

CHAPTER II:

CONCEPTUAL AND CONSTITUTIONAL FOUNDATION

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CHAPTER II

CONCEPTUAL AND CONSTITUTIONAL FOUNDATION

The idea of education is as old as the history of mankind itself. The need for the education was felt by human beings from the ancient times; however, the concept was not defined. When we start discussion on the concept and basis of this right it becomes necessary to trace its historical development in order to find out a universally acceptable definition. The other relevant issue in this respect which attracts our attention is to locate the particular law under which the protection may be properly accorded to this right. At this stage it becomes necessary to look into provisions of other Constitutions in order to drive its fine points that may be beneficial for developing the parameters of the right in our country. An attempt for the protection of right to education through international instruments is equally desirable to discuss to evolve the international common standard of this important right. The aforesaid developments have been analyzed in the following pages before discussing the Indian position in the Constitution and other relevant provisions and judicial decisions.

A: HISTORICAL BACKGROUND

From ancient Bharat to modern India, education has always occupied a place of prominence in Indian history. In ancient times, Nalanda, Taxila and Vikramsila universities were renowned seats of higher learning, attracting students not only from all over the country but from far off countries like Korea, China, Burma (now Myanmar), Ceylon (now Sri Lanka), Tibet and Nepal. Today, India manages one of the largest higher education systems in the world¹

There is disagreement amongst scholars regarding the origin and nature of the education system in ancient India. Some of them hold the view that it is difficult to speak of ancient India. Some of them hold the view that it is difficult to speak of ancient Indian education

¹ www.ugc.ac.in visited on 8.5.2008

with certainty, as our information is based on the documents of 'unequal value and unequal date'²

Nevertheless, it may be stated that the education in India has been notorious for not being socially inclusive. Till the 19th century, it was largely considered a privilege restricted to persons at the higher end of the caste or class system.³ History is replete with examples of caste, class and gender-based discrimination in imparting education.⁴ Education was the sole privilege of the priestly castes (Brahmins) primarily because of the religious basis for the content of education, coupled with the elitist medium of instruction that was chosen to impart the knowledge. Admission to Gurukulas or Ashrams was not open to all. People from lower castes, and so-called 'shudras' (untouchables), in particular, were barred from receiving education. Buddhism and Jainism overthrew the dominance of classical Vedic education by the end of the eighth century A.D,⁵ forcing education beyond the confines of hermitages. Thereafter, several learned Brahmins started Pathshalas (schools) in important towns where they received patronage. The Muslim rulers of the Indian sub-continent also did not consider education as a function of the State. It was perceived as a branch of religion and therefore entrusted to learned theologians called Ulemas.⁶ Therefore, in ancient and medieval India, education was intertwined with religion. From the location of Gurukulas to excluding sections of the society from accessing education, the system of education was clearly not accessible to all persons. The discovery of the sea route to India, in 1498, influenced the course of development of education in the Indian sub-continent.⁷ Although many scholars have commented the British policy of introducing modern education, it was not a spontaneous benevolent act.⁸ The progress in education was facilitated with a view to serving their vested interests, i.e. to train Indians as clerks, managers and other subordinate workers to staff their vast politico administrative machinery. However, education of the 'Indian masses' was largely neglected, and by the beginning of nineteenth century, it was in

² T.N. Siqueira, " *The Education of India Bombay*:" Oxford University Press, 1952 p.3

³ J. P. Naik, "Equality, Quality and Quantity: *The Elusive Triangle in Indian Education*," Allied Publisher, 1975 p.2

⁴ BC Rai, *History of Indian Education*, " Prakashan Kendra, 1997 p. 39

⁵ R. Thaper, " *A History of Indian Education*," Penguin Books, 1966 Vol. I, p.63

⁶ S. M. Edwardes and H L O Garrett, " *Mughal Rule in India*," Asia Publications Services, 1979 p. 221

⁷ S. Nurullah and J. P. Naik, " *A History of Education in India*:" Macmillan, 1943 p.11

⁸ S. N. Mukharji, " *History of Education in India: Modern Period*:" Acharya Book Depot, 1966 p. 16

shambles.⁹ For instance, while reporting about the situation of education Bellary (presently in the State of Karnataka) in the early nineteenth century, Campbell, the then District Collector observed that “it cannot have escaped the government that of nearly a million of souls in this district, not 7000 are now at school...” In many villages where formerly there were schools, there are now none. In support of this, a missionary notice of 1856 stated that in all other parts of the country ‘a school, either government or missionary is as rare as a lighthouse on our coast... Three or four schools existing among three or four million of people.’¹⁰ The neglect of education by the British was also acknowledged by the Wood’s Despatch.¹¹

In this context, the demand for Free and Compulsory Education (FCE) in India can be traced back to the early stages of the freedom struggle in British India. It subsequently became an integral part of the freedom struggle. The Indian National Congress fought valiantly for the expansion of elementary education and literacy, in general, and in rural India, in particular.¹² In the evidence placed before the Education Commission (Hunter Commission) appointed in 1882, Dadabhai Naoroji and Jyothiba Phule from Bombay demanded State-sponsored free education for at least four years. This demand was indirectly acknowledged in the Commission’s recommendations on primary education.¹³ The Commission also recommended that schools should be open to all castes and classes. The first documented use of the word right in the context of elementary education appears in a letter written by Rabindranath Tagore to the International League for the Rational Education of Children in 1908.¹⁴

(1) British India

The educational system during ancient India was most advanced in the world at a particular time. However, with the development of modern government it was highly deteriorated and destructed due to various historical facts. The study of educational system with special reference to the development of right to education is generally started with the British period. However, it does not mean that there was no organized educational

⁹ *Supra note 7*, p. 42

¹⁰ B.B. Misra, “*The Indian Middle Classes*,” Oxford University Press, 1961 p.160

¹¹ K G Siayidian et. Al., “*Compulsory Education in India*”, Universal Book and Stationary Co., 1966 p.19

¹² S S Diksit, “*Nationalism and Indian Education*,” Sterling Publications, 1966 p. 136

¹³ William Hunter, “*Report of the Indian Education commission*,” Superintendent of Government Printing, India 1883 p. 586

¹⁴ www.education.nic.in

system at different levels in our country in the past. But the facts remains that at the time of the start of modern educational system it was highly unsatisfactory. The illiteracy was prevailing all over and therefore, the right to education became the first amongst the demand of fundamental right during freedom struggle. It is, therefore, the development of education at the level of demand and charter which led the foundation of the provision as to right to education under our Constitution. A humble attempt has been made here to analyse howfar the Constitution has incorporated this right for which the people fought for in the past.

Learning or education has always been the highest virtue and the greatest acquisition of a person in the human civilization in general and in particular in this land. Ancient India literature in full of innumerable instances of praise for education and of veneration to the learned people. However, the modern system of education in India originated with the advent of Britishers. Financial allocation for education was made for the first time by the Charter Act of 1813.¹⁵

The present system of higher education dates back to Mountstuart Elphinstone's minutes of 1823, which stressed on the need for establishing schools for teaching English and European sciences. Later, Lord Macaulay, in his minutes of 1835, advocated "efforts to make natives of the country thoroughly good English scholars".

Lord Macaulay was authorized to fulfil the educational hopes and visions of Indians. It was fortunate for India, "that a man with the tastes, and the training, of Macaulay came to her shore as one vested with authority and that he came at the moment when he did, for that moment was the very turning point of her (India) intellectual Progress."¹⁶ By 1834 all educational action was at a stand, for the committee of public Instruction was evenly divided-one half were for the continuation of the existing systems of education in Arabic Persian and Sanskrit with stipends given to students and with subsidies given for the publication of text books.¹⁷ The other half were for imparting elementary education in vernacular languages and higher education in English.

The cogency and force at Macaulays celebrated view won the day and on 7th March 1835 the Government of Lord William Bentick announced, that "The great object of the

¹⁵ *Competition Success Review, February, 1999, p.105*

¹⁶ *Trevelyan, Life and Letters of Lord Macaulays, vol. 1, 1908 p.290*

¹⁷ *H. M. Seervia, Constitutional Law of India, vol. 1. N. M. Tripathi Pvt. Ltd. Bombay 1991, p. 2*

British Government ought to be the promotion of European literature and science among the natives of India.”¹⁸

Sir Charles Wood’s Dispatch of 1854, famously known as the ‘Manga Carta of English Education in India’, recommended creating a properly articulated scheme of education from the primary school to the university. It sought to encourage indigenous education and planned the formulation of a coherent policy of education. Subsequently, the universities of Calcutta, Bombay (now Mumbai) and Madras were set up in 1857, followed by the University of Allahbad in 1887.¹⁹

When the Indian Education Commission was appointed in 1882, the proposal for adopting a law for universal compulsory education, or at least for children employed in factories was mosted. This was unfortunately rejected due to financial and administrative difficulties by the British Parliament.

