTE Act, Section 12 (1)(a) read with the definition clause Section 2(n)(i) mandates free and compulsory elementary education to all children

⁹¹⁶*Ibid.* s. 9(e)

⁹¹⁷*Ibid.* s. 9(f)

⁹¹⁸*Ibid.* s. 9(g)

⁹¹⁹*Ibid.* s. 9(h)

⁹²⁰*Ibid.* s. 9(i)

⁹²¹*Ibid.* s. 9(j)

⁹²²*Ibid.* s. 9(k)

⁹²³*Ibid.* s. 9(l)

⁹²⁴*Ibid.* s. 9(m)

admitted therein; Section 12(1)(b) read with Section 2(n)(ii) inter alia provides free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Section 12 (1)(c) read with Section 2(n) (iii) and (iv) mandates that every recognised school imparting elementary education, even if it is an unaided school, not receiving any kind of aid or grant to meet its expenses from the appropriate government or the local authority, is obliged to admit in Class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion. As per the proviso, if the School is imparting pre-school education, the same regime would apply. Section 12(2) the un-aided school which has not received any land, building, equipment or other facilities, either free of cost or at concessional rate, would be entitled for reimbursement of the expenditure incurred by it to the extent of per child expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed. Such reimbursement shall not exceed per child expenditure incurred by a school established, owned or controlled by the appropriate government or a local authority. Section 12(3) inter alia provides that every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

Section 13 of the Act deals with no capitation fee and subject the child or his or her parents to any screening procedure for admission. In other words Section 13 envisages that no school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents to any screening procedure. Thus, it makes provisions for abolishing any kind of donations or capitation fees and interviews of the child or parent for the process of admission.

Section 14 deals with the prohibition of proof of age for admission and, provides for proof of age certificate of a child and that admission cannot be denied in its absence. The rationale for this provision is that birth certificates under the Births, Deaths and

Marriages Certification Act, 1886 are often not available, and in their absence, children and their parent often have to run from pillar to post to obtain age proof. Thus, other documents can be deemed to be proof of age of the child for the purposes of admission in schools. Section 14(2) inter alia mandates, No child shall be denied admission in a school for lack of age proof. Therefore, the admission shall be given even in the absence of age proof, or other documents.

Section 15 mandates that a child shall be admitted in a school at the commencement of the academic year or within the prescribed extended period. It prohibits schools from denial of admission to a child, irrespective of the time in the academic year in which admission is sought, further, provided that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government. Right to education is a fundamental right under Article 21-A of the Constitution and a child can take admission in school so it cannot be denied at any time, including those children who suffering from difficult circumstances, such as migration, displacement or ill health, etc.

Sections 16 provides that, no child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education. Section 17 inter alia provides the prohibition of physical punishment or mental harassment to a child.

Section 18 postulates that after the commencement of the 2009 Act no school, other than the excepted category, can be established or can function without obtaining a certificate of recognition from the appropriate authority. Section 19 provides the norms and standards for schools. Any school, whether Government or private that does not fulfill the prescribed norms and standards shall do so within a period of three years from the date of commencement of the RTE Act, 2009 (w.e.f. Apr.1.2010). Section 20 of the Act provides power to Central Government to amend the schedule on norms and standards. Section 21 inter alia provides for constitution and functions of a School Management Committee in certain categories of schools.

Section 22 postulates that the School Management Committee constituted under Section 21, shall prepare a School Development Plan in the prescribed manner. Section 22(2) provides that the School Development Plan so prepared shall be the basis for the grants to be made by the appropriate government or local authority, as the case may be.

Section 23 provides qualifications for appointment and terms and conditions of service of teachers. The Central Government has notified NCTE as the academic authority for prescribing teacher qualifications.

Section 24 imposes duties on teachers and redressal of grievances, and provides that a teacher appointed under sub-section (1) of Section 23 shall perform prescribed duties, further, according to Sub-section (2) of 24 inter alia provides A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her.

Section 25(1) deals with maintenance of pupil-teacher-ratio (within three years)⁹²⁵ from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the pupil-teacher-ratio, as specified in the Schedule, is maintained in each school. Section 25(2) inter alia provides for the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.

Section 26 provides that filling up vacancies of teachers in schools should not exceed 10% of the teacher strength for school.

Section 27 Prohibition of deployment of teachers for non-educational purposes, so no teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.

⁹²⁵ Subs. by Act No. 30 of 2012

Section 28 says that, no teacher shall engage himself or herself in private tuition or private teaching activity.

Chapter fifth provides curriculum and completion of elementary education, Section 29(1) of provides curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification. Article 29(2) inter alia provides academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely -conformity with the values enshrined in the Constitution;

- (i.) all round development of the child;
- (ii.) building up child's knowledge, potentiality and talent;
- (iii.) development of physical and mental abilities to the fullest extent;
- (iv.) learning through activities, discovery and exploration in a child friendly and child - centred manner;
- (v.) medium of instructions shall, as far as practicable, be in child's mother tongue;
- (vi.) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- (vii.) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same

Section 30(1) provides, no child shall be required to pass any Board examination till completion of elementary education, Section 30(2) inter alia provides every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed.

Chapter sixth, inter alia provides for protection of rights of children. Section 31(1) provides an institutional mechanism for protection of rights of the child through The National Commission for Protection of Child Rights constituted under section 3, or, as

the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006). Section 31(2) inter alia provides that, the said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act. Further, Section 31(3) provides, where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed.

Section 32 provides redressal grievances, thus inter alia provides that any person having grievance relating to the right of child under the 2009 Act, may make a written complaint to the local authority having jurisdiction, who in turn is expected to decide it within three months after affording a reasonable opportunity of being heard to the parties concerned. In addition, in terms of Section 31, the Commissions constituted under the provisions of the Commissions for Protection of Child Rights Act, 2005 can monitor the child's right to education, so as to safeguard the right of the child upon receiving any complaint in that behalf relating to free and compulsory education.

Section 33 provides that the central government shall constitute by notification, a National Advisory Council, Section 34 inter alia provides that the State government shall constitute by notification, a State Advisory Council.

Chapter seventh has miscellaneous. Section 35(1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act, and inter alia the appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding

implementation of the provisions of this Act.⁹²⁶ Further, the local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.⁹²⁷

Section 36 provides for previous sanction of an authorised officer for prosecution of offences. Section 37 inter alia provides protection, against any legal suit or proceedings, to appropriate government, local authority, etc. for any action taken in good faith.

Section 38(1) gave the power to appropriate Government may, by notification, make rules, for carrying out the provisions of this Act. Section 38(2) inter alia gave the power in particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters.

Finally [Section 39(1) gave the power to Central Government, if any difficulties arise in giving effect to the provision of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulties; further, provided that no order shall be made under this Section after the expiry of three years from the commencement of the right of children to free and compulsory education (Amendment) Act, 2012. Section 39(2) inter alia provides, every made under this section shall be laid, as soon as may be after it is made, before each House of Parliament].⁹²⁸

6.3. Lacunas of the RTE Act, 2009:

The right to free and compulsory education became a fundamental right in India after six decades of independence. The right of children to free and compulsory education (RTE) Act, 2009 came into force April 1, 2010 after a century long serious of struggle, beginning with a demand for legislation for universal education initiated by Gopal

⁹²⁶ RTE Act, 2009 (Act No. 35 of 2009), s. 35(2)

⁹²⁷ RTE Act, 2009 (Act No. 35 of 2009), s. 35(3)

⁹²⁸ Ins. by Act No. 30 of 2012

Krishna Gokhale in the British era, culminating in a time bound promise under Article 45 of the Indian constitution. The RTE Act presents a unique opportunity to ensure that all Indian children enjoy their right to a quality, child-friendly and child-centred education. The RTE is anchored the belief that values of equality, social justice and democracy and the creation of a just and human society can be achieve only through the provision of inclusive elementary education to all. Thus, RTE Act promises a hope for children between 6 to 14 years to receive quality education.

The RTE mandates two categories of goals to achieve – goals related to the infrastructure of the schools and teachers who are the most important agents of change in the society. It provides specific time frames for implementation of its provisions, including three years for establishment of neighbourhood schools. The Act lays down a timeframe of three years to meet all the norms except for the target of teacher training to be achieved by March 31, 2013. The targets related to the teachers within five years, was set as March 31st 2015. Having come into force in April 1, 2010, the both of deadlines has passed.

The Act makes for a host of provisions that can potentially mark a turning point in the status of delivery of education in the country. While a historic step, the Act does have various lacunas, some of them are very serious. For instance, it does not include children below 6 years and above 14 years of age. The law is derived from the 86th Constitutional Amendment Act, 2002 and is, with its imperfections, a product of a hundred years of struggle. The norms and standards provided are inadequate for a national system of public education with an assurance of universal quality, let alone constituting a Common School System, as promised in successive National Educational Policy of 1968⁹²⁹ and National Educational Policy of 1986 as modified 1992.⁹³⁰ The Act confers a right to admission in neighborhood school for every child, schools that have to adhere to certain norms and a standard prescribed in the RTE Act, 2009, it holds out the promise of a

⁹²⁹ Government of India, Report: *Report of The National Policy on Education 1968*, (Ministry of Human Resource Development, New Delhi, 1968),

⁹³⁰ Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), available at: <http://mhrd.gov.in>

larger financial outlay and offers a critical opportunity for comprehensive changes in policies and programmes which is welcomed. The process of convergence of all the key movements around the implementation of these provisions will serve as a trigger for a stronger and wider movement that would eventually remedy the inadequacies that exist today in implementation.

The Act introduces remarkable changes in the education system through the school system in India. Numerous of the changes are quite revolutionary and if implemented properly, will greatly mend the system of delivering education in the country. Though the provisions of the Act have been included with noble intentions, some of them may lead to certain unintended consequences. Thus, analysis of various provisions of the RTE Act, would pin point that this Act is not complete or sufficient in terms of accomplishing its declared and most desirable goals. Further, several lacunas of the RTE Act, 2009 are examined critically, these are as follows:

Sec. 2 - Definition:

The definition clause of the RTE Act, 2009 address the child belonging to disadvantaged group⁹³¹ and child belonging to weaker section.⁹³²

Thus RTE Act does not adequately address the issue of child labour. The Act ignores the reality that a majority of poor children who are employed in agriculture and who bear the burden of housework and sibling care. The need to categorically state that all forms of employment and engagement, which hinders the development of the child, should be banned and made a cognizable offence.

The historic judgement of the Supreme Court's in *Bandhua Mukti Morcha v. Union of India and Ors.*,⁹³³ already declared that, the 'right to live' with 'human dignity' must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, unities and facilities for children to develop in a

⁹³¹The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 2(d).

⁹³²The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 2(e).

⁹³³AIR 1984 802, (1984)2 SCR 67 (Supreme Court on Dec.-16-1983).

healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity.

Sec. 2 - Meaning of Child:

Section 2(c) of the RTE Act, 2009 defined the ‘child’ – means a male or female child of the age of 6 to 14 years.

India accede the United Nations Convention on the Rights of the Child (CRC), 1989 which mandates, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Article 21-A of the Constitution mandates, “The State shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may, by law, determine.”⁹³⁴ Article 45 inter alia provides the provision for early childhood care and education to children below the age of six years.⁹³⁵ The objects and reasons of the RTE, Act 2009, which enacted by parliament and came into force April 1, 2010, mandates that, every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Thus United Nations Convention on Rights of the Child, 1989 use the term a child means “every human being” and Article 21-A of the Indian Constitution use the term “all children” and Article 45 inter alia use the similar term “all children” further objects and reasons of the RTE Act, 2009 use the term “every child”, section 3(1) inter alia use the term “every child”. Thus Section 2(c) defined the ‘child’ – means a male or female child of the age of 6 to 14 years. So we find a contradiction between objects and reasons of RTE Act and definition clause 2(c) of the said Act. Therefore RTE Act, 2009 does not cover every child like Hijras/Kinnar/Transgender Community (TGs).⁹³⁶

⁹³⁴Ins. By the Constitution (Eighty-six Amendment) Act, 2002, s. 2

⁹³⁵Subs. By the Constitution (Eighty-six Amendment) Act, 2002, s. 3

⁹³⁶Ravindra Kumar, “Right to Education: Comprehensive Equal Educational Opportunity to Every Child” *FIR” a Multidisciplinary Biannual Refereed Online Research Journal* (Paper has presented in 11th National Seminar on the

Sec. 3 - Right of Child to Free and Compulsory Education:

The Act is limited to elementary education of children between 6-14 years only.⁹³⁷ This means prohibiting of children in the age of 14-18 years from the ambit of Act.⁹³⁸ Hence, deprive poor children from the opportunity and eligibility for technical education and higher education.

There is ambiguity in the Act as far as understanding for the term 'child' is concerned. The United Nations Convention on the Rights of the Child (CRC) 1989⁹³⁹ defines any individual below 18 years of age as a child. As original Article 45 of the Constitution provides, "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."⁹⁴⁰ The National Policy on Education, 1968 provides free and compulsory education should be made for the early fulfillment of the Directive principle under Article 45 of the Constitution seeking to provide free and compulsory education for all children up to the age of 14 years.⁹⁴¹ Further, The National Policy for Children, 1974 provides, the State shall take steps to provide free and compulsory education for all children up to the age of 14

Child Rights and Child Protection: A Socio-Legal Perspective, held on 11th November 2016, Organized by All Indian Rights Organization (AIRO), and Baba Saheb Bhim Rao Ambedkar Law College, Lucknow).

