

CHAPTER: I
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*“Where the mind is without fear and the head is held high,
Where knowledge is free,
Where the world has not been broken up into fragments
by narrow domestic walls,
Where the words come from the depth of truth,
Where tireless striving stretches its arms towards perfection,
Where the clear stream of reason has not lost its way
into the dreary desert sand of dead habit,
Where the mind is led forward by thee
Into that heaven of freedom, my father led my country
awake.”*

- Rabindranathan Tagore

Education is a primary need of every human being and literacy is an indispensable tool for this purpose. We have to recognise that the aspiration and hopes for the people of our countries depend on the provision of appropriate systems of education. The great problem of poverty, ignorance and disease can be addressed effectively only if we succeed in our programmes for education and literacy. An ancient Chinese saying comes to mind:

*“If you are thinking of one year, plant rice.
If you are thinking of a decade, plant trees,
If you are thinking of a century, educate
the people.”*

Today in many countries the right to education is a fundamental right. The issue therefore is how to provide education to all. A UNESCO Document of 1972 bearing the title ‘Learning To Be’ had mentioned:

*“If we admit that education is and will be more
and more a primordial need for each individual,*

then not only must we develop, enrich and multiply the school and the university, we must also transcend it by broadening the educational function to the dimensions of society as a whole."

While education continues to be concerned essential with individual development, its approach to this fundamental tasks is now conditioned by societal concerns which have acquired a new importance. Social relevance can be established only through an iterative and interactive process between society and educational institutions. In this fast changing world, dynamism and innovation are fundamental to progress. We should be prepared to think far ahead to ensure that the educational system continuously responds to the true needs of the society that is evolving, so that it can serve the objective of the human advancement, progress, prosperity and happiness. Social scientists and economists now fully acknowledge the strong impact of education on development sectors like health, nutrition, and child-care.

Conversely, education system, to be effective, require a holistic approach: incorporating attention towards improved levels of nutrition, health-care and social attitudes. There is a basic complementarities between these sectors. The linkages need to be fostered and the convergence, of a variety of delivery mechanisms for public good, needs to be intensified.

Education is a basic human rights and is the foundation of a free and fulfilled life. Its need and importance has long been emphasized in the recent past since when the countries have found a common platform in United Nations, numerous Covenants and the Treaties have powerfully and unambiguously expressed the relevance of education and have set a goal for them, viz. "Education for All", education is now being visioned as a human right and an instrument of social change. It is the single-most vital element in combating poverty, empowering women, safeguarding children from exploitative and hazardous labour, promoting human rights and democracy and protecting the environment. Education as an economic rights necessitates and adoption of schooling to facilitating subsequent economic self-sufficiency through employment or self

employment. Integration of economic, social, cultural and political facets of education is facilitated by the indivisibility and interrelations of human rights.

Education is undoubtedly the key platform for picking up and developing skills and enhancing the productive capacities of a person. Knowledge acquired through education is fast becoming the basic resource for the development of every society. As, a resource, academic learning and skill training are two sides of the education.

The need of one Indian cannot be generalized as those of another. For one Indian, college education may be the ticket to a white-collar job, while for another learning how to grow high-yielding maize may be the answer. The growing demand for specialization has resulted in the mushrooming of institute tailor made to suit the changing needs of students. Students, especially children, in recent years have been adequately encouraged in India to take to studying and attending schools by bringing into effect relevant legal provisions. In this backdrop an important question is: who is a Literate? For the purpose of Census 2001, a person aged 7 and above, and can *both* read and write with understanding in any language is treated as literate. In the census prior to 1991, children below 5 years of age were necessarily treated as illiterates. Any formal education or minimum educational standard is not necessary to be considered literate. Literacy is an important component of Human Rights issues. Article 26 of the Universal Declaration of Human Rights declares:

“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 generally available and higher education and higher education shall be equally accessible to all on the basis of merit.”

When we talk about education process or system, it can be visualized in the form of a triangle beginning with the foundation of general school education and narrowing towards the completion of the process in highly focused and specialized doctoral studies. Education is divided into pre-primary, primary, middle (or intermediate), secondary (or high school), and higher levels. Primary school includes children of ages six to eleven, children attend classes one through five. Middle school students aged eleven through

fourteen attend classes six through eight, and high school students aged fourteen through seventeen are enrolled in classes nine through twelve. Higher education includes technical schools, colleges and universities.

Education has been the pursuit of human being from the beginning of the civilization. It has obtained various facets and at times different directions and dimensions. Historically from one aspect the education relates to the process of learning and from the other aspects it relates to the imparting of education. This obviously takes stock of the problems into two broad categories- the teachers other than the students. Further more, education does not confine its continuance to the literacy but it is expounded and expanded at various levels and layers. Education starts from the learning of alphabets to the higher and more higher levels. These dimensions of education are subject matter of the present study. When we talk about different levels of education it necessarily necessitates the need and growth of different levels of educational institutions beginning from the primary levels upto the universities and centers of research and advanced research. The problem here arises that who will undertake to establish, finance and manage such a large number of enormous institutions catering to the proportionate need of problems. This is a question of great constitutional, social and individual importance. This issue and the other related issue have been discussed and the answer of that question may be found in the present work.