The first experiment of making primary education compulsory occurred in 1893, when the ruler of the state of Baroda, Maharaja Sayajirao Gackwad, introduced compulsory education in the Amraoli division of his state. Since the results were promising he extended it to the entire state in 1906. The right to education was found mentioned in the Constitution of India Bill, 1895. When Bal Gangadhar Tilak first times demanded right to education compulsorily. The demand for the official introduction of primary education was also made by Gopal Krishna Gokhale in March 1910, when he moved a resolution in the Imperial Legislative Council. However, the British Government with the efforts of Vallabhbhai patel rejected these demands. In 1918, Bombay passed a primary education Act permitting Municipalities to introduce compulsory education in their areas for all childrens. Subsequently, Acts aimed at compulsory primary education were passed in several provinces, like Punjab, the United Provinces, Bihar and Orissa, Assam, Bengal and Madras. These laws, however, were not satisfactorily implemented due to reasons, namely, technical flaws in the statutes, lack of experience and interests on the part of the local boards. Unwillingness to make use of the power of prosecution under the Acts and delays in connection of defaulters.²⁰

¹⁸ Ibid. p.3

¹⁹ *Supra note 1* visited on 8.5.2008

²⁰ *Supra note 13*

The exalted place that education held in our society, in spite of, its non-availability, to most people as discussed above, continue to retain that place even during the long spell of foreign rule. The Indian National Congress was first conceived in an English brain. A. O. Hume saw the need for educated national forum in which “the picked men, the most highly educated of nations could meet each year to secure greater freedom-a more impartial administration and a larger share in the management of their own country”.²¹

Similarly the Nehru report 1928 provides:

“All citizens of the common wealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions maintained or aided by the state and such right shall be enforceable as soon as due arrangement shall have been made by competent authority.”²²

In 1937, at the All India national Conference on Education held at Wardha, Gandhi mooted the idea of self-supporting ‘basic education’ for a period of seven years through vocational and manual training. This concept of self-support was floated in order to counter the Government’s constant excuse of lack of resources. The plan was to not only educate children through vocational training/manual training by choosing a particular handicraft, but also to simultaneously use the income generated from the sale of such handicrafts to partly finance basic education.²³ Furthermore, education was supposed to be in the mother tongue of the pupils with Hindustani as a compulsory subject. Two other interesting features of the Dardha Scheme are as follows: first, within the ‘basic education course’, there were two divisions, the ‘lower basic’ or ‘primary’ corresponded to classes I-V. The ‘upper basic’ or ‘post-primary’ correspond ended to classes VI-VII. The divisions between primary and post primary was created with a view to giving pupils the option of shifting to another form of education if they so desired after the first five years of ‘basic education’²⁴. Second, a minimum wage for teachers was stipulated under the Wardha Scheme. Based on these ideas, the Wardha Scheme of Education was

²¹ *Supra note 17 p. 4*

²² Nehru Report 1928, Fundamental Rights Act 4(v)

²³ B. G. Khareteal, Wardhe Education Scheme, First Communities Report, available at www.education.nic.in

²⁴ *Ibid*

formulated for rural areas. The next landmark development in the history of FCE in India was the Post War Plan of Education Development of 1944, also called the Sargent Plan, which recommended FCE or eight years (6-14 years' age group)

During their fight for freedom our leaders did not miss even a single opportunity to claim education as a fundamental right for all in any possible future Constitutional scheme for the country.²⁵ Unfortunately, all these attempt made by the Indian leaders at times, were rejected at the hands of the British Government as there is not mention of right to education under the Government of India Act 1935. This situation continued till the Indian independence. Thus the educational systems failed to fulfil the aspiration of the Indian people during the British rule. The right to education was confined to the level of demands made at times by the Indian leaders and it was hardly conceived by the British Govt. A few more universities were established during the period as centers of higher education, which were insufficient in order to cater in the needs of the large masses on the one hand and at the same time unsuitable to sustain and develop the traditional occupational profession, arts and craftsmanship of the Indian people on the other hand.

(II) Framing of the Constitution

In 1946, the Constituent Assembly was constituted to frame a Constitution for free India. Nehru at the very outset told the members of the assembly:

*The first task of this assembly is to free India through a new constitutions, to feed the starving people, and to cloth the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity.*²⁶

On 23rd November, 1948, Pandit Lakshmi Kant Mitra moved a motion by amendment No. 962, in the assembly.²⁷ That in article 36, the words "Every citizen" is entitled to free primary education and be deleted; and the article will read quoted is, as: "*The state shall endeavor to provide within a period of ten years from the commencement of this*

²⁵ B. Shiva Rao, Framing of India's Constitution, A Select Documents, 1968, Vol. I, p. 59

²⁶ Quoted in M. L. Upadhyaya, "Legal Aspects of Equality of Educational Opportunities in India, VII JBCI(1974) P.134

²⁷ CAD. Vol. VII p. 538

constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

The object of this amendment was to bring article 36 into line with the preceding and the subsequent articles, in form at any rate, because draft articles 30, 31, 32, 33, 34, 35, 37 and 38 of draft Constitution all begin with the words “The state shall... Draft article 36 provided; every citizen is entitled to education etc.” The learned member argued therefore that if the words as referred above are deleted this also would come into line with the other articles. He further pointed out that part IV deals with directive principles of state policy, and the provisions in it indicate, the policy that is to be pursued by the future government of the country. Unfortunately in article 36, this directive principle is coupled with a sort of a fundamental right, i.e. “that every citizen is entitled... etc.”²⁸ Here directive principle is combined with a fundamental right, therefore it was submitted by the learned member that the portion indicated above should be deleted.

Hon’ble Mr. Mitra also drew the attention of the Drafting Committee about the original draft in the margin of which there was a note: “Provision for the free primary and secondary education.” “That is to say, to every citizen upto the age of 14 years, the state shall provide within ten years of the commencement of this Constitution, free and compulsory education. In other words the education need not be confined to the primary but it may go upto the secondary stage, so long as the person is below the age of 14.

While commenting upon the amended provision of article 36; Naziruddin Ahmad²⁹ suggested that it would be better to continue it to primary education and that should be a directive principle of state. As per the context and from other internal evidence that what was intended was compulsory “primary” education. The state cannot undertake to give compulsory education of a secondary character. Mr. Ahmad moved another amendment to article 36 as:

“That is article 36 a semi-colon be inserted after the word education.”

When article 36 was kept open for general discussion Sri B. Das³⁰ criticised the inclusion of right to education under part IV of the Constitution on the ground of language. He said, Directive Principles are first pious hopes and pious wishes laid down them

²⁸ Ibid

²⁹ Ibid p. 539

³⁰ Ibid, p. 539

occasionally to create trouble for the provisional ministries and very seldom the central government will be affected by criticism of this House. He asked what free and compulsory primary education would be like, will it be one language or will it be two or three language, if a province has two or three kind of people making up the province?.

According to him, primary education gives individuals the chance to be communicated with their God, and in communication with the textbook of their religion, and consequently under Amendment No. 970, it was asked for the free and compulsory primary education for all children in their respective mother tongues. It is to be noted that it is very primary and essential problem that we should not denationalize those peoples who have a mother tongues of their own, and compel them to learn the mother tongue of some one else. Commenting upon the amendment moved by Mr. Mitra³¹ Dr. B.R. Ambedkar said:

*"I accept that amendment proposed by my friend Mr. Mitra, which suggest the deletion of the word "every citizen is entitled to free primary education and: But I am not prepared to accept the amendment of my friend Mr. Naziruddin Ahamad. The objectives of the rest of the clause of article 36, after amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. Its purpose is to forbids any child being employed below the age of 14, and child must be kept occupied in some educational institutes and that is why I say the word 'primary' is quite inappropriate in that particular clause, and therefore I oppose his amendment."*³²

Sri M. Ruthnaswamy³³ asked, is right to education justifiable right if the state government have no money?

G. B. Pant pointed out that the above right cannot be justifiable and no court can possibly adjudicate.

Sardar Vallabhbai patel, Chairman, Advisory Committee on Fundamental Rights, when submitting his Report to the president of the Constituent Assembly of India observed

³¹ Ibid. p. 538

³² Ibid. p. 540

³³ *Supra* note 25 vol. II p. 272

that³⁴ “we have come to the conclusion that in addition to justifiable Fundamental Rights the Constitution should include certain directives of state policy which though not cognizable in any court of law, should be regarded as fundamental in governance of the country, and therefore, in this way the right to education was enshrined under part IV of the Constitution. Ultimately Right to education by the Constituent Assembly was incorporated under the draft article 38. Which says:

*“The state shall, within the limit of its economic capacity and development makes effective provision for securing the right to work, to education, and to public assistance in case of unemployment, old age, disablement and other cases of undeserved ward”.*³⁵

Thus it is submitted that our founding father – the Constitution makers played politics with the right to education and free compulsory basic education. They did not give any importance to the right to education, and did not accept it as a social welfare programme. It may be recalled that originally, the sub-committee on Fundamental Rights of the Constituent Assembly proposed that Basic Education be included in the list of Fundamental Rights, but subsequently it was rejected by the Constitution makers. They said that it is not justifiable rights, in case the government has no money, it cannot be justifiable, which no court can adjudicate. Thus, this clause was transferred to Part IV (Directive Principles).