⁹³⁷ RTE Act, 2009, Section 3(1) 'Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of Section 2 shall have a right to free and compulsory education in a neighbourhood school till completion of his or her elementary education'. This Section replaced by the Act No. 30 of 2012. [old provision was 'Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education', following Act of received the assent of the President on the 19th June, 2012 and Act published in the gazette of India (Extr.) Part II Sec. 1 dated 20-06-2012, 1-3pp.

⁹³⁸ Ravindra Kumar and Dr. Preeti Misra, "Right to Education as a Fundamental Right: A Critical Evaluation" Vol. V, Issue 1, *ShodhPrerak*, 193 (January 2015).

⁹³⁹ United Nations Convention on the Rights of the Child, 1989, Art. 1, for the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

⁹⁴⁰ The Constitution of India, art. 45, before the (Eighty-six Amendment) Act, 2002, which provides 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.

⁹⁴¹ Government of India, Report: *Report of The National Policy on Education*, (Ministry of Human Resource Development, New Delhi, 1968), Section 4(1) - The national education policy had recommended that, free and compulsory education up to the age of 14 years, and equalization of educational opportunities.

years.⁹⁴² Thereafter, the National Policy on Education, 1986 as amended in 1992 have provides, the new thrust in elementary education will emphasise - universal retention of children up to 14 years of age.⁹⁴³ The Supreme Court's historic judgement of Unnikrishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.,⁹⁴⁴ declared the right to free education up to the age of 14 years is a fundamental right of every child/citizen of this country.

Thus International document CRC, 1989 use the term "below" 18 years of age as a child, and all above National Education Policies use the term "up to" 14 years of the age of child, and also judgement of Unnikrishnan, J.P. declared the term "up to" 14 years age of the child. Whenever, the RTE Act, 2009 covers only children in the age group between 6 to 14, clearly excluding and ignoring the child of the 0-6 and 14 to 18 year old and narrows down the definition to child between 6 to 14 years. Though the provision in the Act expresses interest in taking necessary steps in providing free pre-school education for children above three years of age but leaving out such a critical segment of the child population from the definition is perturbing.⁹⁴⁵

Sec. 8(c) & 9(c) - Duties of Appropriate Government and Duties of Local Authorities:

It is worth praising that section 8(c)⁹⁴⁶ and 9(c)⁹⁴⁷ prohibited discrimination against the children belonging to weaker section and disadvantage group from pursuing and completing elementary education on any grounds. But according to Report, 2014 of

⁹⁴² Government of India, Document: *Government Document No.1-14/74-CDD* (National Policy for Children: August 22, 1974, Department of Social Welfare, Government of India, New Delhi)

⁹⁴³ Government of India, Report: *National Policy on Education, 1986 (as modified 1992)*, (Ministry Of Human Resource Development, New Delhi, 1992), Sec. 5.5 provides, the new thrust" in elementary education will be three aspects on (i) universal access and enrolment, (ii) universal retention of children up to 14 years of age, and (iii) a substantially improve the quality of education to enable all children to achieve essential levels of learning.

⁹⁴⁴ AIR 1993 SC 2178; (1993)1 SCC 645, Supreme Court on Feb.-04-1993.

⁹⁴⁵ Ravindra Kumar and Dr. Preeti Misra, "Constitutional Delineation of Right to Education: A Critical Appraisal" Vol. 3, Issue I, *Journal of Legal Studies*, 122 (January, 2015).

⁹⁴⁶ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), Ss. 8(c) and 9(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

⁹⁴⁷ *Ibid*

Human Right Watch (HRW) children belonging to these groups are harassing in class room continually. Such children have to compel to sit back in the classroom, this type of incidence are increasing day by day.⁹⁴⁸

Sec. 8(g) & Sec. 9(h) - Good Quality Elementary Education:

The RTE Act envisages the appropriate government shall ensure ‘good quality’ elementary education conforming to the standards and norms specified in the Scheduled,⁹⁴⁹ and inter alia provides local authority shall ensure ‘good quality’ of elementary education confirming to the standards and norms specified in the Scheduled.⁹⁵⁰

The word ‘good quality’ use only in these clauses and required to appropriate government and local authority provide good quality of elementary education to the norms and standards specified in Scheduled of the Act. Notwithstanding the existence of the word ‘good quality’ in these clauses, the Scheduled itself is generally perceived, not as specifying ‘quality of education’, like which type of quality education.

Thus RTE Act uses the word ‘good quality’ in Sections 8(g) and 9(h), and as one of its objectives of the RTE Act. The word making ‘good quality education’ available use in National Policy on Education, 1986 as modified 1992 and inter alia the word accessible ‘quality education’ use in National Policy for Children, 2013. Whenever, the word ‘good quality’ not defines in the definition clause, and Act is silent about ‘good quality’ and does not declared the meaning of ‘good quality’. Therefore the Act fails to achieve its goals and objective properly.

⁹⁴⁸ New Delhi, Agencies, “GaribBacchonKeSathHota Hai BhedBhaw” *DainikJagran*, Apr. 23, 2014, p.15

⁹⁴⁹The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 8(g).

⁹⁵⁰The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 9(h).

Sec. 10 - Duty of Parents and Guardian:

The RTE Act provides that it shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in neighbourhood school.⁹⁵¹

Thus, this provision generally perceived in this Act, and not the intention of this provision to compel parent or guardian and children or wards, who do not wish to avail of free and compulsory education, to inevitably admit their children or wards in neighbourhood school. In other word, if parent or guardians have not performed their duty, there is no provision in RTE Act, 2009 to compel them to perform their duty.

But, in fact it is reality on grass-root level that the maximum number of children who belong to weaker section and disadvantaged group, do not attend the schools

Sec. 11 - Pre-School Education:

The RTE Act, refers that ‘.....appropriate Government may make necessary arrangement for providing pre-school education to prepare children’ above the age of three years for elementary education and provide early childhood care.⁹⁵²

Whereas, it should be mandatory for all concerned Governments and for this purpose ‘may’ should be replaced by ‘shall’, because the word ‘may’ makes this provision of the Act maim. This provision is not mandatory in this Act, without a mandatory provision, there can be no accountability and clarity that how the appropriate government can make arrangements for this provision. This provision depends only on the will of appropriate government. It is clear that this Section 11 of the Act is continuously working on paper work.

⁹⁵¹ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 10

⁹⁵² The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 11

Sec. 12- Extent of School's Responsibility for Free and Compulsory Education:

Section 12 of the Act provides the extent of school's responsibility for free and compulsory education, for the purposes of this Act, a school specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in class I, to the extent of at least 25%, of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion⁹⁵³

The Act provides education only weaker section and disadvantage group of children admit in class I, to the extent of at least 25%, of the strength of that class, those children whom belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion.

Whereas, the word 'disability' already has mentioned in the definition clause⁹⁵⁴, but missing from Section 12 of the Act. The effect of that is disabled children do not clearly get to avail 25% quota in private schools. Thus, the Act fails to provide free and compulsory education to every child.

There is lot of confusion and ambiguity on 25% reservation quota in private schools will be filled. They may be more than one private school in a neighbourhood school, so how will they decide who will go where? How will reservation in private school be monitored?

Sec.14 (2) - Proof of age:

The RTE Act mandates that, No child shall be denied admission in a school for lack of age proof,⁹⁵⁵ it is the duties of appropriate Government and local authorities.

⁹⁵³ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 12(1)(c)

⁹⁵⁴ Section 2 (ee), Ins. by Act No. 30 of 2012

⁹⁵⁵ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 14(2)

Migrant's children may not be able to procure birth certificate etc. sometimes, and they are protected under this Section, but it should be constructed to support orphans as well as children belonging to disadvantageous circumstances. However Section 9(k) confers responsibility upon all local authorities to 'ensure admission of children of migrant families' but this clause is missing from Section 8 dealing with duties of appropriate Government.

Sec. 15 - No Denial of Admission:

Section 15 mandates that a child shall be admitted in a school at the commencement of the academic year or within the prescribed extended period,⁹⁵⁶ but this provision of the Act does not cover private un-aided schools. Because, Private unaided schools need not be concerned about this provision, especially with respect to the 75% admission, because if they have filled all seats at the beginning of the academic year the question of any-time admission would not arise.

Sec. 16 (Prohibition of Holding Back and Expulsion):

The RTE Act, 2009 mandates that No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.⁹⁵⁷

There is no examination and evaluation process for children in primary classes, they do not get any motivation to improve their skills and complete their elementary education. If a child does not hold back in any class and promoted to next class continuously without any test or examination, does not have enough knowledge and skill to understand the syllabus of higher class, in which he promoted. There is a need to be an element of fear through proper evaluation test the non-performers may become a liability for the society at large.

⁹⁵⁶ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 15

⁹⁵⁷ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 16

Sec. 30 (Examination and Completion Certificate):

The RTE Act, 2009 mandates that, no child shall be required to pass any Board examination till completion of elementary education,⁹⁵⁸ inter alia provides that every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed.⁹⁵⁹

According to the RTE Act, 2009 if a child secure zero marks in all subjects and does not go to school even a single day should be promoted to the next class, this provision of the Act affected those children who really want to read and acquire knowledge. If a child promote to the next class it take away all types of motivation for those children to learn or for the teachers to teach.

The RTE Act, 2009 assured to the children to promote to the next class, this resulted that they do not read and learn seriously, the teacher do not take interest in teaching and became inactive soon in the class and the parent also became careless about their children because they know that their children will be promoted to the next class. No detention policy increases enrollment of students in the school but other hand it decrease improvement in academic education and quality education.

It is the subject of concern that due to no detention policy the child does not learn the mother-tongue, essay calculation and other fundamentals of primary classes, because it is very important for the proper development of child's mind. Therefore the Act is working on paper work only infect it is not working on grass-root level.

6.4. A Critique of the RTE Act, 2009:

Neighbourhood Schools:

There was confusion on the use of the term 'neighbourhood schools'. The RTE Act defines these as schools within three kilometres (class 6 to 8), and within one

⁹⁵⁸ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 30(1)

⁹⁵⁹ The Right of Children to Free and Compulsory Education Act, 2009 (Act No. 35 of 2009), s. 30(2)

kilometres (class 1 to 5), from a child's residence. Do we have such schools which are government owned and government-aided in all the metropolitan and capital cities of our country? The answer is, No, we do not have such 'neighbourhood schools' unless and until we take into account the privately-managed schools. This is because of HRD Ministry has brought private schools under the scheme of the RTE Act by insisting on a 25 per cent reservation by private schools for students from the economically backward classes. However, the term 'neighbourhood' cannot be applied to these schools as their students come from different parts of the city which are often beyond the 'three kilometres' and 'one kilometres' specified in the RTE Act, and for the most choice among them which are often residential boarding schools, some of their students are children of NRI parents. The RTE Act also applies to the government's Navodaya schools which are residential boarding schools.

Screening Procedure for Admission:

The RTE Act does not allow 'screening' and advises 'random admission'. Section 13 of the RTE Act not only bans screening but also imposes a penalty of Rs. 25,000 on a school for first contravention and Rs. 50,000 for a later one. While the term 'random admission' is open to different interpretations in case of different schools, and perhaps poses no major problem to government-owned and government-aided schools, it has created a real headache for private schools, as such 'random admission' might well impair their reputation and standard. After representation to the HRD Ministry, private schools will now offer 'random admission' only in the case of students who come under the 25 per cent reservation quota; for the remaining 75 per cent of their students they are allowed to go for 'screening' admissions. The HRD Minister seems to signal a rethink on this provision of the Act when the times of India and other national daily newspapers in December 2010 quoted him as saying: -"There are practical problems... How will schools like Doon, Mayo, Modern and others give 'random admission' to children? I have suggested that while schools will not screen 25 per cent of poor children who have to be taken, 75 per cent will go through screening."

With a rush for admission from the economic weaker section category, which private schools in general find it difficult to cope with, the school authorities have started talking about some kind of mechanism either in the form of lottery or score on a 100 point scale by a child or a combination of both, which if adopted also implies some kind of ‘screening’, with the result of a large number of aspirants for admission in these schools being left out.

Mother tongue:

The Act speaks about the mother tongue as the medium of instruction. But in private schools the medium of instruction is almost invariably English. The children from economic weaker section and disadvantage group with their mother tongue as the medium of instruction will face difficulties without any arrangement for learning English in private schools. They could also suffer from an inferiority complex because of their economic background which has given them the privilege of random selection for admission. And they may find it difficult to adjust with the affluent students of these schools admitted through a process of ‘screening’. This may create a kind of complex also among their parents who might shy away from meeting or interacting with parents of the affluent children.