The Indian education system has although undergone a tremendous transformation from an elite system, nurtured by colonial roots to a mass system attempt to meet the demand of a vibrant democracy, it is continued to be considered as a social service rather than a trade service. Learning is considered an excellence of wealth that none can destroy and which cannot be attained by chance. It must be sought for with ardour and pursued with diligence. The relation between teachers (Gurus) and the pupils (Shishya) are considered as sacred and teacher has been given a respectable status in the society after mother and father. The education system in India passed through 3 main eras viz. *i) Gurukul era, (ii) British era and (iii) Independence era.*

The study of education in the perspective of the individual and the state brings in focus the evaluation of the historical development of its different aspect, what we achieved in

India today, and what is needed to reform it in the third millennium. It is undenyng fact that education as a branch of knowledge was much developed first in the world in different branches, a brief mention of the situation prevailing in ancient India may be found here. The British period heralded the door of the modern system of education as early as possible in 1813 and it got impetus with the establishment of three universities in India, based on the model of London University. The study of these aspects becomes necessary in order to evaluate the introduction and growth of a system which was alien to the Indian subcontinent and its contribution to the different aspects of social, political and national life. The Indian leaders during the freedom struggle were conscious of the need of education and demand of uniform education system though a task difficult to be achieved was constantly made since 1895.

India became independent with its people illiterate starving and striving for equal opportunities. The spirit of its people and their need were elaborately discussed in the Constituent Assembly in detail. The present work will throw a light on the realization and the aspiration of the people by the framers of our Constitution, and their constraint enability to declare the right to education as a fundamental right.

The concept of right to education does not lend itself to easy definition. The difficulty arises out of the fact that this concept is not a unitary concept but a multidimensional concept, amenable more for enumeration rather than definition. But a right without definition is right without protection. Therefore it becomes necessary to define the right to education in such a way that it may cover all the aspects of the right. In order to arrive at an appropriate definition, it becomes necessary to analyse various definitions given by contemporary scholars. Whether there is coherence and continuity amongst such definition? Is it possible to evolve a conspectus out of these definitions? Is there any definition which aptly covers all aspects of education? The present work makes an attempt to study and analyse the definition of education given by eminent scholars and tries to evolve a comprehensive definition. In considering the emergence of right to education in India, it becomes necessary to look into other Constitutions of the world. Although the right to education is not found as an independent fundamental right in many modern Constitution, but it is not true to say that the right is not protected. The Universal

Declaration of Human Rights 1948, proclaimed the international standard of human right and it is the first international document which expressly declares the right to education as an important independent right. It is therefore necessary to look into the Universal Declaration and other international and developments so that the right in our country may be raised to the international standard.

At the dawn of the Constitution down to the third decade thereafter the judiciary in India adopted a go slow attitude in view of the primary responsibility imposed by the Constitution to realise the directive principles relating to the right to education. Apathy and no action on the part of the legislatures compelled the Indian judiciary to break through in order to derive the life breath from the directive principles and inject it into the life the most basic amongst the basic rights guaranteed under Article 21-A of the Indian Constitution. The present work discussed as to how the right to education is connected with the right to live as an essential part of life and its various dimensions and aspects including its relation with the right to equality and its impact and bounden upon the state vis-à-vis individual?

When we talk about education, its most important aspects is its beneficiaries e.g. the large masses of students. The present work covers the problem and prospects of student as to their education and admission to the educational institutions. A spate of petitions cropped up through out the country at the High Court and at the Apex Court levels, the main issue of which, has been subject of discussion within the judiciary, educational institutions and beyond, are admission of students, the criteria of eligibility for different courses, the reservation of seats on different grounds including scheduled castes, scheduled tribes backward classes, etc and in this context the recent Constitution Amendment and enactment of the Central educational Institution (Reservation in Admission) Act 2007 has been analysis and examined.

At the same time the irregularity on the part of the institutions regarding admission and the evils of ragging is a blot on the fair name of the institutions. The role of the Supreme Court is also attracted in the above aspect. The judicial approach in the aforesaid areas has been examined in detail in the present study in order to evolve the just principles and

guidelines for providing a solution to the problems and thereby creating a healthy environment and growth of the education as well as the institutions. In this context the Raghavan Committee Report is also analysed and discussed to curb the menace of ragging at the centre of learning.