They contended that if a right to education becomes non-justifiable, it would remain as pious wishes. They added that if it does not become imperative obligations of the State towards the citizens, they would be perpetuating a needless fraud. If the State has no such responsibility laced upon them, they might be inclined to avail themselves of every excuse to justify their own inactivity to the matter, indifference, or worse.

B: DEFINITIONAL CONCEPT

Life is not merely an animate or vegetative existence but it is a state of conscious being. It is supported with a valuable bundle of right to make it possible and meaningful in view of the fact the right to life cannot mean only a right to animate existence but it

³⁴ Ibid. p. 304

³⁵ Ibid p. 323

includes all those rights which are necessary to make life worth while. Such rights are innumerable beginning with the first moment of existence in the womb of the mother upto the last spur of existence. Of all such rights the most significant is the 'right to education'. The 'right to life' has no meaning if one is not able to live it.

A person cannot live life property unless prepared for it through education and training. Thus the first and the foremost obligation of the state, is that it must recognise and honor the 'rights to education' of its people to make their lives better and try to make good citizens out of them. Especially when without education, a state cannot expect its citizen to be capable and skilled.³⁶

Education is the very foundation of good citizenship and principal instrument to awaken the child to cultured values and for preparing the child for latter professional training and helping him / her to adjust to the environment. Education nourishes intellectual advancement and develops no dignity of the persons, without which there is neither intellectual excellence nor pursuit of happiness. Without education a man is so circumstanced that knows not how to make the best of himself. For him the purpose of society is abinitio frustrated, when citizens are in that vulnerable ignorance and squaller, they knows not themselves how to make use of their opportunities and the opportunities are mockery and the fundamental rights are teasing illusions³⁷.

It is through the education a person makes himself ideal, meaningful and powerful because education means knowledge – and “knowledge itself is power”.

As rightly observed by John Adams³⁸ the preservation of means of knowledge among the lowest rank is of more importance to the public than all the properties of all the rich man in the country. Therefore education is essential for social unity, and fraternity.”

³⁶ M. Afzal Wani, *Education as a Human Right: Policy and Action in India*, 40 JILI. (1998) p. 244

³⁷ E. Dharma Rao, *Scheduled Castes and Scheduled Tribes Admission into Educational Institutions*, AIR 1991 (Jour) p. 185

³⁸ Shiv Dutt Sharma, “*Education is Basic Human Right of Human Being*. AIR 2001 (Jour) p.285

Education developed human personality and the senses of the dignity and strengthens the respects of the human right and fundamental freedoms. Education enables all persons to participate effectively in free society, promotes understanding, tolerance and friendship among all persons. Therefore education is a tool to maintain peace, unity and integrity of the Nation.

Now coming to the definitional aspect of Education it is pertinent to refer a few important and widely accepted definitions.

According to Oxford Dictionary³⁹, the term "Education" is defined as the process of education or being educated, and the theory and practice of teaching. It also gives information about or training in a particular subject or informal an enlightening experience.

The term is defined in different perspectives. It may include the act or process of educating or being educated; the knowledge or skill obtained or developed by a learning process; a program of instruction of a specified kind or level: a college education; the field of study that is concerned with the pedagogy of teaching and learning; an instructive or enlightening experience.

According to Mitra's Legal and Commercial Dictionary⁴⁰ the term Education is defined as:

The action or process of education or of being educated; a stage of such process; the knowledge and development resulting from an educational process (a man of little -); the field of study that deals mainly with method of teaching and learning in schools.

Emile Durkheim defined education as 'the action exercised by the older generations upon those who are not yet ready for social life. Its object is to awaken and develop in the child those physical, intellectual and moral states which are required of him both by his

³⁹ Oxford Dictionary, 7th Edition, 2005, p. 488

⁴⁰ Mitra's Legal and Commercial Dictionary, Eastern Law House, New Delhi. 1991. p. 256

society as a whole and by the milieu for which he is specially destined⁴¹. **Earl Warren**, C.J. Speaking for the Supreme Court of United states in *Brown v. Board of Education* ⁴² has emphasized this fact in the following words:

“Today, education is perhaps the most important function of States and local governments.... It is required in the performance of our most basic responsibilities ... It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for latter professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonable be expected to succeed in life if he is denied the opportunity of an education.”

In Chartered Insurance Institute v. London Corporation ⁴³ The Court has emphasized the importance of education as in one sense the word “education” may be used to describe any form of training, any manner by which physical or mental attitude, which man may desire to have for the purpose of his work, may be acquired.

However in *Ramchand v. Malkapur Municipality* ⁴⁴ the High court of Bombay stress that Education means teaching or training up the person in general learning other than teaching or teaching up for a business or professional. Levying and collection of cess for the purpose of promoting the education would be covered by the term ‘education’ in Entry No. 11 of List II of the Seventh Schedule of the Constitution.

Education is the key to the door of modernization. Improved education prospects, including literacy and opportunities for skill training, have direct implications for the quality of the life that people enjoy. In the changing society, it is now well recognized that education, formal and nonformal, is linked with programmes of rural development. To be active participants, the people in the rural areas must become aware of national and

⁴¹ Emile Durkheim, *Education et Sociologie*, 1922. T.B Bottomore, “Sociology “1986. p. 262

⁴² 98 L ed: 347 US 483 (1954)

⁴³ (1957)2 ALL ER 638

⁴⁴ AIR 1970 Bom. 154

educational goals and programmes⁴⁵. Education can play a vital role in promoting and developing self-confidence, self-reliance, initiatives and skills of innovations. It is notable that all such things are basis and significant in the process of human development and, in turn, for the development of human society as a whole.

Education brings excellence, enriches the mind and illuminates the spirits. It prepares a child for the good citizenship. It liberates from ignorance, superstition, prejudices and ultimately unfolds the vision and truth. Ignorance is the mother of weakness and helplessness, whereas education brings light of knowledge and the knowledge in itself is power. Again, education is the preeminent means for promoting human values, the quality of human resources and respects for the cultural heritage. It is the excellence source of all happiness. In the absence of education exploitation and abuse of the child is sure to occur⁴⁶.

*In Mohini Jain v. State of Karnataka*⁴⁷ the Supreme Court highlighting the importance of education said that, the fundamental purpose of education is same at all time 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. Besides in a democratic form of government, which depends for its sustenance upon the enlightenment of the populace, education is a social and political necessity. In India, the leaders harped upon universal primary education as a desideratum for national progress but the percentage of illiteracy here is still appalling. In this era of knowledge- explosion when the frontiers of knowledge are enlarging with incredible swiftness it is the foremost need of the state to eradicate illiteracy that persists in a depressing measure. Again in a very lucid style Mohan, J. explains the need for eradicating illiteracy as follows:

⁴⁵ A.K Singh and A.Bhaumik, "*Education, Participatory Training and Rural Development*, Chugh Publication, All. P. 254.

⁴⁶ Shrinivas Gupta, "*Legal Attitude towards Child Education*." CILQ. 1994. Vol VII p. 432

⁴⁷ AIR 1992 SC 1858

*Victories are gained, peace is preserved, progress is achieved, and civilization is built up and history is made not on the battlefield where ghastly murders are committed in the name of patriotism, not in the council chambers where insipid speeches are spun out in the name of debate, not even in factories where are manufactured novel instrument to strangle life, but in educational institutions which are the seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers who will determine the progress of the land.*⁴⁸

Education is enlightenment. It is the one that lends dignity to a man as was rightly, observed by **Gajendragadkar J.** in *University of Delhi v. Ram Nath*⁴⁹

“Education seeks to built up the personality of the pupil by assisting his physical, intellectual, moral and emotional development.”

The importance of education was emphasized in the ‘**Neethishatakam**’ by **Bhartruhari** (First Century B.C) in the following words:

“Translation :

Education is the special manifestation of man;

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

Education secures material pleasure, happiness and frame;

Education is the teacher of the teacher;

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

A man without the education is equal to animal.”⁵⁰.

The significance of education was also considered by the Supreme Court in *T.M.A Pai Foundation v. State of Karnataka*⁵¹ the Court said that

⁴⁸ *Unnikrishnan J.P v. State of A.P* (1993) 1 SCC 645

⁴⁹ AIR 1963 SC 1873 p. 18

⁵⁰ *Supra* note 48 p. 2230

⁵¹ AIR 2003 SC. 355

“All education is expected to be liberal. It should free us from the shackles of ignorance, prejudice and unfounded belief. If we are incapable of achieving the good life, it is due to faults in our inward being, to the darkness in us. The process of education is the slow conquering of darkness. To lead us darkness to light, to free us from every kind of domination except that of reason, is the aim of education.”

*In Aruna Roy v. Union of India*⁵², the Supreme Court while emphasizing on the value of education held that education should not be for the purpose of making a child merely literate and intelligent. The real education is one in which a child gradually realizes that he is made up not only of body and mind but also some inner elemental qualities. Democracy can not only survive and constitution can not work unless Indian citizens are not only learned and intelligent, but they are also of moral character and imbibe the inherent virtues of human being such as truth, love and compassion.