No detention:

The private schools as well as government and government aided ones are up in arms against the ‘no-detention’ provision in the RTE Act, 2009 which guarantees automatic promotion to the next class irrespective of a student’s performances and are demanding a change, as such a provision is likely to defeat the whole purpose of the Act which is to add to the knowledge of a child. In case of ‘no-detention’ and automatic promotion, the child who may not be interested in learning anything may find it hard to proceed to a secondary school where written admission test is routinely conducted and for the teacher, class-room teaching may not appear important and useful at all. Already millions of children in government and government-aided schools complete elementary

education without being able to read simple paragraphs or do basic mathematics. So a 'no-detention' provision will aggravate the situation further in schools where teachers are more interested in private tuition than in class-room teaching. This may lead to dilution of the aim of the Act from the Right to Education to the Right to School for children between 6 to 14 years of age.

Special Provision for Elementary Education:

There is another problem not clarified in the RTE Act, 2009. The Act which stipulates free and compulsory elementary education for children between 6 to 14 years says no one will be denied admission even without the proof of age. So what will happen if a student whose age is fourteen years seeks admission to the lowest class, say, class 1 in a school? Will this student be denied the privilege of a free compulsory elementary education when they reach class 2 at the age of fifteen? Such a thing is likely to happen mostly in the economic weaker section (EWS) category where the children often do not have the privilege of attending a pre-elementary or nursery education. Even for those outside the economic weaker section (EWS) who attend such classes, the duration of a pre-elementary education is not uniform and varies from one state to another state. It is to rectify this anomaly that the MHRD has issued a circular to follow a uniform duration of pre-elementary classes in the country.

Duty of parents:

In all cases of admissions to schools, a large number of students will fail to obtain admission. As the RTE is a Fundamental Right, the left-out students can perhaps seek government and legal help and exercise their right to education. On the other hand, there is another group of parents from the EWS category who do not want to send their children to schools as they help them earn their livelihood. With the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) in vogue since 2006, parents in rural areas who have opportunities for daily work, will probably have less difficulty in sending their children to schools, but in the metropolitan cities and towns where the cost

of living is higher and where the parents from the EWS category have to often depend upon the employment of their children to help them supplement their own income, they will be most reluctant to give their children a school education. Will the government punish such parents for violation of the Fundamental Right of their children? We have already touched upon these points much earlier while voicing our reservation about the Saikia Committee's proposal to make education for the children between six and fourteen years as a Fundamental Right.

Thus, there are other areas in the Act which can be violated in the absence of vigilance of the officials concerned over its implementation. For example, it bans capitation fees for admission but will find it difficult to enforce it at the 75 per cent 'screening' stage in private schools. The Act bans private tuition by teachers. In government and government-aided schools, children from the affluent classes often do well because they take tuition, sometimes from the teacher who probably skips the class in school in the morning. They sometimes have to, because teachers in government and government-aided schools are noted for their absenteeism. In a survey of government schools in the country by a Harvard economist, a quarter of government teachers were found to be absent, and another quarter were present but not teaching. The Act does nothing to improve teacher accountability and the teachers' unions are so powerful, that it is often difficult for authorities to take action against errant teachers. There is little doubt that the provision that a child without any evidence of the date of birth will not be denied admission will not be accepted by most, if not all, schools. It defeats the character of elementary education as it is restricted to the age group of 6 to 14 years, and on a school's insistence on the production of a birth certificate, a parent may be forced to produce a false certificate which may involve bribery and corruption, both at the level of the school as well as at that of the municipal public authority which issues such certificates. Again, all private schools have to provide a certificate of fitness in terms of infrastructure required for implementing the Act, which is not applicable to government-run and aided institutions including the municipal schools' which are often poorly

maintained and poorly managed. A majority of private schools in low-income areas which charge small fees may be defaulters but they are certain to bail themselves out of trouble by bribing government inspectors. On the other hand, best private schools often charge a high fee from students, but in case of a student they would take on from the EWS they would be reimbursed on the basis of expenses incurred on a student in a government school. This would leave a gap in reimbursement to the private schools, which would suffer a loss in their usual incomes.

Literacy rate:

India is the 7th largest country and its population stands 2nd in the world after China.⁹⁶⁰ The basic indicator of educational standards in any country is the rate of literacy of a particular country. In a country like India, literacy is the main foundation for social and economic growth. However, literacy does not mean education. Mahatma Gandhi said that, Education mean an all-round drawing out of the best in man - body, mind and spirit. Literacy in itself is no education.⁹⁶¹ Literacy rates nothing but the numbers of persons who are able to carry out “3R’s” i.e. reading, writing and arithmetic – these words pronunciation have start with alphabet ‘R’. In other word, if person can read simple sentences. Write his name and signature and do basic arithmetic, then he or she is termed as literate. Literacy is the first rung of education ladder and for long it has been considered a pre-requisite for development.⁹⁶²

Illiteracy causes serious problem in a society. The effect of literacy is very similar in developing and developed countries. Illiterate people are generally trapped in a cycle of poverty with limited opportunities for employment or income generation and higher chances of poor health and adverse circumstances.⁹⁶³

⁹⁶⁰ Literacy in India available at: <http://www.census2011.co.in/literacy.php>

⁹⁶¹ Prabhu and Rao (eds.), *Mind of Mahatma Gandhi* (Navjeevan Publishing House, 3rd edn. Ahmedabad, 1968)

⁹⁶² Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: 1 April 2010-2011* (RTE Forum, New Delhi, 2011).

⁹⁶³ <http://www.worldliteracyfoundation.org>

In a developing country like India, a vast majority of the population is illiterate and living far below the poverty line. When the British rule ended in India in 1947 the literacy rate was just 12%.⁹⁶⁴ As per census 2011, the literacy ratio of India is 74.04% with male literacy at 82.14% and female literacy at 65.46% over the sixty years. Compared to the adult literacy rate here the youth literacy rate is about 9% higher, almost 10 point increase from the last census report of the year 2001. However this seems like a very great achievement, it is still a matter of concern that still so many people in India cannot even read and write.⁹⁶⁵ India has not been able to reach the world literacy rate of 84% so far. With the illiteracy rate of 26%, India is the country with the largest number of illiterates in the world. Whenever, the target of 11th five year plan was to achieve 80% literacy rate.⁹⁶⁶

⁹⁶⁴ Literacy in India available at: <http://www.census2011.co.in/literacy.php>

⁹⁶⁵ *Ibid.*

⁹⁶⁶ Government of India, *Report To The People On Education, 2010-11* (Ministry of Human Resource Development, New Delhi, March 2012)

CHAPTER – 7

CONCLUSION AND SUGGESTIONS

“The most important and urgent reform needed in education is to transform it, to endeavour to relate it to the life, needs and aspirations of the people and thereby make it the powerful instrument of social, economic and cultural transformation necessary for the realization of the national goals. For this purpose, education should be developed so as to increase productivity, achieve social and national integration, accelerate the process of modernization and cultivate social, moral and spiritual values.”

---(Dr. S. Radhakrishnan (1948-49))

In this chapter researcher gives conclusion and suggestions after taking into consideration all preceding chapters. Researcher has sought to clarify various human rights instruments that contribute and make education a right at global and state levels. It is clear that various international conventions and declarations have made legal provisions to recognise the human right to education and to develop education innovations and initiatives. India is signatory to International instruments that guarantee the right to elementary education – Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and the United Nations Convention on the Rights of the Child (CRC) 1989.

Education and philosophy are two aspect of the same coin called life. Philosophy is the theoretical aspect whereas the education is the practical aspect. Whatever goals we desire to achieve in the life can be achieved through the process of education. If we want to achieve any changes in the society, any improvement in any of its sub-system, then can brought about by education only. The importance of education process now has increases so much in modern world which cherished materialistic values. Now every act is carried out only to satisfy one’s materialistic needs and desires. Here education has great role

play. Education based on values can inculcate such moral values which make man, a sensitive human being concerned about the safety, welfare and ultimately development of not only one's relatives, friends and fellow humans but everybody and everything around him/her locally and generally.

The Government of India by Constitutional (Eighty-sixth Amendment Act) Act, 2002 had added a new Article 21-A, which provides that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law determine". Further, they strengthened this Article 21-A by adding a clause (k) to Article 51-A, which provides for those who are a parent or guardian to provide opportunities for education to his/her child or ward between the age of 6 and 14 years. On the basis of the Constitutional mandate provided under Articles 41, 45, 46, 21-A, 51-A(k) and various judgments of this Court, both the Government of India, as well as this Court has taken several steps to eradicate illiteracy, improve the quality of education and simultaneously ensure that the dropouts are brought to nil. The numbers of children who do not get education especially in the rural areas are still high. Though the government has made a law that every child under the age of 14 will get free education, the problem of illiteracy is still at large.

The literacy rate in India has always been a matter of concern, but many NGO initiatives and government ads, campaigns and programs are being held to spread awareness amongst people about the importance of literacy. Also the government has made strict rules for female equality rights. Indian literacy rate has shown a significant rise in the past 10 years.

Mahatma Gandhi said that, Education mean an all-round drawing out of the best in man - body, mind and spirit. Literacy rates nothing but the numbers of persons who are able to carry out "3R's" i.e. reading, writing and arithmetic – these words pronunciation have start with alphabet 'R'. In other word, if person can read simple sentences. Write his name and signature and do basic arithmetic, then he or she is termed as literate. Literacy

is the first rung of education ladder and for long it has been considered a pre-requisite for development. The effect of literacy is very similar in developing and developed countries. Illiterate people are generally trapped in a cycle of poverty with limited opportunities for employment or income generation and higher chances of poor health and adverse circumstances.

Illiteracy is one of the major problems faced by the all developing nations. In Africa and South East Asia, it has been identified as a major cause of socio economic and ethical conflicts that frequently surfaced in the region. Therefore, literacy has now become part of the Human Right dialogue. Now most of the nations of the world have also accepted their obligation to provide at least free elementary education to their children.

It is still a matter of concern that still so many people in India cannot even read and write. Now, if we consider female literacy rate in India, then it is lower than the male literacy rate, as many parents do not allow their female children to go to schools. Because, many people, especially in rural areas believe that educating a male child is better than educating a girl child.

Near about 65% of Indian population recent, is less than 35 years old. A huge demographic dividend will be available, if India face-lifts the education sector. Not doing so will have serious consequences for the country. Many studies have shown that if a child is provided good quality education and health care in the early years of schooling, it enhances his/her ability to lead a more meaningful and productive life. Children in India have the necessary intelligence and potential; what they need are opportunities to access quality education.

Education is thus, viewed as an integral part of national development and held as an instrument by which the skills and productive capacities are developed and endowed. Literacy forms the cornerstone for making the provision of equality of opportunity a reality. The right to education will be meaningful only and only if all the levels of

education reach to all sections of people, otherwise it will fail to achieve the target set out by our founding Fathers, who intended to make the Indian society an egalitarian society.

The parliament would play an important role in achieving universal elementary education in India. Article 21-A of the Constitution provides right to education as a fundamental right of every child and Directive Principles of State Policy under Articles 41, 45, 46, 39(e) and (f) provides the provision related to education of children and various judgments of Supreme Court and High Courts have significant role in developing educational standards in the country and recognise the human rights and right to education.

The judgement of Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors. (1993) had further observed that the right to education existed and would not be contingent upon the economic capacity of the State up to 14 years of age. Article 21-A said it would come in to force in such manner as the State may bring in, RTE Act, a historic legislation took another eight years to come since the Constitution (Eighty-sixth Amendment) Act, 2002 was passed. So it took seventeen years for the right to be enforced since the Unni Krishnan, J.P. judgement that too far a restricted age group of 6-14 years. A notable point is that it was the Parliament Standing Committee on education that recommended the age group 6-14 for the ultimate 86th Amendment, paving the way for the restricted age group. It was imperative for the 86th amendment to be re-amended to correct this anomaly, but unfortunately it was not done.

The Right to free and compulsory education is the responsibility of the Central and State Governments. RTE, Act needs to apply first to the all government schools. The Act clearly states that the State Government is responsible for ensuring adequate number of schools and the infrastructure. The RTE is an effective tool that the government has to use to improve enrolment and quality of education in fully government aided schools first. The Right to Education is now a Fundamental Right for all children in the age group of six to fourteen years. In simple word, it means that the Government will be responsible

for providing elementary education to every child up to the eight standards, free of cost, irrespective of class and gender. Part III of the Constitution of India gives all force to every child to get free and compulsory education through Article 21, and insertion of Article 21-A by the Constitution (Eighty-sixth Amendment) Act, 2002 is also a landmark in this respect.

Right to free and compulsory education in Article 21-A of the Constitution should be divided into three parts as— first, The State shall provide free and compulsory education to all children of the age of six to fourteen years, and second, The Right to Free and Compulsory Education referred to in part first shall be enforced in such manner as the State may, by law, determine. Part third; The State shall make any law, for free and compulsory education under part second, in relation to aided and un-aided educational institutions.

The problem can be traced to the Constitution (Eighty-sixth Amendment) Act, 2002 and Article 21-A, of the Constitution, which seeks to make free and compulsory education as a fundamental right only for the children in the age of 6 to 14 years and not for the children in the age of 0–6 years. The provision of Article 21-A is directory in nature. It is difficult to understand that up to 6 year of age right to education has not been given the status of fundamental right rather it is in the shape of directive principles of state policy and word acquire the status of a fundamental right only after the child attains the age of 6 year; whereas the fact is that the fundamental rights, if they are really fundamental rights, are acquired by birth, and not subsequently.