The Constitutional equality implies that reservation is an adhoc measure in order to uplift the educationally and socially backward people. As education is means to development it necessitates the need of reservation or certain number of seats for admission to different courses in favour of such classes. In this respect the question arises as to what levels the reservation will operate? Whether it is available only to the primary and college levels or at the level of postgraduate and research as well? Further, whether the reservation may be provided only in favour of the members of the scheduled castes and scheduled tribes or also to the wards of the other backward classes? What may be the other grounds of reservation of seats in educational institutions not provided under the Constitution, whether it includes the sports quotas and institutional reservation? These issues and the related matters have also been discussed here.

Now the system of higher education is taking a new turn. The youth of India has started preferring technology and employment oriented courses. As a consequence more and more engineering and other technical institutions have started coming up. In order to meet the growing demand for such technical and employment oriented courses, the government started permitting the private institutions to come into education sector and encouraged more private investment in education.

The imparting of education implies the establishment and management of educational institutions by law requires its affiliation and recognition by appropriate form. It may vary from the initial schools levels to the colleges, post graduate colleges and universities. Catering to the needs of different levels and different branches of education the issue that arises in this respect is whether the legal formalities of affiliation and recognition are mandatory and what would be the effect of non affiliation and non recognition. The present study discusses in detail aforesaid issues and the judicial approach thereto. The establishments of any institutions obviously requires a certain

amount of fund, the government as a matter of policy and in order to effectuate the right to education (whatever the people have) provides grants-in-aid to the educational institutions. On the fulfillment of certain conditions. Now it requires to be clarified whether the state or the institution can claim grant-in-aid as a matter of right? The professional colleges particularly medical and engineering colleges were allowed to be established by the government in the private sector, which shifted their financial burden upon the students. Thus the scenario is that the educational institutions have been commercialized, and as a result corruption has extended its tentacles in the temple of learning. The above issues find place in the present studies.

In the last quarter of the twentieth century the politic and political activities extended its hands in the educational institutions particularly in the colleges and universities. It is significant to note here that many of the political movements in India were organized and led by the students organizations. This situation rapidly increased the students absentism, unrest and indiscipline throughout the country. Therefore the students developed an escapist tendency; they obviously hunted for means of passing the examinations which generated, unfair means and malpractices during the examinations. The judiciary has made important contributions in this area which has been made the subject matter in the present work. This issues raise a dilemma as to whether the examination regulation should be made and governed by the institutional authorities or the court should act as controller of examination? An attempt has been made in this study to evolve a principle to make the examination system fair and to eradicate unfair means and malpractices.

The role of teachers in the development of education and educational institutions can not be overlooked. Better the quality of teachers better the quality of students – is the general dictum. In this situation the present study analyses the rules and regulations made by the appropriate authorities, providing for the eligibility criteria of the recruitment of teachers particularly in the institution of higher learning. Freedom from fear and the freedom from want are sin-qua-non of the healthy working environment. Therefore better pay and service conditions including the prospect of promotion to the higher grade became necessary. There are different kinds of institutions from the point of their status e.g. government aided private and unaided private institutions for the teachers? Is there need

of equal pay parity amongst all kinds of institutions for the teachers? Is there a need of disciplinary action against the teachers at fault? If so what protection may be afforded to the teachers employees against their suspension and termination. These are the issues which have been discussed in the present study. While providing better pay scale and service condition to the teachers, the expectation from them, to the students, society and the state is very high. This attracts the need of accountability on the part of teachers. Given the higher intellectual and respectable position of the teacher of it is not desirable to impose any legal sanction for accountability on them it is their responsibility to introspect and assess their contributions which act as a moral sanction. These have been covered by the present work. Issues and related matters have been examined in the present work.

Now coming to the framework of the study, the present work has been divided into eight chapters.

Chapter 1: introduces the subject and the issues involved therein. The concepts of the right to education and its place in the Indian Constitution, as well as, in some other Constitutions of the world and international instruments in the historical context have been discussed in chapter 2. Chapters 3 mainly concentrate upon the education with respect to the rights of the student, covering diverse areas, like admission, reservation of seats, students union, ragging etc. The establishment, affiliation and recognition of schools and colleges, right to manage and select teachers in, minority institutions, right to receive grants-in-aid, accreditation of the institutes etc has a significant role to play in this area which has been the subject matter of the study in chapter 4. Chapter 5 contains the concept of privatization and commercialization of education, particularly in professional colleges leading to corruption on the matter of education in the educational institutions. Chapter 6 takes the note in prevailing examination system, with special reference to lack of attendance, indiscipline, use of unfair means and malpractices, during the examination, problem of re-valuation of answer sheets, grace marks and otherwise, and discuss in detail the steps and the strategies to check such evils. Chapter 7 deals with the appointment, service condition, promotion and accountability of the teachers who are the most important constituent of the educational system. It discusses the facilities and freedom required for their, legal, social and moral obligation. At the end the work closes

with an epilogue in Chapter 8. The present study takes stock of the reported judicial decisions, in India and some of the important foreign cases, available academic writing, relevant statutory provisions, reports and recommendations of various commissions and committees. The work has been done within the aforesaid limitations.