Since societies have grown more complex now, the state must itself take all positive measures necessary for providing education to its citizens. The Supreme Court of United States *in Wisconsin v. Yoder*⁵³ recognized this obligation of the State saying that establishing public schools was one of the primary functions of a state. This is the reality and no sensible person, I believe, can deny this view of the United States Supreme Court. It is pertinent to say that the need for the right to education is better understood by knowing the aim and importance of education. Education broadly serves two purposes; first, it equips people with knowledge and skills of analysis and helps them attain the freedom to enjoy the life. Second, it prepares them to become economically independent. Education development is the essential pre-requisite to all –round development of the society economically, socially and culturally. Education has the power to eradicate poverty, eliminate gender and racial discrimination, protect against violation of the right of the individuals, promote democracy and development and maintain human dignity. Thus, education shapes the destiny of a nation.

⁵² AIR 2002 SC 3176

⁵³ 32 L ed 15 : 406 US 205 (1971)

Amartya Sen also explores the importance of the basic education in economic development. According to him without compulsory education, no economic development is possible. The dynamic process of education remains one of the most important issues for the upliftment of humanity.

Since children are future citizens and the success of the democracy depends upon their ability, both children and democracy are interrelated and independent. It also implies that education is the means through which democracy establishes social justice. Thus, a right to adequate education is a defining feature of democracy which is necessary for its survival and functioning.

From the above laid discussion, it is concluded that education is as necessary as food, cloth and shelter.

At the end it may be said that education is a high ideal

And value to be perused and an absolute necessity for the all round

growth of human personality. It prepares a sound base for the peaceful co-existence and advancement of the society. Education must, therefore, be made available to everyone; available not in the sense of freedom to get oneself educated but in sense of providing every facility necessary to get oneself educated. This is a difficult task and requires enormous recourses, skilled planning and sincere planning and sincere execution of plans and policies.

C: OTHER COUNTRIES

The right to education has been guaranteed in some form or the other, either explicitly or implicitly, in many of the Constitutions of the world. The provision and historical development of right to education and educational system of different countries such as U.S.A, England, Canada, Japan, Pakistan, Bangladesh and some of the countries of the world are being discussed.

(i) United States of America

The history of education in the United States, often called foundation of education, is the study of educational policy, formal institutions and informal learning from the 17th to 21st century.

The first American school opened during the colonial era. As the colonies began to develop, many in New England began to institute mandatory education schemes. In 1642 the Massachusetts Bay Colony made “proper” education compulsory⁵⁴. Similar statutes were adopted in other colonies in the 1640s and 1650s. Virtually all of the schools opened as a result were private. The nation’s first institution of higher learning, Harvard University, was founded in 1636 and opened in 1638.

Religious denomination establishes most early universities in order to train ministers. In New England there was an emphasis on literacy so that people could read the Bible. Most of the universities which opened between 1640 and 1750 from the contemporary Ivy League, including Harvard, Yale, Columbia, Princeton, Brown, the University of Pennsylvania, and several others⁵⁵. After the American Revolution, the new national government passed the Land Ordinance of 1785, which set aside a portion of every township in the unincorporated territories of United States for use in education. The provisions of the law remained unchanged until the Homestead Act of 1862. After the Revolution, an emphasis was put on education, especially in the northern states, which made the US have one of the highest literacy rates at the time.

The school system remained largely private and unauthorized until the 1840s. In fact, the first national census conducted in 1840 indicated that near- universal (about 97%) literacy among the white population had been achieved⁵⁶. The same data tables demonstrate that of the 1.8 millions girls between five and fifteen (and 1.88 million boys of the same age) about 55% attended the primary schools and academies⁵⁷. The data tables do not note the actual attendance rates, but only reflects the static numbers at the time of the U.S. census.

Data from the indenture servants contracts of German immigrant children in Pennsylvania from 1771-1817 showed that the number of children receiving education increased from 33.3% in 1771-1773 to 69% in 1787-1804. Additionally, the same data showed that the ratio of school education versus home education rose from .25 in 1771-1773 to 1.68 in 1787-1804⁵⁸. The increase in number of children being educated, and the

⁵⁴ Massachusetts Education Laws. Of 1642 and 1647 available on [www. eiu](http://www.eiu). Visited on 21.5.2008

⁵⁵ [www. Cals. Ncsu. Edu](http://www.Cals.Ncsu.Edu). Visited on 21.05.2008

⁵⁶ 1840 Census Data available on [http. /books. Google,com](http://books.Google.com) visited on 22.5.2008

⁵⁷ *Ibid.*

⁵⁸ *The Journal of Economic History*, vol: 52, No. 2. 1992 pp. 363-375

fact that more students were being educated in school rather than at home, could help explain how near- universal literacy was achieved by 1840.

Education reformers such as Horace Mann of Massachusetts began calling for public education systems for all. Upon becoming the secretary of education in Massachusetts in 1837, Mann helped to create a state wide system of “common schools,” which referred to as belief that everyone was entitled to same content in education. These early efforts focused primarily on elementary education. The common school movement began to catch on in the North. Connecticut adopted a similar system in 1849, and Massachusetts passed a compulsory attendance law in 1852.

It was not until after the Civil War and under Reconstruction governments, that the coalition of black and white Republicans in state legislature established universal public education in the South. This was one of the major achievements of the reconstruction governments⁵⁹. By 1870, every state provided free elementary education. Although in some states, education was first establishes as integrated, after white Democrats regained political power in 1870s, they imposed segregation on all schools, and later on all public facilities. The South was struggling after the war, but as they had before the war, the wealthiest classes resisted taxes that would provide sufficient funding for education.

More significantly, through laws and new constitutions, white legislatures systematically disfranchised most African Americans and tens of thousands of poor whites in each Southern state from 1890-1908. The disfranchisement lasted for decades; in most states, it lasted with little relief until with the Civil Rights Movement of the 1960s had gained passage of the Voting Right Act of 1965⁶⁰. As one result, white dominated legislatures consistently under funded schools for African American. Most rural schools ran shortened scheduled because children were needed in framing. It was chiefly due to the African American community’s own tremendous efforts with the help of some Northern financial support in establishing schools and colleges, that 30,000 African American teachers trained and by 1900, a majority of black in the South were literate.

⁵⁹ W.E.B Du Bois , *Black Reconstruction in America*, oxford University press, New York, 1935.

⁶⁰ Richard H. Pildes, “*Democracy, Anti-Democracy, and the Canon*,” Constitutional commentary, vol17 2000 p. 12-13.

By 1900, 31 states required children to attend school from the age of 8-14 years old. As a result, by 1910, 72 percent of American children attended school. Half the nation's children attended one- room schools. In 1918, every state requires students to at least complete elementary schools. Lessons consisted of students reading aloud from their text such as the Mc Guffey Readers, and placed emphasis on rote memorization. Teachers often used physical punishment, such as hitting students on the knuckles with birch switches, for incorrect answers.

Because the public school focused on assimilation, immigrants who were not protestant organized to develop their own schools. This was also an effort to create a social environment more supportive than the often hostile native who resented immigration by Catholics, in addition. Catholic communities raised to built colleges and seminaries to train teacher and religious to head their churches⁶¹. The most numerous early Catholics were Irish immigrants in the early to mid -19th century, followed by Germans, Italians and other Catholics from Southern and Eastern Europe. By the time latter groups immigrated, Irish immigrants and their descendents had often built an extensive network of Churches and schools in many cities. The Irish dominated the American Catholic Church for generations. Through the society of Sisters that students could attend private schools to comply with compulsory education laws.

To put the historical progress of education in the United States into perspective, American towns began providing high school in 1910. By 1940, 50% of young adult had earned a high school diploma.

At the beginning of the 20th century, fewer than 1,000 colleges with 160,000 students existed in the United States. Explosive growth in the number of colleges occurred at the end of the 1800s and early twentieth century. Philanthropists endowed many of these institutions. Leland Stanford, one of The Big Four, for example, established Stanford University in 1891.

Many American public universities were created because of the Morrill Land-Grant Colleges Acts of 1862 and 1890⁶². During the rapid westward expansion of the United States during the 19th century; the federal government took the control of huge

⁶¹ Dennis Clark, *"The Irish in Philadelphia: Ten Generation of Urban experience,"* Temple University Press, 1984, p. 96.

⁶² Primary Document in American History, available at www.Loc.Gov. visited on 22.5.2008

amount of so -called “empty” land (often after forcing the previous Native American residents into reservations). Under the Morrill Acts, the Federal government offered to give 30,000 acres (121 km) of federal land to each state on the condition that they used the land (or proceeds from its sale) to establish colleges. The resulting schools are often referred to as land-grants colleges.

Founded in 1863, Kansas State University is the pioneer land-grant institution. Other well known land- grant Universities includes Texas A&M University, Pennsylvania State University, The Ohio State University and the university of California system. Some states, especially in the south, created more than one land-grants institution, with one established as a historically black college (HBCU). Three states, Alabama, Massachusetts and New York, designated private universities a one of their land-grants institutions. Respectively, there were Tuskegee University, an HBCU; Massachusetts Institute of Technology and Cornell University.