Thus, Constitution (Eighty-sixth Amendment) Act, 2002 and Article 21-A of the Constitution has promoted this huge mistake by not recognise the importance of the early years. Whenever, early years of childhood, are the most important period for the rapid growth and development, during this period of age the foundations of cognitive, physical and socio-emotional development, language and personality develop properly. The brain

development is most rapid during this phase - 90% of brain growth takes place before the age of 5 years.

Article 51-A(k) of the Constitution provides that, It shall be the duty of every citizen of India --- In Article 51-A, after clause (j), the following clause (k) has been inserted – “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.”

The problem can be trace Article 51-A(k) of the Constitution, because the provision of this Article has use the word ‘his’ only. Thus, Article 51-A(k) apply only for ‘male children’ not for ‘female children’, because the word ‘her’ is missing from Article 51-A(k). So there is huge mistake of Constitution (Eighty-sixth Amendment) Act, 2002 and Article 51-A(k). Therefore Article should be amended immediately to insert the word ‘her’ in this Article or any other gender related word inclusive of all children.

The original Article 45 of the Directive Principles of State Policy in part IV of the Constitution had used the term up to 14 years provision for free and compulsory education for children, that “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.” (Art. 45 before 86th Amendment, 2002). Unni Krishnan, J.P. and Ors. v. State of Andhra Pradesh and Ors.(1993), Court has declared, all children up to the age of 14 years have a fundamental right to education. The Supreme Court contended that ‘right to life’ under Article 21 of the Constitution should be read in ‘harmonious construction’ with the directive in the Article 45 to provide free and compulsory education to every child up to the age of 14 years, including those below six year of age. Thus, Article 21-A restricted the age group from 0-6 years of children.

Researcher discusses various educational policies and programmes related to right to education of children. The analysis covers major shifts in a primary area of education law and policy and includes detailed analyses of legislative and judicial decisions

marking our understanding of long term developments that have fundamentally shaped how schools and school systems are run. It investigates the goals underlying major legal and policy reforms. Finally, it attempts to provide a strong foundation for crafting future of education law and policy reforms not simply in response to problems that have emerged with the most recent reform effort but with knowledge of some of the broader issues that persistently underlie such problems.

In the earlier post - independence period, the Radhakrishnan Commission (1948-49) emphasized that “education is a universal right, not a class privilege”. The Kothari Commission (1964-66) regarded attainment of equality as one of the objectives of education. It highlighted the role of education in bringing about social change – “if this change on a grand scale is to be achieved without violent revolution there is one instrument, and one instrument only that can be used: education.” Following the Commission’s recommendations, the National Policy on Education, 1968 devoted one Section (4.1) on the ‘equalization of educational opportunity’ and called for, among others, the adoption of the Common School System as recommended by it. The NPE 1986 (modified in 1992) stated, ‘the new Policy will lay special emphasis on the removal of disparities and to equalize educational opportunity by attending to the specific needs of those who have been denied equality so far. However, the Common School System was never a part of the strategy for ensuring the equalization of opportunity in education, and the agenda under this head included ‘specific needs’ of the disadvantaged groups, women, Scheduled Castes and Scheduled Tribes, minorities and the handicapped.

Even in recent years, the discourse on education at the school level has remained confined to rights, and the equal opportunity and social justice as applied to education are yet to receive attention from educationists and social activists, except perhaps in the shape of demands for reservations for admissions in higher academic institutions. Some examples are offered to affirm that rights with equal opportunity and social justice have not received much of space in the educational politics and policy making in this country. These are (a) emergence of non-formal education, for the poor and the disadvantaged,

parallel to formal schooling; (b) growth of fee-charging private schools, for upper middle and privileged class, at the cost of government schools and (c) promotion of segregated schools in non-inclusive environment, for scheduled castes and scheduled tribes, and minorities, child labour and children with disabilities, (d) definition of child in Article 21-A of the Indian Constitution, and Right of Children to Free and Compulsory Education Act, 2009.

Thus, problem can be traced that, Indian policy makers have recognized the right to education at least in theory, but the question of equality of opportunity and social justice in the realm of education is yet to figure prominently and effectively on their Agenda. In the meantime, the parallel streams of schooling that have emerged in the recent years have put a huge question mark on the prospect of the realization of the objective of equality of opportunity and of putting in place an inclusive school education system. Does the Common School System provide a way out of this impasse? The Commission is categorically of the view that it does, by virtue of the obligation that it imposes on all schools in the system to comply with a set of minimum norms for providing education of equitable quality to all children. Article 21-A of the Constitution provides right to education as a fundamental right of every child and Directive Principles of State Policy under Articles 41, 45, 46, 39(e) and (f) provides the provision related to education of children and various judgments of Supreme Court and High Courts have significant role in developing educational standards in the country and recognize the human rights and right to education.

The Kothari Commission (1964-66) in particular was to advise the Government on the national pattern of education and on the national policies for the development of education at all stages-ranging from the primary to post-graduate stage and in all its aspects besides examining a host of educational problems in their social and economic context. The Commission was, however, not to examine legal and medical education.

Right to Education was recognized by the United Nations as fundamental to man – indeed as the United Nations was established. India has argued passionately in favour of education as a fundamental right. The National Policies on Education adopted in, 1968, and 1986 as modified-1992 contained provisions regarding Universal Elementary Education. The National Policy on Education, 1986 had aimed to achieve Universal Elementary Education by 1995, the time frame for which was extended by another five years in its 1992 version as – “the new educational policy gave the highest priority to solve the problem of children dropping out of school and will adopt an array of meticulously formulated strategies based on micro-planning, and applied at the grass-roots level all over the country, to ensure children’s retention at school. This effort has fully coordinated with the network of non-formal education. It had ensured that free and compulsory education of satisfactory quality is provided to all children up to fourteen years of age before we enter the 21st century. A national mission has launched for the achievement of this goal.” The National Policies on Education of 1968, and 1986 as modified-1992 in India recognized education as a precondition for development and set out three critical issues in both policies as – equity, accessibility and quality. However, targeted of universal elementary education as envisaged in the policy of 1992 could not be achieved even by the end of the century.

The current legal enactment, educational policies and constitutional framework of right to education of children in India does not place enough emphasis on the rights of children. The right of children to free and compulsory education in India thus depends on earlier educational policies and schemes created and run by the Central and State Governments.

Near about seven decades after independence while much has been achieved, many would genuinely feel that India has not taken its rightful place in the comity of nations. At independence, India had sound institutional infrastructure and an administrative system that was the envy of the developing world; even taking into account the major achievement in standing out as a stable democracy, India seems to

have lost its preeminent position mainly because of poor education standards, which are both the cause and the effect of the current situation.

Government of India has taken several steps to eradicate illiteracy, improvement of the quality of education and to get the children back to school those left the school for one or the other reasons. Illiteracy causes serious problem in a society. As per census 2011, the literacy ratio of India is 74.04%, it is still a matter of concern that still so many people in India cannot even read and write. The target of 11th five year plan (2007-12) was to achieve 80% literacy rate. The 12th five year plan (2012-17) is near to an end, but India has failed to achieve the target set by 11th five year plan (2007-12). India has not been able to reach the world literacy rate of 84% so far.

The right to free and compulsory education became a fundamental right in India after six decades of independence. The right of children to free and compulsory education (RTE) Act, 2009 came into force April 1, 2010 after a century long serious of struggle, beginning with a demand for legislation for universal education initiated by Gopal Krishna Gokhale in the British era, culminating in a time bound promise under Article 45 of the Indian constitution. The RTE Act presents a unique opportunity to ensure that all Indian children enjoy their right to a quality, child-friendly and child-centred education. The RTE is anchored the belief that values of equality, social justice and democracy and the creation of a just and human society can be achieve only through the provision of inclusive elementary education to all children. Thus, RTE Act promises a hope for children between 6 to 14 years to receive quality education.

The RTE mandates two categories of goals to achieve – goals related to the infrastructure of the schools and teachers who are the most important agents of change in the society. It provides specific time frames for implementation of its provisions, including three years for establishment of neighbourhood schools. The Act lays down a timeframe of three years to meet all the norms except for the target of teacher training to be achieved by March 31, 2013. The targets related to the teachers within five years, was

set as March 31st 2015. Having come into force in April 1, 2010, both deadlines have passed.

The Act confers a right to admission in neighborhood school for every child, schools that have to adhere to certain norms and a standard prescribed in the RTE Act, 2009, it holds out the promise of a larger financial outlay and offers a critical opportunity for comprehensive changes in policies and programmes which is welcomed. The process of convergence of all the key movements around the implementation of these provisions will serve as a trigger for a stronger and wider movement that would eventually remedy the inadequacies that exist today in implementation.

The Act introduces remarkable changes in the education system through the school system in India. Numerous of the changes are quite revolutionary and if implemented properly, will greatly mend the system of delivering education in the country. The Act will definitely prove to be a milestone in the history of education related laws in India. Though the provisions of the Act have been included with noble intentions, some of them may lead to certain un-intended consequences. Thus, analysis of a few of the provisions of the RTE Act would pin point that this Act is not complete or sufficient in terms of accomplishing its declared and most desirable goals. The researcher found out various lacunas of The RTE Act, 2009, some of them are very serious and discussed in previous chapter.

Section 10 of the RTE Act, 2009 provides that it shall be a duty of every parents/guardian to send their children to get free and compulsory education in a neighbourhood school. Article 51-A(k) of the Constitution inter alia provides the same. If parents fail to perform their duty, there is no compulsion upon them. One Hundred Sixty Fifth Report of Law Commission (1998) had also recommended that every parent or guardian who fails to discharge his duty or comply with the attendance order shall be liable to fine not exceeding Rs. 5/- for each day in violation as may be imposed by the competent authority. The Bombay Primary Education Act, 1923 had also made it

compulsory. It provided for fine of Rs. 5.50/- per days on guardians for not sending their children to school. The students and parents in the United States often face the same fines when students fail to attend school. Fines for students make more sense when low self-control is the reason for which they fail to attend school. At the same time, punishing Indian students who have no choice but to work would make no sense.

Under Section 7 of The Tamil Nadu Compulsory Elementary Education Act, 1994: “Every parent or guardian of a child of school age who fails to discharge his duty under Section 4 (duty of parent to cause child to attend elementary school) shall be punishable with fine which may extend to one hundred rupees.”

Section 18(1) of The Delhi Primary Education Act, 1960 states: “If any parent fails to comply with an attendance order passed under Section 13, he shall be punishable with fine not exceeding two rupees, and, in the case of continuing contravention, with an additional fine not exceeding “fifty naye paise” for every day during which such contravention continues after conviction for the first of such contraventions. Provide the amount of fine payable by any one person in respect of any child in any one year shall not exceed fifty rupees.”

In Wisconsin, parents who fail to send their children to school may have to pay a fine of not more than \$500 or face imprisonment for not more than 30 days or both. [Wisconsin Statute Sections 118.15(1)(a) and 118.15(5)(a)1.a]. For a second or subsequent offence, they may face a fine of not more than \$1,000 or imprisonment for not more than 90 days or both. [Wisconsin Statute Sections 118.15(1)(a) and 118.15(5)(a)1.b]. Alternatively, they may be sentenced to perform community service. [Wisconsin Statute Sections 118.15(1)(a) and 118.15(5)(a)2].

In order to give effect to the constitutional right under Article 21-A, it is imperative that the Central Government pass suitable legislation. The fine should be suitably increased. Imprisonment should be a sentencing option as well.

The Parliament should criminally penalize those parents who receive financial benefits and, despite such payments, send their children to work and penalize those employers who preclude children from attending school or completing homework. 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 21-A, which, in the larger interest of the nation, must be fully implemented. Without Article 21-A, 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.

Section 12(1)(c) of the RTE Act, 2009 has provided 25% admission of the strength of class, children belonging to weaker section and disadvantage group in the neighbourhood and provide free and compulsory elementary education till its completion. As per census 2011, India is the 7th largest country and its population stands 2nd in the world after China. The basic indicator of educational standards in any country is the rate of literacy of a particular country. In a developing country like India, a vast majority of the population is illiterate and living far below the poverty line. Illiteracy causes serious problem in a society. India has not been able to reach the world literacy rate of 84% so far. With the illiteracy rate of 26%, India is the country with the largest number of illiterates in the world. Therefore, 25% reservation is not sufficient for such a huge population. So reservation should be increased as the Law Commission recommended in its 165th Report (1998) that, private un-aided educational institutions must be made to impart free education to 50% of the students admitted to their institutions as this principle has already been applied in medical, engineering and other colleges, there is no reason why the schools imparting primary/elementary education should not be placed under the same obligation.

Section 3 of the RTE Act, 2009 provides every child of the age of 6 to 14 years right to free and compulsory education in a neighbourhood school till completion of his or her elementary education.⁹⁶⁷ It provides only 8 years elementary education of children between 6-14 years. There is ambiguity in the RTE Act, 2009 as understanding for the term ‘children education’. The United Nations Convention on the Rights of the Child (CRC) 1989 defines any individual below 18 years of age as a child. India has ratified the CRC on 12 November 1992 and accede the Convention on 11 December 1992. The National Policy on Education, 1968 provides, free and compulsory education should be made for the early fulfillment of the Directive principle under Article 45 of the Constitution seeking to provide free and compulsory education for “all children up to the age of 14 years” Section 4(1). Further, The National Policy for Children, 1974 provides, the State shall take steps to provide free and compulsory education for “all children up to the age of 14 years” [(Policy measures Section 3(iv)]. Thereafter, the National Policy on Education, 1986 as amended in 1992 provides, the new thrust in elementary education will emphasise - universal retention of “children up to 14 years” of age [(Section 5(5)).