Following World War II, the GI made college education, and deceased an association of higher education as a pursuit only for the wealthy. The rate of enrollment at institutions of higher learning has grown even since, although it has varied by gender and ethnicity. Another important, recent reform in America’s education system came under the No Child Left Behind Act of 2001. The current education structure in the United States has been compared with the development of fast food- standardized, prepackaged, and unhealthy. Political acts such as No Child Left Behind that are intended to improve education tend to reinforce the Philosophy of education that knowledge is something that can be delivered in a uniform and efficient manner. This undermines the roles of both the students and the teachers.

(ii) England

Education in England is the responsibility of the Department for children, schools and families and the Department for Innovation, Universities and skills department of the government of the United Kingdom. Until June 2007, education in England was the responsibility of the Department for Education and Skills. At a local level the local authorities take responsibility for implementing policy for public education and state schools. There is also a strong tradition of independent schooling.

The education structures for Wales and Northern Ireland are broadly similar to the English system, but there are significant differences of emphasis in the depth of teaching objective in Scotland. Traditionally the English system emphasizes a deeper understanding of a relatively smaller number of subjects. The Scottish system promotes the teaching of more subjects at the expenses of depth.⁶³

In England, the full time education is compulsory for all children aged between 5 and 16 (inclusive) across England. This can be provided by state, schools, independent schools, or home schoolings⁶⁴.

The history of state- sponsored education in England

The period before 1950⁶⁵

- From medieval times, the Church (or chapel) providing education to all classes of society, in monasteries, at public, orphanages, charity schools, grammar schools, church foundations, or by the chaplains to private households. Until as late as the nineteenth century, all University fellows and many schoolmasters were expected or required to be in holy orders. Schoolmistress typically taught “the three Rs” (reading, writing, and arithmetic) in dame schools, charity schools, or informal villages schools. The Church of England resisted early attempts for the state to provide secular education, and church schools still are an integral part of the state school system.
- In August 1833, the U.K parliament voted sums of money each year for the construction of schools for poor children, the first time state had become involved with education in England and Wales, whereas the programme of universal education in Scotland began in 1561.
- A meeting in Manchester in 1837, chaired by Mark Phillips, led to the creation of Lancashire Public School’s Association. The association proposed that non-denominational schools should be funded from local taxes.
- In 1839 government grants for the construction and maintenance of schools were switched to voluntary bodies, and became conditional on a satisfactory inspection.

⁶³ www. Wikipedia. Org. visited on 22.5.2008

⁶⁴ www. Home education. org. U.K visited on 22.5.2008

⁶⁵ www. Wikipedia. Org/education _in England. visited on 22.5.2008

- In 1840 the Grammar Schools Act expanded Grammar School curriculum from classical studies to include science and literature.
- Before 1870, education was largely a private affair, with wealthy parents sending their children to fee-paying schools, and others using whatever local teaching was made available.
- The *Forester Eliminary Education Act 1870* required partially state funded board school to be set up to provide primary (elementary) education in areas where existing provision was inadequate. Board schools were managed by elected schools boards. The schools remained fee-paying. The previous government grant scheme established in 1833 ended on December 31st 1870.
- Under the *Elementary Education Act 1880*, education became compulsory from the ages of 5 to 10.
- The *Free Education Act 1891* provided for the state payment of school fees up to ten shillings per week.
- The *Elementary Education (School Attendance) Act 1893* raised the school leaving age to 11 and later to 13. The *Elementary Education (Blind and Deaf Children) Act* of the same year extended compulsory education to blind and deaf children, and made provision for the creation of the special schools.
- The *Voluntary Schools Act 1897* provided grants to public elementary schools not funded by schools boards (typically Church Schools).
- From April 1900 higher elementary schools were recognized, providing education from the age of 10 to 15.
- The 'Balfour' *Education Act 1902* created local education authorities (LEAs), who took over responsibility for board schools from the schools boards. Grammar schools also became funded by the LEA. The act was of particular significance as it allowed for all schools, including denominational schools, to be funded through rates (local taxation).
- The Fisher *Education Act 1918* made secondary education compulsory up to age 14 and gave responsibility of secondary schools to the states. Under the Act, many higher elementary schools and endowed grammar schools sought to become state funded central

schools or secondary schools. However, most children attended primary (elementary) schools up until age 14, rather than going to separate schools for secondary education.⁶⁶

- After the passing of the 1929 *Local Government Act*, Poor Law Schools became state funded elementary schools.
- The Bulter Education Act of 1944 established the Tripartite System, and defined the modern split between primary and secondary education at age 11.
- Education was made compulsory up to age 15 in 1947.

The post –war period ⁶⁷

Due to the perceived failures of the tripartite system, the Labor government in 1965 requested proposal from all the UK’s regions for them to move from the tripartite system to the Comprehensive System. Note that was an optional reform for the region, and regions still have the tripartite system.

In 1972, education was made compulsory up to age 16. A generation of “ROSLA” (Raising of the school leaving age) children caused significant problems for teachers, Following the 1979 general Election, the conservative party regained the power the central government, and made two main changes in this period.

1. New Vocationalism was expended (Labour had made some small efforts before hand but the conservatives expended it considerably). This was seen as an effort to reduce the high youth unemployment, which was regarded as one of the causes of the sporadic rioting at the end of the seventies.
2. The Assisted Places Scheme was introduced in 1980, where by gifted children who could not afford to go to fee-paying schools would be given free places in those schools if they could pass school’s entrance exam.

The Education Reform Act of 1988⁶⁸

The 1988 Education reform act made considerable changes to the education system. These changes were aimed at creating a ‘market’ in education with schools competing

⁶⁶ Ibid

⁶⁷ *Supra note. 65.*

⁶⁸ *Supra note 67*

with each other for 'customers' (pupils) the theory was that bad schools would lose pupils to the good schools and either have to improve, reduce in capacity or close.

The reform included the following:

- The National Curriculum was introduced, which made it compulsory for schools to teach certain subjects and syllabus. Previously the choice of subjects had been made up to the schools.
- National curriculum assessments was introduced at the key stages 1 to 4 (ages 7, 11 14 and 16 respectively) through what were formerly called SATS (Standard Assessment Tests). At Key Stage 4 (age 16) the assessments were made from the GCSE exam.
- League tables began showing performance statistics for each school. These are regularly published in newspapers and are available (<http://www.dfes.gov.uk/performance/tables/>) over the web, so parents can see how schools are doing in each areas of the country.
- Formula funding was introduced, which meant that the more children a school could attract to, the more money it got.
- Open Enrollment and choice for parents were brought back, so that parents could choose or influence which school their children went to.
- Schools could, if enough of their pupil's parents agreed, opt out of local government control, becoming grants maintained schools and receiving funding direct from central government. The government offered more money than the school would get usually from the local authority as an enticement. This was seen as a political move given that often local authorities were not run by the government by the conservative party whereas central government was.

New Labour's educational policies from 1997⁶⁹

During the 1997 General Election, the Labour party mantra was "Education. Education, Education," a reference to their confidence slogan. Winning the election returned them to

⁶⁹ Supra note 65

power, but New Labour's political ideology meant that many of the changes introduced by the Conservative during their time in power remained intact.

They began changing the structure of the school and higher education systems. The following changes took place:

- The previous Labour focus on the Comprehensive system was shifted to a focus on tailoring education to each child's ability. Critics see this reminiscent of the original intentions of the tripartite system.
- Grants- mentioned status was abolished, with GM schools being given the choice of rejoining the local authority as a maintained community school, or becoming a Foundation school.
- Labour expanded a policy started by the conservatives of creating specialist school. This new type of secondary school teaches the National Curriculum subjects plus a few specialist branches of knowledge (eg business studies) not found in most other schools. These schools are allowed to select 10 % of their pupils.
- Numbers: in 1997 there were 196 of these schools. In August 2002 there were thousands. By 2006 the plan is to have 2000, and the goal is to make all secondary schools specialist eventually.
- The Beacon Schools programme was established in England in 1998. Its aim was to identify high performing schools, in order to help them form partnerships with each other and to provide examples of effective practice for other schools. The programme was replaced in August 2005 with more broadly based programmes; the leading edge partnership programme (for secondary schools) and primary strategy learning network (PSLNs) (at the primary level)⁷⁰.
- A new grade of advance skills teachers was created, with the intention that highly skills teachers would be paid more if they accepted new post without reach duties beyond their own schools.
- City academics were introduced. These are new schools, built on the site of, or taking over from existing failing schools. A city academy is an independent school within the state system. It is outside the control of the local education authority and set up with

⁷⁰ Department for education and skills website. www.standards.dfes.gov.uk. Visited on 22.5.2008

substantial funding from interested third parties, which might be businesses. Charities or private individual.

- Education Action Zones were introduced which deprived areas are run by an action forum of people within that areas with the intention of making that areas schools better.
- Vacation qualifications were renamed / restructured as follows;

GNVQs became Vocational GCSEs and AVCEs.

NVQs scope expanded so that a degree equivalent NVQ was possible.

- The new deal was introduced, which made advisors available to long term unemployed (in the U.K this is defined as being unemployed for more than 6 months) to give help and money and those who want to go back into Education.
- Introduce Literacy and Numeracy hours into schools, and set targets for literacy and numeracy
- Set Truancy targets.
- Set a maximum class size of 30 for 5 to 7 olds.
- Introduced the EMA, (Education Maintainces Allowances), which paid to those between 16 and 18 as an enticement to remain in full time education and get A-Levels / AVCEs
- A performance threshold was introduced in 2000 to allow experience teachers access to higher rates of pay on meeting a set of performance standards including a standard of pupil attainment. The performance- related pay changes have been bitterly opposed by teaching unions, most notably the National Union of Teachers which challenged the Threshold scheme by legal action.
- Introduced curriculum 2000, which reform the further education system into the current structure of AS levels, A2 levels and key skills. Abolished the Assisted Places Scheme.
- A report was commissioned, led by the former chief –inspector of school, Mike Tomlinson, into reform of the curriculum and qualifications structures for 14-19 year – olds. The report was published on October 18, 2004 and recommended the introduction of a diploma that would bring together both vocational and academic qualifications and

insure that all pupils had a basic set of core skills. it is proposed that the current qualification would evolve into this diploma over the next decade, whether the government will follow the recommendations is yet to be seen-the Conservatives Party have already introduced alternative proposals to return to norm –referencing in A-levels rather than the current system of criterion –referencing .

- in 2003 green paper entitled Every Child Matters was published .It build on existing plans to strengthen children’s services and focused on four key areas :
- Increasing the focus on supporting families and carriers as the most critical influence on children’s life’s.
- Ensuring necessary intervention takes place before children reach crisis point and protecting children from falling through the net.
- Addressing the underlying problems identified in the report into the death of Victoria Climbié-weak accountability and poor integration.
- Ensuring that the people working with children are valued and trained.

The green paper-prompted a wide debate about services for children, young people and families. Their followed a wide consultation with those working in children’s services, and with parents, children and young people. The government published Every Child Matters: the next steps in November 2004 and pas the children act 2004, providing the legislative spine for developing more effective and assessable services focused around the needs of children, young people and families.

In January 2007 Education Secretary Alan Johnson announced plans to extent the school leaving age in England to eighteen by 2013. This would raise the leaving age for the first time since the last raised in 1972, when compulsory education was extended until sixteen. This change will include training such as apprenticeships and work based training rather than exclusively offering continued academic learning.⁷¹

(iii) Canada

Education in Canada is provided, funded and overseen by federal, provincial, and local governments. Education is within provincial jurisdiction and the curriculum is overseen by the province. Education in Canada is generally divided into Elementary (primary

⁷¹ School. Learning age set to be 18, BBC News. Website: www.bbc.co visited. On 20.5.2008

Schools, public Schools), followed by Secondary (High school) post secondary (university, colleges). Within the provinces under the ministry of education, there are district schools broad administrating the educational programmes. Education is compulsory up to the age of 16 in every province in Canada, except for Ontario and New Brunswick, where the compulsory age is 18. In some province early leaving exemptions can be granted under certain circumstances at 14. Canada generally has 190 schools days in the year, officerially starting from September (after Labour Day) to the end of June (usually the last Friday of the month, Wednesday in some Ontario schools).⁷²

Elementary, secondary. And post –secondary education in Canada is a provincial responsibility and there are many variations between the provinces. Some education fields are supported at various levels by Federal Departments. The Department of citizenship and Immigration is responsibility for the education of the first nations. North West Territorial education is the mandate of the Department of Resources and Development which latter came under the jurisdiction of the Department of Northern Affairs and National Resources. Vocational training can be subsidized via the Department of Labour⁷³. Junior kindergarten (or equivalent) as an official program exists only in Ontario currently. Kindergarten (or its equivalent) as is available in every province, but provincial funding, and the number of hours provided varies widely. Starting at grade one, at the age six or seven, there is universal publicly funded access up to grade twelve (or equivalent). Department on the province the age of mandatory entry is at 4-7 years. Children are required to attend school until the age of sixteen (Age 18 in Ontario and New Brunswick). About one of ten Canadians does not have high schools diploma- one in seven has university degree- the adult population that is without the high school diploma is a combination of both immigrants and Canadians –born. In many places, publicity –funded high school courses are offered to the adult population. The ratio of the high school graduate versus non diploma- holders is changing rapidly, partly due to chances in the labour market that require people to have a high school diploma and, in many cases, a university degree.

⁷² [www. Wikipedia. Org/ education in _ Canada](http://www.Wikipedia.Org/education_in_Canada) visited on 24.5.2008

⁷³ Ibid

Canada spends about 7% of its GDP on education. Since the adoption of section 23 of the Constitution Act, 1982, education in both English has been available in most places across Canada (if the population of children speaking the minority language justified it).

(iv) Japan

Japan is known for its well-maintained education system and excellent achievement. In successive international tests of mathematics, Japanese children consistently rank at or near the top. The Ministry of Education, culture, sports, science and technology (MEXT) is responsible for educational administration⁷⁴.

Formal education in Japan began with the adoption of Chinese culture in the 6th century. Buddhist and Confucian teaching as well as sciences, calligraphy. Divination and literature were taught at the courts of Asuka, Nara and Hein. Scholar officials were chosen through an Imperial examination system but contrary to China, the system never fully took hold and titles and post at the court remained hereditary family possessions. The rise of *bushi*, the military class, during the Kamakura period ended the influence of scholars officials, but Buddhist monasteries remained influential centers of learning.

During the Edo period (1603-1867), the daimyo vied few power in the largely pacified country. Since their influence could not be raised through war, they competed on the economic field. Their warrior-turned- bureaucrat Samurai elite had to be educated not only in military strategy and the martial arts, but also agriculture and accounting likewise, the wealthy merchants class needed education for their business, and their wealth allowed them to be patrons of arts and science. But temple schools (*terakoya*) educated peasants too, and it is estimated that at the end of the Edo period 50% of the male and 20% the female population possessed some degree of literacy. Even though contact with foreign countries was restricted, books from China and Europe were eagerly imported and *Rangaku* ("Dutch studies") became a popular area of scholarly interest.

After the Meiji Restoration of 1868, the methods and structures of Western learning were adopted as a means to make Japan a strong, modern nation. Students even high-ranking government officials were sent abroad to study, such as the Iwakura mission.

⁷⁴ www.wikipedia.org/Education_in_Japan.visited on 24.5.2008

Foreign scholars, the so-called o-yatio gaikokujin, were invited to teach at newly founded universities and military academics. Compulsory education was introduced, mainly after the Prussian model. By 1890, only 20 years after the resumption of full international relations, Japan already had enough western-education academic to discontinue employment of the foreign consultants.⁷⁵

The rise of the militarism to the education system to prepare the nation for war. The military even sent its own instructors to schools. After the defeat in World War II, the allied occupation government set an education reform as one of its primary goals, to eradicate militarist teachings and “democratize” Japan. The education system was rebuilt after the American model.

The ends of the 1960s were a time of students protests around the world, and also in Japan. The main subjects of protest were the Japan-U.S. security treaty. A number of reforms were carried out in the post-war period until today. They aimed at easing the burden of entrance examinations, promoting internationalization and information technologies, diversifying education and supported lifelong learning.

More than 99% of children are enrolled in elementary school. All children enter first grade at age six, and starting school is considered a very importance event in a child’s life.⁷⁶

Virtually all elementary takes place in public schools; less than 1% of the schools are private. Private schools tended to be costly, although the rate of cost increase in tuition for these schools had slowly in the 1980s. Some private elementary schools are prestigious, and they serve as a first step to higher-level private schools with which they are affiliated, and thence to a university.

Junior high school

Lower secondary school covers grades seven, eight, nine, children between the ages of roughly 12 and 15, with increased focus on academic studies. Although it is still possible to leave the formal education system after completion lower secondary school and find employment, fewer than 4% did so by the late 1980s.⁷⁷

⁷⁵ *Supra* note 74

⁷⁶ *Supra* note 74.

⁷⁷ *Ibid.*

Like elementary schools, most lower-secondary schools in the 1980s were public, but 5% were private. Private schools were costly, averaging 558,592 yen (US \$3,989) per students in 1988, about four times more than the 130,828 yen (US \$934) that the ministry estimated as the cost for students enrolled in public lower secondary schools. Teachers often majored in the subjects they taught, and more than 80% graduate from the four – Year College. Classes are large, with thirty-eight students per class on average, and each class is assigned a homeroom who doubles as counselor. Unlike elementary students, lower-secondary schools have different teacher for different subjects. The teacher, however, rather than the students, moves to a new room for each fifty-minute period.⁷⁸

Instruction in lower-secondary schools tends to rely on the literature method. Teachers also use other media, such as television and radio, and there is some laboratory work. By 1989 about 45% of all public lower secondary schools had computers, including schools that use them only for administrative purposes. Classroom organization is still based on small work groups although no longer for reasons of discipline.