Thus, CRC, 1989 use the term “below 18 years” of age as a child, and all above National Education Policies use the term “up to 14 years” of the age of child. Whenever, the RTE Act, 2009 covers only children in the age group between 6 to 14, clearly excluding and ignoring the child of the 0-6 and 14 to 18 year old and narrows down the definition to child between 6 to 14 years. Though the provision in the Act expresses interest in taking necessary steps in providing free pre-school education for children above three years of age but leaving out such a critical segment of the child population from the definition is perturbing.

Section 3(1) of the RTE Act provides that, ‘Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. However, RTE Act provides ‘compulsory education’ not ‘compulsory schooling’. There is an important difference between

⁹⁶⁷Ins. By Act No. 30 of 2012.

“compulsory education” and “compulsory schooling”. Compulsory schooling requires compulsory attendance at a public school; it applies to a specific process whereby education is to be managed. On the other hand “compulsory education”, applies only to the output; to the fact that learning must take place, giving little or no importance to where it takes place, as long as it is actually taking place. So, the RTE Act should also mention inter alia the word ‘compulsory schooling’, attendance of every child in above Section.

The RTE Act envisages the appropriate government shall ensure ‘good quality’ elementary education conforming to the standards and norms specified in the Scheduled [(Section 8(g)], and inter alia provides local authority shall ensure ‘good quality’ of elementary education conforming to the standards and norms specified in the Scheduled [(Section 9(h)]. The word ‘good quality’ use only in these clauses and required to appropriate government and local authority provide good quality of elementary education to the norms and standards specified in Scheduled of the Act. Notwithstanding the existence of the word ‘good quality’ in these clauses, the Scheduled itself is generally perceived, not as specifying ‘quality of education’, like which type of quality education.

Researcher discussed that, the National Policy on Education, 1986 as modified in 1992, mandates that children with special talent or aptitude should be provided opportunities to proceed at a faster pace, by making good quality education available to them, irrespective of their capacity to pay for it (Section 5.14). Thereafter, inter alia National Policy for Children, 2013 promote affordable and accessible quality education up to the secondary level for all children [(Section 4.6 (iii)].

Thus, RTE Act uses the word ‘good quality’ in Sections 8(g) and 9(h), and as one of its objectives of the RTE Act. The use of the word ‘good quality’ in National Policy on Education, 1986 as modified 1992, and inter alia use the word ‘good education’ in National Policy for Children, 2013 Whenever, the word ‘good quality’ not defines in the definition clause of the Act. Therefore RTE Act, 2009 silent about the ‘good quality’ and

Act fails to define ‘good quality’ elementary education, and fails its objective and goals of the Act also.

The RTE Act provides norms and standards in specified in Scheduled to all schools including private un-aided and quality education is also in its objective. In comparison to private schools, the infrastructure in most of the government schools specially run by state governments is very poor. There are many schools in our country which are functioning without proper buildings and basic amenities. On the other hand, some private un-aided schools are collecting lakhs of rupees as fees and are providing library, well equipped class rooms, swimming pools, gymnasium, and air-conditioned rooms, etc. for the children of the privileged group which is generally available to all children of most of the developed countries without any discrimination. This is a clear picture of bitter reality of the existence of two diametric opposite words of education in our country.

There is a common misconception that the Right of Children to Free and Compulsory Education Act, 2009 does not address ‘quality of education’. Usually, for those holding such misconceptions, the notion of ‘quality of education’ appears to be limited only to ‘outcome’ of education, and is further narrowed to those among the outcomes that can be quantified and measured. However, the concept of quality of education refers to a much larger vision: a vision of society, a way of life, and of the role of education as a preparation of our young people to populate that envisaged world. As such the assessment of the quality of education for a future society can only be in terms of the extent to which it prepares children for that social order.

The issue of quality of education becomes problematic when the term quality is used as a verb, when it is and should be used a noun. In the context of that use of the term, ‘quality education’ tends to relate to something that is tangible, measurable, and quantifiable. However the process of getting education to fit into a ‘measure’ for its quantification, involves reducing, or cutting it down to the size of it that can be captured

into that cage called its measure. However it also involves leaving out of the measure, much of what is the amorphous soul of education - the manner in which it engages the child, the way it is used by the child to create new concepts and ideas; the bond between the teacher and the child which propels the child to higher planes of development of mind, body, and spirit and confidence.

Those parts of what is education that are more easily entrapped into measures for quantification are usually 'behaviours' and actions such as the elicitation of the right responses to standard stimuli. Therefore, perhaps aptly in the behaviorist tradition, these limited measures which were adopted by us came to be known as the 'minimum levels of learning' for each grade. The parts that these minimalist measures failed to capture, were those related to the agency and participation of the child which should form essential elements of any education given to the child as aright.

However, these very elements of child agency and engagement are better represented in the view of construction of knowledge that informs the National Curriculum Framework (NCF), 2005 - that is referred to in Sections 7(6) and sections 29 (1) and (2) of the RTE Act, 2009 and which together attempt, to the extent possible, to create the conditions for the child to have access to education of good quality.

In the right situations, education of good quality, can like a plant, take root and flower. As such the quality of education can hardly be separated from the situations in which it emerges. And just like a delicate plant, it needs the right soil and climate, and the continuous and careful potions of the right conditions such as a level field, non-discrimination, a happy and emotionally warm classroom environment, gentle care and positive regard, etc.. All of these situations that the RTE Act, 2009 required to incorporate into the legislation through its many provisions that all seek to ensure the quality of education, without so much as using the words 'quality' and 'outcomes'. But like a plant, it will need time to grow, become deep rooted, will need constant potions of

finance, shielding from the harsh administration centred testing, and gentle care for the respect, and dignity of the child and the teachers.

Quality education opens up new vistas of development of humanism. It transforms human being into a noble soul and an asset to the universe. The quality education enhances dignity and self-respect of human being. If quality education is given to each individual and carried forward in every field of human activity the world will be better place to live.

The RTE has several provisions in the Act, like prohibition of corporal punishment, detention and expulsion and the same time specification of the several norms, including pupil teacher ratios; norms for community participation; infrastructure and curriculum reform, and many more. The RTE Act, 2009 have laid down a number of deadlines for implementation that come to an end on March 31, 2013- all schools were expected to comply with all the norms of RTE, except ensuring that all teachers are professionally trained. This has to be put in place by March 31, 2015. It is unfortunate that the radical transformation of the schools and the larger educational system that was expected from the RTE Act has not happened. The failure of the state to deliver on its own legal and constitutional commitments on a mass scale is unfortunate. Whenever, the government has missed both deadlines March 31, 2013 and March 31, 2015.

The RTE Act, 2009 promising a real hope for all children between the ages of 6-14 years to receive quality education at all level. Unluckily, 5 years later, for more children, this right remains a distant dream as millions of children are still out of school and the quality of education remains a major concern. While enrolment figures have indeed greatly increased 97 per cent (as per DISE 2013-14)⁹⁶⁸ and almost every habitation now has a government primary school, drop-out rates continuously high with a large percentage of children failing to complete elementary education. Quality of education, or what children actually learn in school, seems to have declined. In 2006,for

⁹⁶⁸ Report: *DISE, 2013-14* (Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, 2014)

example, 53 per cent of children in grade 5 could read, by 2014 this had dropped to 48 per cent (as per ASER 2014).⁹⁶⁹ What we are seeing, therefore, is the presence of larger numbers of children in schools than ever before, but they are not actually being ‘educated’. Perhaps, the RTE Act, 2009 seems to have therefore delivered more a right to ‘schooling’ than ‘education’.

The RTE Act has travelled a long and difficult path to the point of legislative sanctions and is the most substantive declaration of the government’s responsibility towards right to education. The Government of India set several deadlines and targets to meet the major and minor provisions of the RTE Act. It is extremely pressing for us to highlight the reflection of the past five years – what achievements were made since April 1, 2010, and what targets still remain to be talented, particularly since the targets are the government’s legal and judicial responsibility to meet.

The Right to Education Act, 2009, states in Section 8 (g) that, “The appropriate government shall – ensure good quality elementary education.” In 2011, Hamid Ansari, Vice President of India, stated that: “While the imperative for ensuring access to elementary education is well understood and enshrined as a fundamental right, the “quality agenda” is still not accorded the same priority.” While access to education has improved, the quality of education, i.e., what children learn and how they learn, seems to have declined, even on simple parameters of reading and arithmetic. In the first year after the implementation of the RTE, the quality agenda, which focuses on issues of infrastructure, supportive learning environment, curriculum, and learning outcomes, had not gained national and local priority. Hence, it is important to observe the trend of implementing quality across various measures since 2010 to 2015.⁹⁷⁰

What can be understood as an important indicator of quality education is the outcome of learning of children in schools. While schooling is not just about the learning

⁹⁶⁹ Report: *Annual Status Of Education Report (Rural) 2014* (ASER Centre, New Delhi, January, 2015).

⁹⁷⁰ Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Five, 2014-15* (RTE Forum, March, 2015), available at: <http://www.rteforumindia.org>

of language and arithmetic, if children are not even acquiring basic language and mathematics knowledge and skills, then their attendance in school remains fruitless. While there are very few surveys that assess student's learning, ASER (2014) study offers some glimpse in comparing the trends in mathematics and language amongst government school children. In 2012, ASER (2014) reported that 26.3% children from standard III could not do two-digit subtraction. In 2014, the figure was 25.3%. A further worrying trend can be observed in children's ability to recognize numbers, that is, the number of children who cannot recognize number still 9 from Standard II has increased from 11.3% in 2009 to 19.5% in 2014. In terms of reading level outcomes, although we find some improvements over the years the improvement is very small. The percentage of Standard V students who can read at Standard II level has increased from 46.8% in 2012 to 48.1% in 2014. However, this is still very low as children are still unable to read as per their grade level. Furthermore, ASER(2014) reports that "in some states, like Bihar, Assam, Jharkhand, Chhattisgarh, Madhya Pradesh and Maharashtra, there are visible declines in reading levels over the last 5-6 years."⁹⁷¹

Thereafter, as per the RTE Act, each school must have provision of library facility with "newspapers, magazines, and books on all subjects, including story-books." According to ASER report 2014, 21.9% Schools do not have libraries. Many States do not provide functional libraries.⁹⁷²

Teachers are the backbone of the education system and they play an important role in the implementation of the RTE Act. Hereafter, it is important to examine the progress made in staffing teachers, filling gaps of vacant posts, teacher education and ensuring low deployment of teachers in non-teaching tasks. In terms of recruitment and staffing of teachers, the issue of number of vacant posts has only minimally decreased in the first few years of the RTE Act implementation. Many schools aim to fill this gap of vacant posts by hiring para-teachers like contract teachers. However, the issue of para-teachers is

⁹⁷¹ Report: *Annual Status Of Education Report (Rural) 2014* (ASER Centre, New Delhi, January, 2015).

⁹⁷² Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Five, 2014-15* (RTE Forum, March, 2015), available at: <http://www.rteforumindia.org>

also of serious concern in India as they do not qualify for full employment, and while they are cheaper to afford, research suggests they are not as productive in ensuring quality education as full time regular teachers.⁹⁷³ It is concerning that despite hiring of various types of teachers; the school system in India still has 5.68 lakh teacher positions vacant.⁹⁷⁴

The success of educational institutions cannot be imagined in absence of the teacher who plays a crucial role in developing the future of students and the institution.⁹⁷⁵ The elementary education part of our system already suffers from shortage of teachers and a fairly large number of teachers of this segment are untrained. 5 lakh sanctioned teacher posts remain vacant and 6.6 lakh in-service teachers are untrained (2013-14).⁹⁷⁶ Around 37% primary schools have a pupil teacher ratio adverse to the national norm of 1:30. The share of untrained teachers has actually increased. Around 10% schools remain single teacher schools. Teachers are routinely engaged in non-academic duties.

According to District Information System for Education (DISE) in 2012-13, 78.58% teachers were TGT qualified professionally trained regular teachers. This is, unfortunately, a marginal decrease from 79.58% in the previous year. The figure shrank in 18 States. Only Delhi reported having all teachers as being professionally qualified and permanent.⁹⁷⁷ According to DISE report, in 2011-12 only 34.12% primary school teachers were graduates, while 17.05% teachers were post-graduates. 13 States were under the relaxation in the professional qualifications as laid down by the NCTE.⁹⁷⁸

The State Governments have accordingly taken up the training of 6.6 lakh untrained in-service teachers through the distance mode. The Indira Gandhi National

⁹⁷³ Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Five, 2014-15* (RTE Forum, New Delhi, 2015).

⁹⁷⁴ Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Five, 2014-15* (RTE Forum, New Delhi, 2015).