All course contents are specified in the course of study for Lower-Secondary Schools. Some subjects such as Japanese language and mathematics are coordinated with the elementary curriculum other, such as foreign language studies, mathematics, science, music, fine art, health, and physical education. All students also are exposed either industrial arts or home making. Moral education and special activities continue to receive attention. Many students also participate in after-school sports clubs.

The ministry recognizes a need to improve the teaching of all foreign languages, especially English. To improve instruction in spoken English, the government invites many young native speakers of English to Japan to serve as assistance to school boards and prefectures under its Japan Exchange and Teaching Program. By 1998 participants numbered over 1,000.

High School

Even though upper secondary school is not compulsory in Japan 94% of all lower secondary school graduates entered upper secondary school as of 2000. Private upper-secondary schools account for about 24% of all upper-secondary schools, neither public

⁷⁸ Supra note 74

nor private schools are free. The Ministry of education estimated that annual family expenses for education of a child in a public upper-secondary school were about 300,000 yen (U.S 2,142) in both 1980s and the private upper-secondary schools were about twice as expensive.⁷⁹

The most common type of upper-secondary schools has a fulltime, general program that offered academic courses for students preparing for higher education and also technical and vocational courses for students expecting to find employment after graduation. More than 70% of upper-secondary school students were enrolled in the general academic program in the late 1980s. A small number of schools offer part-time or evening courses or correspondence education.

The first-year program for students in both academic and commercial courses is similar. They include basis academic courses, such as Japanese language, English, mathematics, and science. In upper-secondary school, differences in ability are first publicly acknowledged, and course content and course selection are far more individualized in the second year. However, there is a core of academic material through out all programs.⁸⁰

Vocational-technical programs includes several hundreds specified courses, such as information processing, navigation, fish farming, business English, and ceramics. Business and industrial courses are the most popular, according for 72% of all students in full- time vocational programs in 1989.

Most upper-secondary teachers are university graduates. Upper secondary schools are organized into departments, and teachers specialized in the major field although they teach the variety of courses with in their disciplines. Teaching depends largely on the lectures system, with the main goal of covering the very demanding curriculum in the allotted. Approach and subject coverage tends to be uniform, at least in the public schools.⁸¹

Training of disable students, particularly at the upper secondary levels, emphasizes vocational education to enable students to be as independent as possible within society. Vocational training varies considerably depending upon the student's disability, but the opinions are limited for some. It is clear that the government is aware of the necessity of

⁷⁹ *Supra note 74*

⁸⁰ *Ibid.*

⁸¹ *Supra note 74*

broadening the range possibilities for these students. Advancement for higher education is also a goal for the government, and it struggles to have institutions of higher learning accept more disabled students.⁸²

Universities and colleges

As of 1991, more than 2.1 million students were enrolled in 507 universities. At the top of the higher education structure, these institutions provide four-year training leading to a bachelor's degree, and some offer six-year programs leading to a professional degree. There are two type of public your-year college: the ninety six national universities (including the University of the Air) and the thirty-nine local public universities, founded by prefectures and municipalities. The 372 remaining four-year colleges in 1991 were private.⁸³

The overwhelming majority of college students attend full-time day program. In 1990s the most popular courses, enrolling almost 40% of all undergraduate students, were in social science, including business, law, and accounting. Other popular subjects were engineering (19 percent), the humanities (15 percent), and education (7percent).

The average costs (tuition, fees, and living expenses) for the year of higher education in 1986 were 1.4 million yen (US\$ 10,000). To help defray expenses, students frequently work part-time or borrowed money through the government-supported Japan Scholarship Association. Assistance also is offered by local government, nonprofit corporation, and other institutions.⁸⁴

According to The Times Higher Education Supplement, the two top –ranking universities in Japan are the University of Tokyo and Kyoto University.⁸⁵

(v) Pakistan

Education in Pakistan is divided into five levels : primary (grades one through five); middle (grade six through eight); high (grade nine and ten, leading to the secondary

⁸² Ibid.

⁸³ Ibid

⁸⁴ *Supra note 74*

⁸⁵ The Times Higher Education Supplement world. University Ranking available on www.alnaja7.org. visited on 24.5.2008

School Certificate); intermediate (grades eleven and twelve, leading to Higher Secondary school Certificate); and university programs leading to graduate and advanced degrees.

All academic education institutions are the responsibility of the provincial governments. The federal⁸⁶ government mostly assists in curriculum development, accreditation and some financing of research.

When Pakistan was founded in year 1947 as a result of the partition with India. The country had only one institution of higher education⁸⁷, the University of the Punjab. Over the next 20 year, many private and public schools and higher education institution were established to help the country's socio-economical development.

In the early 1970s, all of Pakistan's educational institutional were nationalized under the government of Zulfikar Ali Bhutto, who was committed to idea of Islamic Socialism.

For the next decade, Pakistan's entire system of education was state-run. However, the growing demand for the higher education fasts outpaced the established of new public universities. During that period, the system could accommodate only 25% of the higher school graduate who applied to higher education institutions. The overcrowding prompted many wealthy Pakistan to seek University degrees abroad in the United States, Great Britain and Australia, while others sought out private tutors at home or entered the job market without a degree.

In 1979 a government commission reviewed the consequence of nationalization and concluded that in the view of the poor participation rates at all levels of education, the public sector could no longer be the country's sole provider of education. By the mid-1980s, private education institutions were allowed to operate on the condition that they comply with government- recognized standards.

Until 1991, there were only two recognized private universities in Pakistan: Aga Khan University established in 1983; and Lahore University of Management Sciences establishes in 1985. By 1997, however, there were 10 private universities and in 2001-2002, this number had doubted to 20. In 2003-2004 Pakistan had a total of 53 private degree granting institutions.

⁸⁶ www. Wikipedia. Org. / Education level. Available on www. wes. Org.

⁸⁷ World Bank enrollment Level. Available on www. wes. org

The rapid expansion of private higher education is even more remarkable if we look at the number of institutions established on a year-by-year basis. In 1997, for instance, three private institutions were established; in 2001 eleven new private institutions were opened; and in 2002 a total of 29 private sector institutions sprung up.

The government has decided to introduced 'English Medium Education' on a phased basis to substantially and the right to 'Mother Tongue Education'. This new policy which is termed 'Education Sector Reforms (Policy decisions); states that "*English language has been made compulsory from class-I onwards.*" And the "*introduction of English as medium of institution for Science. Mathematics ,Computer Science and other selected subjects like Economics and Geography in all schools in a graduated manner.*"⁸⁸

(vi) Bangladesh

The educational system in Bangladesh is three-tiered and highly subsidized. The government of Bangladesh operates many schools in the primary, secondary, and higher secondary levels. It also subsidized parts of the funding for many private schools. In the tertiary education sector, the government also funded more than 15 state universities through the Universities Grants Commission.

In the past, Bangladesh education was primarily an English- controlled, upper-class affair with all courses given in English and very little being done for the common people. The Bangladesh education board has taken steps to leave such practices in the past and looking forward to education as a way to provide a somewhat poverty- stricken nation with a brighter future.

Bangladesh fully confirms to the education For All (EFA) objectives and the Millennium Development Goals (MDG) and international declarations. Article 17 of the Bangladesh Constitution assures that all children between the age of six and ten years are to be provided basis education free of charge.⁸⁹

⁸⁸ Government of Pakistan, Ministry of Education. available on www.gov.pk. Visited on 25.5.2008

⁸⁹ [www. Wikipedia. Org./ education_in_Bangladesh](http://www.Wikipedia.Org./education_in_Bangladesh) visited on 25.5.2008

From the time of English rule to the Pakistani regime and finally the Bangladesh system, education has evolved not only in methods but also in fundamental aspects like language and governance. Bangladesh has gone through various phases of education systems.

During British rule, education was mainly reserved for the wealthy class. The language of pedagogy was English, as religious nuns and other British people ran the schools. The few natives who were fortunate to receive education were either from wealthy families (Nawabs) or whose family had ties with British governing body. For one to receive higher education, such as a university degree, to become a professional, one had to attend schools in England. Such was the case of Mahatma Gandhi, who traveled to London to study law. As native people were treated as second-class citizens, education was largely withheld from the general population.⁹⁰

After the British left the Indian subcontinent, the territory currently known as Bangladesh came under Pakistan regime as the state of East Pakistan. Education during this period was still very scarce but those who had the means of acquiring it were no longer considered second-class citizens. The state language however was Urdu, the mother tongue of Pakistan. In East Pakistan, however, the native language was Bengali. Hence, a conflict over language was imminent. During that period schools system largely functioned in the English language and a few such schools, like the Holy Cross and numerous Catholic schools and colleges, were still taught by Christian missionaries.⁹¹

Education system

Currently the education system is divided into four levels or stages. The first is the Primary level which incorporate grades 1 to 5. The second is Secondary level which covers grades 6 to 10. The Higher Secondary levels consists of grades 11 and 12. If a student wishes to pursue further studies, tertiary education institutions are available. There are 11 government universities in Bangladesh and some 20 private universities which provide tertiary education. Students can choose to further studies in engineering, technology, agriculture and medicine at a variety of universities and colleges.⁹²

⁹⁰ Supra note 89

⁹¹ Ibid.