⁹⁷⁵ Dr. Mool Chand Sharma, *Right To Education* (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2013)

⁹⁷⁶ Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Four, 2013-14* (RTE Forum, March, 2014), available at: <http://www.rteforumindia.org>

⁹⁷⁷ *Ibid.*

⁹⁷⁸ Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Four, 2013-14* (RTE Forum, 2012), available at: <http://www.rteforumindia.org>

Open University's School of Education launched a new, two-year Diploma in Elementary Education, offered in Open Distance Learning mode, for in-service teachers to enhance their understanding and competency at elementary-level teaching.⁹⁷⁹ At the same time, some states have seen efforts towards regularization of Para teachers. The largest such movement was in Uttar Pradesh where the government announced the regularization of 1.70 lakh Shiksha Mitras.⁹⁸⁰

The Right to Education Act, 2009 (RTE Act) has imposed legal obligations on the Central and State Governments to provide every child between the ages of 6 to 14 access to full time elementary education of satisfactory and equitable quality, which satisfies certain essential norms and standards. As against this, In 2014-15, there were 14 lakh schools in the country imparting elementary education, with a total enrolment of 19.77 crore. Of these, Government schools numbering 11 lakh accounted for an enrolment of 11.9 crore at the elementary level; while 3 lakh private schools catered to 8.56 crore students. Additionally, there were 23,529 un-recognised institutions and 3750 un-recognised Madrasas with an enrolment of 33 lakh at the elementary level in 2014-15. There were a total of 80 lakh teachers at the elementary level, including 47 lakh teachers in Government schools. In 2014-15, more than 8.6% of the total teachers at the elementary level were in private aided schools; 29.9% were in private unaided schools; and 2.6% were in un-recognised schools and Madrasas (U-DISE, 2014-15).

The next major problem is the high rate of drop-outs and out of school children. Answering a question in the Rajya Sabha, on 10th March 2016, the Minister of HRD said that in 2014, some 6.064 million children remained out of school. There has been an expansion in the number of schools but the right to education forum stocktaking report for 2014 suggests that across the country, less than 10% schools comply with all the RTE norms. State and Nation Child Rights Commissions have been working actively with governments to reduce the percentage of children out of schools. Despite such efforts, we

⁹⁷⁹ Ignou Launches Diploma In Elementary Education For Teacher, *available at:* <http://www.timesofindia>

⁹⁸⁰ Over 1.70 lakh ShikshaMitras to be regularized, *available at:* <http://www.timesofindia>

continue to see children working at roadside restaurants, in people's homes, at construction sites, in shops and on the roads. However, to pick these children up and put them in school is hardly as easy as it sounds.⁹⁸¹

The RTE Act, 2009 mandates a minimum of two teachers in every school. As per Pupil-Teacher Ratio (PTR) of 30:1 at the primary level whereas this percentage of 35:1 at the upper primary level. This ratio has been prescribed in such a way that a teacher can pay attention to individual students and can reach all the learners effectively. However, the data shows that in 2012-13, 11.79% primary schools were single teacher schools. This percentage did not change significantly from the previous years. 16 States showed an increase in percentage of single teacher schools. As per DISE data for the same period, 59.67% of India's children continued to be enrolled in primary schools that failed to obey to the PTR norms. 44.43% children attended schools that failed the norm at upper primary level. The adverse PTR figures have resulted in reduced classroom instruction time and lack of individualized attention for children. This has impacted quality and inclusion agenda in states where huge number of out of school children are entering the schools for the first time.⁹⁸²

The States laws fail to provide the free and compulsory education to all children on two accounts - First, they are too lenient to have a deterrent effect, and second, the legislation is not adequately enforced. Many children drop out of, or are absent from, school before they turn fourteen, "free education" alone cannot solve the problem. The current patchwork of laws on compulsory education is insufficient. Monetary fines do not go far enough to ensure that Article 21-A is upheld.

In comparison to private schools, the infrastructure in most of the government schools specially run by state governments is very poor. There are many schools in our

⁹⁸¹ Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Four, 2015-16* (RTE Forum, March, 2016), Remarks by Shri. M. Hamid Ansari, Hon'ble Vice President Of India during session at National Stocktaking Convention organised by the Right To Education Forum in 21 March 2016. available at: <http://www.rteforumindia.org>

⁹⁸² Report: *Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: Year Four, 2013-14* (RTE Forum, March, 2014).

country which are functioning without proper buildings and basic amenities. The students in these schools are helpless and have to attend classes under the burning sun and during rain. Both teacher and students run for shelter or school is closed. On the other hand, some private unaided schools are collecting lakhs of rupees as fees and are providing library, well equipped class rooms, swimming pools, gymnasium, and air-conditioned rooms, etc. for the children of the privileged group which is generally available to all children of most of the developed countries without any discrimination. This is a clear picture of bitter reality of the existence of two diametric opposite words of education in our country.

The major problem is that, the concerned governments are not spending even minimum per students per day. Government budgetary allocation for elementary education in 2015-16 decreased from Rs. 43126.28 crore in 2014-15 to Rs. 32917.20 crore in 2015-16. This is a decline of Rs. 10209.08 crore, a decrease of 23.67%. The Union Budget of 2015-16 saw massive cuts in the overall spending on education as well as SSA allocation. Fifty years ago, the Kothari Commission (1966), had recommended 6% of GDP allocation to education. Unfortunately, we are yet to cross the 4% mark. Considering the cumulative gap, at least 10% of GDP need to be spent on education.

Union Government's total allocation for education was 0.7% of Gross Domestic Product (GDP) in 2013-14, which has decreased to 0.66% of GDP in 2013-14. This reduction is attributed to the reduction in Plan budget of Ministry of Human Resource Development (MHRD) by Rs. 4000 crore. A closer look of revised estimates for 2013-14 shows a 5% reduction in budget allocations for the Department of School Education and Literacy for 2013-14. SSA has also experienced a 2.4 % reduction in 2013-14 (Rs. 26608 crore) as compared to 2013-14 (Rs. 27258 crore).

The elementary education part of our system already suffers from shortage of teachers and a fairly large number of teachers of this segment are untrained. The RTE Act, 2009 mandates a minimum of two teachers in every school. More than 80% teachers

are unqualified in elementary school in the country.⁹⁸³ More than 5 lakh teacher's posts are vacant so far.

It is not a hyperbole to say that our education system is in disorder. Various evaluation studies show a decline in learning levels among school students. Teacher vacancies and teacher absenteeism continue to plague government schools in which dropout rates are still high. There is widespread corruption in appointments and transfers of teachers and also in according approval and recognition to educational institutions. Further, donations have to be paid for several kinds of admissions and are particularly widespread all over the India in private un-aide schools.

Therefore, Education must be given the highest priority. It is the duty of Central and State Governments to provide necessary resources and create conditions that are favourable for the process of teaching and learning to embellishment. Every opportunity needs to be provided to all children to get good quality education and acquire skills that lead to employment and entrepreneurship.

The Indian child is as resourceful and intelligent as any in the world. The Central and the States Governments only need to understand the catalytic role they have to play in fostering an atmosphere that enables children to think, to learn, and contribute for the development of the country. All that is required is a change in the mindset among stakeholders. Once the importance of ascribing the highest priority to education is recognized, the corresponding responsiveness and sense of accountability will inexorably emerge.

The success and failure of RTE would largely depend on consistent political attention. Government have been taken certain initiatives to ensure the implementation of the Act, but broadly we have failed to make the RTE Act a reality. Presently, most of the provisions of the Act have failed to fulfil its goals as, the deadline has passed. There is no

⁹⁸³ New Delhi, "1 In 5 Primary Teachers Unqualified" *The Times of India*, Apr. 5, 2015 available at: <http://timesofindia.indiatimes.com>

road- map or time-frame to determine the future of the Act as well as the intention of the government.

If we want to overcome the challenges relating to children education, it would be necessary to overhaul the entire education system and the following can be suggested for bringing qualitative improvement with respect to RTE Act 2009. So, there are some suggestions as follows:

- Right to education should ensure satisfactory and qualitative education for all children in all government aided and un-aided private schools.
- Right to Education which is free of cost up to a certain level must be accessible to all.
- Article 21-A of the Constitution should be amended and ambit up to age of 18 years in the same manner of International definition of a child in the International Convention on the Rights of the Child, 1989.
- Article 51-A(k) of the Constitution should be amended and ambit up to age of 18 years in the same manner of international definition of a child in the Convention on the Rights of the Child, 1989.
- Article 21-A of the Constitution mandates, “the State shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may, by law, determine.” Thus Article 21-A provide, the fundamental right only for 8 years for children neither before six year nor after 14 years. Whenever, the part III of the Constitution of India provides fundamental rights by birth to all children not for limited period of specific age of child. Therefore, Article 21-A of the Constitution should be amended immediately for providing fundamental right by birth to all children.
- Article 51-A(k) of the Constitution provides that, It shall be the duty of every citizen of India --- In Article 51-A, after clause (j), the following clause (k) has been inserted - 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.” Thus, Article 51-A(k) it seems apply only for ‘male children’ not for ‘female children’, because the word ‘her’ is missing from above Article. Therefore Article should be amended immediately to insert the word ‘her’ in this Article or any other gender related word inclusive of all children.

- The optimum age for the right to free and compulsory education should be same as the age of right to vote, age of maturity, right to work and right to marriage, etc.
- The provision of Article 45 of the Constitution should be a part of fundamental right to education as it influences the most vital period of the child’s development.
- Section 3 provides only 8 years elementary education of children between 6-14 years. Whenever, the National Policy on Education, 1968 provides, free and compulsory education should be made for the early fulfillment of the Directive principle under Article 45 of the Constitution seeking to provide free and compulsory education for “all children up to the age of 14 years”. The National Policy for Children, 1974 provides, the State shall take steps to provide free and compulsory education for “all children up to the age of 14 years”. The National Policy on Education, 1986 as amended in 1992 provides, the new thrust in elementary education will emphasise - universal retention of “children up to 14 years” of age. Thus, RTE Act, 2009 clearly excluding and ignoring the child of the 0 to 6 and 14 to 18 year. Section 3 of the RTE Act, 2009 should be amended and Act ambit to the age up to 18 years to deprive poor children in technical education and higher education.
- The period of Right to free and compulsory education under RTE Act should be amended and should begin from nursery class and extend for four more years that is from 9th -12th Class.
- Section 11 of the RTE Act, refers that ‘.....appropriate Government may make necessary arrangement for providing pre-school education to prepare children’ above the age of three years for elementary education and provide early childhood care. Thus, it is clear that the word ‘may’ is not mandatory in this Act, without a mandatory provision, there can be no accountability and clarity that how the

appropriate government can make arrangements for this provision on grass-root level. This provision depends only on the will of appropriate government, and Section 11 of the RTE Act is continuously working on paper work. Whereas, it should be mandatory for all concerned Governments and for this purpose, Section 11 should be amend immediately to word 'may' should be replaced by 'shall', because the word 'may' makes this provision of the Act maim.

- Section 11 of the RTE Act, 2009 should be amended and provide education above the age of 3 years of children and until they complete the age of 6 years as fundamental right because this age is very important for mental as well as physical growth of all children. A minimum level of grading or standard should be fixed for the child to be promoted to the next class instead of blanket promotion.
- Only qualified teacher should be appointed for teaching in every part of the country and those not meeting proper qualification criteria should be sacked.
- Children with disabilities should be provide with extra facilities in neighbourhood school and specially trained teacher should be recruit in every school to realise the goal of RTE, Act, 2009.
- The concept of safe and secure education should be decoded and planed, it need to be addressed to all State governments as an urgent to non-negotiable to support delivery of quality education, should be appropriate in number vis-à-vis enrolment of children in schools.
- Adequate infrastructure should be made available to remove economic, social, cultural, linguistic and disability related barriers.
- In the view of the importance of Article 21-A, it is imperative that the education which is provided to children in the primary schools should be in the environment of safety.
- Weak student should be identified, remedial classes should be arranged and special training should be apart from the regular classes.

- Government should ensure that no school remains single teacher school and arrange recruitment of head teachers and teachers so that pupil-teacher ratio can fulfil in all schools.
- The teachers' performance is the most challenging input in the field of right to education. Well qualified and highly motivated teachers are the key to effective implementation of the curriculum so innovative teachers should be motivated further through incentives.
- Workshop, seminar and teacher exchange programmes should be encouraged to keep them abreast about the latest development in pedagogical methods.
- Adequate and proper training facilities of teachers and other personnel should be created for the proper implementation of this Act.
- Sufficient financial assistance, ten percent of development fund should be spent on school education.
- Awareness should be spread among the rural masses about the importance of education, so that they really feel the need to send their children to school.
- Certain skill based short term course should be included in the curriculum to make it interesting for the student and thus reducing the drop out ratio.
- The School Management Committee (SMCs) should also be established in un-aided private schools to safeguard the children who are from weaker sections and disadvantaged groups.
- Those parents/guardians, who fail to admit their child to a neighbourhood school for obtaining elementary education, should be debarred from availing total government facilities like ration card, water, electricity, LPG and job card facility, etc.
- Those parents/guardians, who do not admit their children to a neighbourhood school for elementary education, should be liable to fine for each day during which such contravention continues.

- The pattern of syllabus of elementary education to all children should be equal at national level in all government aided and un-aided private schools.
- The right of transfer to other school, a child should be allowed to seek transfer to any un-aided private school also from any other school for completion of his elementary education.
- The primary schools need to be made aware of the provisions made for 25% seats for the economically, socially weaker sections and disadvantaged groups of children of the society and the role of school managing committees in this regard.
- Pupil-teacher ratio must be maintained to enhance good quality education of children.
- Every literate person should also come forward and spread knowledge about usefulness of education to illiterate parents who are unable to appreciate the relevance of education in curbing the social evils.
- Budgetary allocation of funds should be sufficient in this respect. Social inequalities and monopolization by any group should not be permitted at any cost.

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**THE RIGHT OF CHILDREN TO FREE AND COMPULSORY
EDUCATION ACT, 2009 (ACT NO. 35 OF 2009)**

An Act to provide for free and compulsory education to all children of the age of six to fourteen years.

Be it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:-

Statement of Objects and Reasons

The crucial role of Universal Elementary Education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of Universal Elementary Education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even In the case of children who complete elementary education.

2. Article 21-A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.
3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,-

- (a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;
 - (b) '*compulsory education*' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;
 - (c) '*free education*' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay and kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;
 - (d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and
 - (e) a system for protection of the right of children and a decentralized grievance redressal mechanism.
4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.
5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in Article 21-A of the Constitution.
6. The Act seeks to achieve this objective.

The Right of Children to Free and Compulsory Education (Amendment) Bill, 2010

(Act No. 30 of 2012)

Statement of Objects and Reasons

Consequent upon the enactment of the Constitution (Eighty-Sixth Amendment) Act, 2002, the Right of Children to Free and Compulsory Education Act, 2009 which provides for free and compulsory education to all children of the age of 6 to 14 years was enacted.

2. Clause (d) of section 2 of the aforesaid Act of 2009 defines the expression “child belonging to disadvantaged group” to mean a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification. However, children with disabilities, even though disadvantaged, are not specifically included in that clause. Children with disabilities constantly experience barriers to the enjoyment of basic rights, and to their inclusion in society. It is, therefore, proposed to include children with disabilities in the definition of “child belonging to disadvantaged group” with a view to ensuring that their specific needs are given precedence in the elementary education system in the country, and enable them, over time, to participate as full and equal members of the community in which they live. Secondly, the proviso to sub-section (2) of section 3 of the Act states that “a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1995 (Act No.1 of 1996) shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act”. It has been pointed out that Persons with Disabilities (Equal

Opportunities, Protection and Full Participation) Act, 1995, does not cover children with cerebral palsy, mental retardation, autism and multiple disabilities, who are covered under the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (Act No. 44 of 1999). Accordingly, it is proposed that children with cerebral palsy, mental retardation, autism and multiple disabilities are also explicitly covered under the Right of Children to Free and Compulsory Education Act, 2009.

3. Sections 21 and 22 of the Right of Children to Free and Compulsory Education Act, 2009 provides for the constitution and functions of the School Management Committee and preparation of school development plan by the School Management Committee. However, unaided schools, not receiving any kind of aid or grants from the appropriate Government or local authority to meet their expenses, are exempted from constituting School Management Committees. Article 30 of the Constitution provides that all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. It is, therefore, proposed to amend section 21 of the aforesaid Act so as to provide that the School Management Committees constituted under sub-section (1) of section 21 of the aforesaid Act in respect of minority institutions shall function only in an advisory capacity. It is also proposed to amend section 22 of the Act so as to provide that the functions envisaged under the said section 22 for School Management Committees would not apply to minority institutions.
4. The Bill seeks to achieve the above objects.

The Right of Children to Free and Compulsory Education Act, 2009

(Act No. 35 of 2009)⁹⁸⁴

(As Amended by Act No. 30 of 2012)⁹⁸⁵

Chapter - I

Preliminary

1. Short title, extent and commencement: -

- (1) This Act may be called the Right of Children to Free and Compulsory Education Act, 2009.
- (2) It shall extend to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date⁹⁸⁶ as the Central Government may, by notification in the Official Gazette, appoint.
- (4) [Subject to the provisions of Articles 29 and 30 of the Constitution, the provisions of this Act shall apply to conferment of rights on children to free and compulsory education].⁹⁸⁷
- (5) Nothing contained in this Act shall apply to Madrasas, Vedic Pathshalas and educational institutions primarily imparting religious instruction.⁹⁸⁸

⁹⁸⁴ The following Act of received the assent of the President on the 26th August, 2009 and Act published in the gazette of India (Extraordinary) Part II Section 1 dated 27-8-2009, Pages 1-13

⁹⁸⁵ The following Act of received the assent of the President on the 19th June, 2012 and Act published in the gazette of India (Extraordinary) Part II Section 1 dated 20-06-2012, Pages 1-3

⁹⁸⁶ The Act came into force on 01-04-2010 Vide S.O. 427 (E)

⁹⁸⁷ Ins. by Act No. 30 of 2012

⁹⁸⁸ *Ibid*

2. Definitions: -

In this Act, unless the context otherwise requires,--

- (a) **“appropriate Government”** means –
- (i.) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;
 - (ii.) in relation to a school, other than the school referred to in sub-clause (i), established within the territory of-
 - (A.) a State, the State Government;
 - (B.) a Union territory having legislature, the Government of that Union territory;
- (b) **“capitation fee”** means any kind of donation or contribution or payment other than the fee notified by the school;
- (c) **“child”** means a male or female child of the age of six to fourteen years;
- (d) **“child belonging to disadvantaged group”** means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;
- (e) **“child belonging to weaker section”** means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification;

(ee) ⁹⁸⁹“**child with disability**” includes, -

- (A.) a child with “disability” as defined in clause (i) of Section 2 of the Person With Disabilities (Equal Opportunities, Protection Of Rights And Full Participation) Act, 1995 (1 of 1996);
- (B.) a child, being a person with disability as defined in clause (j) of Section 2 of the National Trust For Welfare Of Person With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities Act, 1999 (44 of 1999);
- (C.) a child with “severe disability” as defined in clause (o) of Section 2 of the National Trust For Welfare Of Person With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities Act, 1999 (44 of 1999);

- (f) “**elementary education**” means the education from first class to eighth class;
- (g) “**guardian**”, in relation to a child, means a person having the care and custody of that child and includes a natural guardian or guardian appointed or declared by a court or a statute;
- (h) “**local authority**” means a Municipal Corporation or Municipal Council or ZilaParishad or Nagar Panchayat or Panchayat, by whatever name called, and includes such other authority or body having administrative control over the school or empowered by or under any law for the time being in force to function as a local authority in any city, town or village;
- (i) “**National Commission for Protection of Child Rights**” means the National Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006);
- (j) “**notification**” means a notification published in the Official Gazette;
- (k) “**Parent**” means either the natural or step or adoptive father or mother of a child;
- (l) “**prescribed**” means prescribed by rules made under this Act;
- (m) “**Schedule**” means the Schedule annexed to this Act;

⁹⁸⁹ Ins. by Act No. 30 of 2012

- (n) **“school”** means any recognised school imparting elementary education and includes –
- (i.) a school established, owned or controlled by the appropriate Government or a local authority;
 - (ii.) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;
 - (iii.) a school belonging to specified category; and
 - (iv.) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;
- (o) **“Screening procedure”** means the method of selection for admission of a child, in preference over another, other than a random method;
- (p) **“Specified category”**, in relation to a school, means a school known as Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified, by notification, by the appropriate Government;
- (q) **“State Commission for Protection of Child Rights”** means the State Commission for Protection of Child Rights constituted under section 3 of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006).

Chapter - II

Right to Free and Compulsory Education

3. Right of child to free and compulsory education: --

- (1) [Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of Section 2 shall have a right to free and compulsory

education in a neighbourhood school till completion of his or her elementary education].⁹⁹⁰

(2) 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:

(3) [X X X].⁹⁹¹

(4) [A child with disability referred to in sub-clause (A) of clause (ee) of Section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of Section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995

Provided that a child with “multiple disabilities” referred to in clause (h) and a child with “severe disability” referred to in clause (o) of Section 2 of the National Trust For Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation And Multiple Disabilities Act, 1999 (44 Of 1999) may also have the right to opt for home-based education].⁹⁹²

4. Special provisions for children not admitted to, or who have not completed, elementary education: --Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age.

⁹⁹⁰ Subs. by Act No. 30 of 2012

⁹⁹¹Omitted by the Act No. 30 of 2012, Prior to its omission as follows: “Provided that “a child suffering from disability, as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1995 (Act No.1 of 1996) shall have the right to pursue free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act”.

⁹⁹²Ins. by Act No. 30 of 2012.

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

5. Right of transfer to other school: --

- (1) Where in a school, there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary education
- (2) Where a child is required to move from one school to another, either within a State or outside, for any reason whatsoever, such child shall have a right to seek transfer to any other school, excluding the school specified in sub-clauses (iii) and (iv) of clause (n) of section 2, for completing his or her elementary education.
- (3) For seeking admission in such other school, the Head-teacher or in-charge of the school where such child was last admitted, shall immediately issue the transfer certificate:

Provided that delay in producing transfer certificate shall not be a ground for either delaying or denying admission in such other school:

Provided further that the Head-teacher or in-charge of the school delaying issuance of transfer certificate shall be liable for disciplinary action under the service rules applicable to him or her.

Chapter - III

Duties of Appropriate Government, Local Authority and Parents

- 6. Duty of appropriate Government and local authority to establish school: --**For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighbourhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.
- 7. Sharing of financial and other responsibilities:--**
- (1) The Central Government and the State Governments shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.
 - (2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.
 - (3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in sub-section (2) as it may determine, from time to time, in consultation with the State Governments.
 - (4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.
 - (5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.
 - (6) The Central Government shall –

- (a) develop a framework of national curriculum with the help of academic authority specified under section 29;
- (b) develop and enforce standards for training of teachers;
- (c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.

8. Duties of appropriate Government: --The appropriate Government shall --

- (a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation: -The term "compulsory education" means obligation of the appropriate Government to –

- (i.) provide free elementary education to every child of the age of six to fourteen years; and
 - (ii.) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;
- (b) ensure availability of a neighbourhood school as specified in section 6;
 - (c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;
 - (d) provide infrastructure including school building, teaching staff and learning equipment;

- (e) provide special training facility specified in section 4;
- (f) ensure and monitor admission, attendance and completion of elementary education by every child;
- (g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
- (h) ensure timely prescribing of curriculum and courses of study for elementary education; and
- (i) provide training facility for teachers.

9. Duties of local authority: --Every local authority shall--

- (a) provide free and compulsory elementary education to every child: Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school;
- (b) ensure availability of a neighbourhood school as specified in section 6;
- (c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;
- (d) maintain records of children up to the age of fourteen years residing within its jurisdiction, in such manner as may be prescribed;
- (e) ensure and monitor admission, attendance and completion of elementary education by every child residing within its jurisdiction;
- (f) provide infrastructure including school building, teaching staff and learning material;
- (g) provide special training facility specified in section 4;

- (h) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
- (i) ensure timely prescribing of curriculum and courses of study for elementary education;
- (j) provide training facility for teachers;
- (k) ensure admission of children of migrant families;
- (l) monitor functioning of schools within its jurisdiction; and
- (m) decide the academic calendar.

10. Duty of parents and guardian: -It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.

11. Appropriate Government to provide for pre-school education: -With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may make necessary arrangement for providing free pre-school education for such children.

Chapter - IV

Responsibilities of Schools and Teachers

12. Extent of school's responsibility for free and compulsory education:-

(1) For the purposes of this Act, a school,-

- (a) specified in sub-clause (i) of clause (n) of Section 2 shall provide free and compulsory elementary education to all children admitted therein;
- (b) specified in sub-clause (ii) of clause (n) of Section 2 shall provide free and compulsory elementary education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent.;
- (c) specified in sub-clauses (iii) and (iv) of clause (n) of Section 2 shall admit in class I, to the extent of at least twenty-five per cent, of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided further that where a school specified in clause (n) of Section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education.

- (2) The school specified in sub-clause (iv) of clause (n) of section 2 providing free and compulsory elementary education as specified in clause (c) of sub-section (1) shall be reimbursed expenditure so incurred by it to the extent of per-child-expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed:

Provided that such reimbursement shall not exceed per-child-expenditure incurred by a school specified in sub-clause (i) of clause (n) of section 2:

Provided further that where such school is already under obligation to provide free education to a specified number of children on account of it having received any land, building, equipment or other facilities, either free of cost or at a concessional rate, such school shall not be entitled for reimbursement to the extent of such obligation.

- (3) Every school shall provide such information as may be required by the appropriate Government or the local authority, as the case may be.

13. 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) 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

14. Proof of age for admission: -

- (1) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886) or on the basis of such other document, as may be prescribed.
- (2) No child shall be denied admission in a school for lack of age proof.

15. No denial of admission: --A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.

16. Prohibition of holding back and expulsion: - No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

17. Prohibition of physical punishment and mental harassment to child:-

(1) No child shall be subjected to physical punishment or mental harassment.

(2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person

18. No School to be established without obtaining certificate of recognition: -

(1) No school, other than a school established, owned or controlled by the appropriate Government or the local authority, shall, after the commencement of this Act, be established or function, without obtaining a certificate of recognition from such authority, by making an application in such form and manner, as may be prescribed.

(2) The authority prescribed under sub-section (1) shall issue the certificate of recognition in such form, within such period, in such manner, and subject to such conditions, as may be prescribed:

Provided that no such recognition shall be granted to a school unless it fulfils norms and standards specified under section 19.

(3) On the contravention of the conditions of recognition, the prescribed authority shall, by an order in writing, withdraw recognition:

Provided that such order shall contain a direction as to which of the neighbourhood school, the children studying in the derecognised school, shall be admitted:

Provided further that no recognition shall be so withdrawn without giving an opportunity of being heard to such school, in such manner, as may be prescribed.

(4) With effect from the date of withdrawal of the recognition under sub-section (3), no such school shall continue to function.

(5) Any person who establishes or runs a school without obtaining certificate of recognition, or continues to run a school after withdrawal of recognition, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

19. Norms and standards for school: --

(1) No school shall be established, or recognised, under section 18, unless it fulfils the norms and standards specified in the Schedule.

(2) Where a school established before the commencement of this Act does not fulfil the norms and standards specified in the Schedule, it shall take steps to fulfil such norms and standards at its own expenses, within a period of three years from the date of such commencement.

(3) Where a school fails to fulfil the norms and standards within the period specified under sub-section (2), the authority prescribed under sub-section (1) of section 18 shall withdraw recognition granted to such school in the manner specified under sub-section (3) thereof.

(4) With effect from the date of withdrawal of recognition under sub-section (3), no school shall continue to function.

(5) Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

20. Power to amend Schedule: --The Central Government may, by notification, amend the Schedule by adding to, or omitting there from, any norms and standards.

21. School Management Committee: -

(1) A school, other than a school specified in sub-clause (iv) of clause (n) of section 2, shall constitute a School Management Committee consisting of the elected representatives of the local authority, parents or guardians of children admitted in such school and teachers:

Provided that at least three-fourth of members of such Committee shall be parents or guardians:

Provided further that proportionate representation shall be given to the parents or guardians of children belonging to disadvantaged group and weaker section:

Provided also that fifty per cent. of Members of such Committee shall be women.

(2) The School Management Committee shall perform the following functions, namely:--

(a) monitor the working of the school;

(b) prepare and recommend school development plan;

(c) monitor the utilisation of the grants received from the appropriate Government or local authority or any other source; and

(d) perform such other functions as may be prescribed

⁹⁹³[Provided that School Management Committee constitute under sub – section (1) in respect of, --

(a) a school established and administered by minority whether based on religion or language; and

(b) all other aided school as defined in sub- section(ii) of clause (n) of Section,

shall perform advisory function only].

22. School Development Plan: -

(1) Every ⁹⁹⁴[School Management Committee, except the School Management Committee in the respect of a school established and administered by minority, whether based on religion or language and an aided school as defined in sub-clause (ii)of clause (n) of Section 2, constituted].under sub-section (1) of section 21, shall prepare a School Development Plan, in such manner as may be prescribed.

(2) The School Development Plan so prepared under sub-section (1) shall be the basis for the plans and grants to be made by the appropriate Government or local authority, as the case may be

⁹⁹³ Ins. by Act No. 30 of 2012

⁹⁹⁴ Subs. by Act No. 30 of 2012

23. Qualifications for appointment and terms and conditions of service of teachers: --

- (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.
- (2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

- (3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed

24. Duties of teachers and redressal of grievances: --

- (1) A teacher appointed under sub-section (1) of section 23 shall perform the following duties, namely: -
 - (a) maintain regularity and punctuality in attending school;
 - (b) conduct and complete the curriculum in accordance with the provisions of sub-section (2) of section 29;
 - (c) complete entire curriculum within the specified time;

(d) assess the learning ability of each child and accordingly supplement additional instructions, if any, as required;

(e) hold regular meetings with parents and guardians and apprise them about the regularity in attendance, ability to learn, progress made in learning and any other relevant information about the child; and

(f) perform such other duties as may be prescribed.

(2) A teacher committing default in performance of duties specified in sub-section (1), shall be liable to disciplinary action under the service rules applicable to him or her:

Provided that before taking such disciplinary action, reasonable opportunity of being heard shall be afforded to such teacher.

(3) The grievances, if any, of the teacher shall be redressed in such manner as may be prescribed

25. Pupil-Teacher Ratio: --

(1) ⁹⁹⁵[Within three years] from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil - Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.

26. Filling up vacancies of teachers: -The appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall ensure that

⁹⁹⁵Subs. by Act No. 30 of 2012

vacancy of teacher in a school under its control shall not exceed ten per cent/of the total sanctioned strength

27. Prohibition of deployment of teachers for non-educational purposes: --No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be.

28. Prohibition of private tuition by teacher: --No teacher shall engage himself or herself in private tuition or private teaching activity.

Chapter - V

Curriculum and Completion of Elementary Education

29. Curriculum and evaluation procedure: --

(1) The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government, by notification.

(2) The academic authority, while laying down the curriculum and the evaluation procedure under sub-section (1), shall take into consideration the following, namely:--

- (a) conformity with the values enshrined in the Constitution;
- (b) all round development of the child;
- (c) building up child's knowledge, potentiality and talent;
- (d) development of physical and mental abilities to the fullest extent;
- (e) learning through activities, discovery and exploration in a child friendly and child - centred manner;
- (f) medium of instructions shall, as far as practicable, be in child's mother tongue;

- (g) making the child free of fear, trauma and anxiety and helping the child to express views freely;
- (h) comprehensive and continuous evaluation of child's understanding of knowledge and his or her ability to apply the same

30. Examination and completion certificate:--

- (1) No child shall be required to pass any Board examination till completion of elementary education.
- (2) Every child completing his elementary education shall be awarded a certificate, in such form and in such manner, as may be prescribed

Chapter - VI

Protection of Right of Children

31. Monitoring of child's right to education: --

- (1) The National Commission for Protection of Child Rights constituted under section 3, or, as the case may be, the State Commission for Protection of Child Rights constituted under section 17, of the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), shall, in addition to the functions assigned to them under that Act, also perform the following functions, namely:--
 - (a) examine and review the safeguards for rights provided by or under this Act and recommend measures for their effective implementation;
 - (b) inquire into complaints relating to child's right to free and compulsory education; and

(c) take necessary steps as provided under sections 15 and 24 of the said Commissions for Protection of Child Rights Act.

- (2) The said Commissions shall, while inquiring into any matters relating to child's right to free and compulsory education under clause (c) of sub-section (1), have the same powers as assigned to them respectively under sections 14 and 24 of the said Commissions for Protection of Child Rights Act.
- (3) Where the State Commission for Protection of Child Rights has not been constituted in a State, the appropriate Government may, for the purpose of performing the functions specified in clauses (a) to (c) of sub-section (1), constitute such authority, in such manner and subject to such terms and conditions, as may be prescribed

32. Redressal of grievances: --

- (1) Notwithstanding anything contained in section 31, any person having any grievance relating to the right of a child under this Act may make a written complaint to the local authority having jurisdiction.
- (2) After receiving the complaint under sub-section (1), the local authority shall decide the matter within a period of three months after affording a reasonable opportunity of being heard to the parties concerned.
- (3) Any person aggrieved by the decision of the local authority may prefer an appeal to the State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be.
- (4) The appeal preferred under sub-section (3) shall be decided by State Commission for Protection of Child Rights or the authority prescribed under sub-section (3) of section 31, as the case may be, as provided under clause (c) of sub-section (1) of section 31

33. Constitution of National Advisory Council: --

- (1) The Central Government shall constitute, by notification, a National Advisory Council, consisting of such number of Members, not exceeding fifteen, as the Central Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.
- (2) The functions of the National Advisory Council shall be to advise the Central Government on implementation of the provisions of the Act in an effective manner.
- (3) The allowances and other terms and conditions of the appointment of Members of the National Advisory Council shall be such as may be prescribed.

34. Constitution of State Advisory Council: --

- (1) The State Government shall constitute, by notification, a State Advisory Council consisting of such number of Members, not exceeding fifteen, as the State Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.
- (2) The functions of the State Advisory council shall be to advise the State Government on implementation of the provisions of the Act in an effective manner.
- (3) The allowances and other terms and conditions of appointment of Members of the State Advisory Council shall be such as may be prescribed.

Chapter - VII

Miscellaneous

35. Power to issue directions: --

- (1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act.
- (2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of this Act.
- (3) The local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.

36. Previous sanction for prosecution:--No prosecution for offences punishable under sub-section (2) of Section 13, sub-section (5) of Section 18 and sub-section (5) of Section 19 shall be instituted except with the previous sanction of an officer authorised in this behalf, by the appropriate Government, by notification.

37. Protection of action taken in good faith: --No suit or other legal proceeding shall lie against the Central Government, the State Government, the National Commission for Protection of Child Rights, the State Commission for Protection of Child Rights, the local authority, the School Management Committee or any person, in respect of anything which is in good faith done or intended to be done, in pursuance of this Act, or any rules or order made thereunder

38. Power of appropriate Government to make rules:--

- (1) The appropriate Government may, by notification, make rules, for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:--
 - (a) the manner of giving special training and the time-limit thereof, under first proviso to section 4;
 - (b) the area or limits for establishment of a neighbourhood school, under section 6;
 - (c) the manner of maintenance of records of children up to the age of fourteen years, under clause (d) of section 9;
 - (d) the manner and extent of reimbursement of expenditure, under sub-section (2) of section 12;
 - (e) any other document for determining the age of child under sub-section (1) of section 14;
 - (f) the extended period for admission and the manner of completing study if admitted after the extended period, under section 15;
 - (g) the authority, the form and manner of making application for certificate of recognition, under sub-section (1) of section 18;
 - (h) the form, the period, the manner and the conditions for issuing certificate of recognition, under sub-section (2) of section 18;
 - (i) the manner of giving opportunity of hearing under second proviso to sub-section (3) of section 18;

- (j) the Other functions to be performed by School Management Committee under clause of sub-section (2) of section 21;
 - (k) the manner of preparing School Development Plan under sub-section (1) of section 22;
 - (l) the salary and allowances payable to, and the terms and conditions of service of, teacher, under sub-section (3) of section 23;
 - (m) the duties to be performed by the teacher under clause (f) of sub-section (1) of section 24;
 - (n) the manner of redressing grievances of teachers under sub-section (3) of section 24;
 - (o) the form and manner of awarding certificate for completion of elementary education under sub-section (2) of section 30;
 - (p) the authority, the manner of its constitution and the terms and conditions therefor, under sub-section (3) of section 31;
 - (q) the allowances and other terms and conditions of appointment of Members of the National Advisory Council under sub-section (3) of section 33;
 - (r) the allowances and other terms and conditions of appointment of Members of the State Advisory Council under sub-section (3) of section 34.
- (3) Every rule made under this Act and every notification issued under sections 20 and 23 by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately

following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(4) Every rule or notification made by the State Government under this Act shall be laid, as soon as may be after it is made; before the State Legislatures.

39. ⁹⁹⁶[Power Of Central Government To Remove Difficulties: --

(1) If any difficulties arise in giving effect to the provision of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulties :

Provided that no order shall be made under this Section after the expiry of three years from the commencement of the right of children to free and compulsory education (Amendment) Act, 2012.

(2) Every made under this section shall be laid, as soon as may be after it is made, before each House of Parliament].

⁹⁹⁶Ins. by Act No. 30 of 2012

SCHEDULE

(See Sections 19 and 25)

Norms and Standards for a School

Sl. No.	Item	Norms and Standards	
1.	Number of teachers:		
	(a) For first class to fifth class	Admitted children Up to Sixty	Number of teachers Two
		Between sixty-one to ninety	Three
		Between Ninety-one to one hundred and twenty	Four
		Between One hundred and twenty-one to two hundred	Five
		Above One hundred and fifty Children	Five plus one Head-teacher
		Above Two hundred children	Pupil-Teacher Ratio (excluding Head-teacher) shall not exceed forty.
		(b) For sixth class to eighth class	(1) At least one teacher per class so that there shall be at least one teacher each for -
	(i.) Science and Mathematics;		
	(ii.) Social Studies;		
	(iii.) Languages.		

		(2) At least one teacher for every thirty-five children.
		(3) Where admission of children is above one hundred -
		(i.) a full time head-teacher;
		(ii.) part time instructors for -
		(A.) Art Education;
		(B.) Health and Physical Education;
		(C.) Work Education.
2.	Building	All-weather building consisting of -
		(i.) at least one class-room for every teacher and an office-cum-store-cum-Head teacher's room;
		(ii.) barrier-free access;
		(iii.) separate toilets for boys and girls;
		(iv.) safe and adequate drinking water facility to all children;
		(v.) a kitchen where mid-day meal is cooked in the school;
		(vi.) Playground;
		(vii.) arrangements for securing the school building by boundary wall or fencing
3.	Minimum number of working days/instructional hours in an academic year	(i.) two hundred working days for first class to fifth class;

		(ii.) two hundred and twenty working days for sixth class to eighth class;
		(iii.) eight hundred instructional hours per academic year for first class to fifth class;
		(iv.) one thousand instructional hours per academic year for sixth class to eighth class.
4.	Minimum number of working hours per week for the teacher	Forty-five teaching including preparation hours.
5.	Teaching learning equipment	Shall be provided to each class as required.
6.	Library	There shall be a library in each school providing newspaper, magazines and books on all subjects, including story-books.
7.	Play material, games and sports equipment	Shall be provided to each class as required