⁹² Ibid.

At all levels of schooling, students can choose to receive their education in English or Bengali. Private schools tend to make use of English-based medium while government-sponsored schools use Bengali medium of study.⁹³

A separate religious branch of education, known as the Madrasahs system, teaches all the basics of education in a religious environment. Madrasahs take in countless homeless children and provide them with food, shelter and education. 4Religious studies are taught in Arabic and the children also usually serve the related mosques.

Education management

The overall responsibility of management of primary education lies with the Primary and Mass Education Division (PMED), set up as a separate division with the status of a Ministry IN 1992. While the PMED is involved in formation of policies, the responsibility of implementation rests with the Directorate of Primary Education (DPE) headed by a Director General.⁹⁴

The Director of primary Education (DPE) and its subordinate officers in the district and upazila are solely responsible for management and supervision of primary education. Their responsibilities include recruitment, posting, and transfer of teachers and other staff; arranging in-service training of teachers; distribution of free textbooks; and supervision of schools. The responsibility of school construction, repair and supply of school furniture lies with the Facilities Department (FD) and local; Government Engineering Department (LGED). The National Curriculum and Texts Books (NCTB) are responsible for the development of curriculum and production of textbooks. While the ministry of Education (MOE) is responsible for formation of policies, the Directorate of Secondary and Higher Education (DSHE) under the Ministry of Education is responsible for implementing the same at secondary and higher educational levels. The NCTB responsible for developing curriculum and publishing standard textbooks.

Current government projects to promote the education of children in Bangladesh include compulsory primary education for all, free education for girls up to age 10, stipends for female students, a nation wide integrated education system and food-for-

⁹³ Ibid.

⁹⁴ Ibid.

education literacy movement. A large section of the country's national budget is set aside to help put these program into action and to promote education and make it more accessible. Recent years have seen these efforts pay off and the Bangladesh education system is strides ahead of what it was only a few short years ago.⁹⁵

(vii) Eire

Eire Article 42 states: the States shall provide for free primary education.

(viii) Burma

Article 33 says: when in particular, the State shall make provisions for free and compulsory primary education.

Article 44 says: The State shall pay special attention to the young and promote their education.

(ix) France

The preamble to constitution of fourth French Republic States:-

'The establishment of free, secular, public education on all levels is a duty of the State.'

(x) Czechoslovakia

Section 12

- (i) All citizens have rights to education.
- (ii) Elementary education is uniform, compulsory and free.

(xi) Germany

SECTION 39

(i) Every child must be given opportunity to develop thoroughly his physical, mental and moral powers, attendance at the technical and secondary schools and at the institute of higher learning shall be made possible for all section of the Nation.

⁹⁵ Supra note 89

(ii) School shall be free of charge, learning Aids in compulsory schools shall be supplied without payment.

(xii) Costa Rica

Section 78

Primary education is compulsory. Primary, pre-School and secondary educations are free and are provided at national expenses.

The State shall facilitate the higher studies of persons, who lack the necessary funds. The ministry of education shall be responsible for the awarding of Scholarship and grants-in-aid, through a body appointed by law.

Section 82

The State shall provide food and clothing for needy pupils in accordance with law.

U.N.O- Article 23 (i) posits- Elementary & fundamental education shall be free & compulsory.

(xiii) Nepal

Likewise, the Constitution of Nepal has also promised free education to children.

It is also a fact that the constitution of Nepal has also guaranteed right to know and knowledge u/s 16 of the constitution of Nepal.⁹⁶

Now, the perusal of these provisions of the various Constitution of foreign nation has shown us the need for free and compulsory education although certain riders have been imposed for free and compulsory education. Hence, rights to free education has been made to be a fundamental rights and State is bound to grants for right to free and compulsory education, in some foreign nations, this right to education has been made compulsory and free completely to all kinds of children but in certain nations, it has been made free up to primary education,. The position of France is quite unique, which has provided for the establishment of free, secular, public education at all levels as a duty of state.

⁹⁶ Gokulesh Sharma," *Whether Right to Education, right to know and knowledge should be Fundamental Right*, Law Teller, March 1999.p.35

D: INTERNATIONAL INSTRUMENTS

The right to education has been recognized in several international instruments, of which the three key international instruments are the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) and the Convention on the Rights of the Child, 1989. While some instruments uphold the Rights to 'elementary education,' other use the phrase; 'primary education'.

(i) Article 26 of the **Universal Declaration of Human rights, 1948**⁹⁷ provides:

(i) Everyone has the rights to education. Education shall be free at least in the elementary and fundamental stages. Elementary education shall be compulsory ...

(ii) Education shall be directed to the full development of the human personality and to strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, social or religious group and shall further the activities of the United Nations for maintenance of Peace.

(iii) The parents have a prior right to choose the kind of education that shall be given to their children.

Then the **(ii) International Covenant on Economic, Social and Cultural Rights, 1966**⁹⁸ under its Art. 13 recognize the rights to education as enunciated above by Universal Declaration of Human Rights as under: (1) the state parties to the present Convent recognizes the right of everyone to education. They agree that the education shall be directed to the full development of the human personality and the senses of its dignity, and shall strengthen the respect for human rights and fundamental freedom. They further agree that education shall enable all persons to participate effectively in a free society, promotes understanding, tolerance and friendship among all nations and all social, ethnic or religious groups and further the activities of the United Nation for the maintenance of peace.

⁹⁷ This Declaration was adopted and proclaimed by UNGA resolution 217A (iii) of Declaration 10, 1948.

⁹⁸ This UN Covenant was adopted and opened for signature, ratification. And accession by General Assembly Resolution 2200 A (XXI) of Declaration 16, 1966. And came into force on January 03, 1976.

(2) The state parties to the present Covenant recognizes that with a view to achieving full realization of this right:

(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 progressive introduction of free education

(d) Fundamental education shall be encouraged or identified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of system of school at all level shall be actively pursued, an adequate fellowship system shall be established and the material conditions of teaching staff shall be continuously improved.

(3) the states parties to the present Convent undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools other than those establishes by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and ensures religious and moral education of their children in conformity with their own convictions,

(4) no part of this article shall be constructed so as to interfere with the liberty of the individuals and bodies to establish and direct educational institutions, subjects always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institution shall conform to such minimum standards as may be laid by the State.

Above provisions of Universal Declaration of Human Rights recognizes education as a basis human rights of human being. Human rights are inalienable in the sense that a holder of these rights can not divest himself of them. The reason is simple. These rights are inherent in a very nature of human being. Jackques Maritain had said that the “ human person possesses right because of the very fact that it is a person, a whole, a master of itself and of its act-by natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to a

man because of the very fact that he is a man⁹⁹. Being education as human rights, it develops full personality of the persons. Development of personality is also inalienable rights of human being”.

(iii) UN Convention on the Rights of the Child, 1989 under Art. 28 provide that the states Parties recognize the rights of the child to education and with the 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) encourages the development of different forms of secondary education, including general and vocational education, and make them available and accessible to every child, and take appropriate measure 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 of every appropriate means;
- (d) Make education and vocational information and guidance available and accessible to all children;
- (e) Take measure to encourage regular attendance at school and the reduction of dropout rates.

(2) States parties shall take all appropriate measures to ensure that schools discipline is administered in a manner consisted with the child’s human dignity and in conformity with the present convention.

(3) States parties shall promotes and encourages international cooperation in manner relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the ‘world’ and facilitating assess to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Whereas Art. 29 provides that:

- (1) The States Parties agree that the education of the child shall be directed to
 - (a) The development of the child’s personality, talent and mental and physical abilities to their fullest potential;

⁹⁹ J. Maritain, “ *The Rights of Man and Natural Law*, ” 1951 p. 65

(b) The development of respects for human rights and fundamental freedoms, and for principles enshrined in the Charter of the United Nations;

(c) the development of respect for child's parents, his or her own cultural identity, language and values, for national values of the country in which the child is living, the country from which he or she may originate and for civilization different from his or her own;

(d) the preparation of the child for responsibility life in a free society, in the sprit of understanding peace, tolerance, equality of sexes an friendship among all people, ethnic, national and religious groups and persons of indigenous origin;

(e) the development of respects for the natural environment.

(2) omitted.

(iv) The Beijing Declaration and Education: 1995

The Beijing Platform¹⁰⁰ for Action, a statement of intention on the part of government representative at the Fourth World Conference for Women in Beijing, 1995 recognized education as a basis human rights and an essential tools for achieving more relations between women and men. It recommended investing in formal and non-formal education and training for girls and women as one of the best means of achieving economic growth and development that is sustained and sustainable. The Platform for Action proposes these strategic objectives:

- ensure equal access to education;
- ensure the completion of primary education by at least 80% of children, with special emphasis on girls, by the year 2000;
- Close the gender gap in primary and secondary education by the year 2005 and achieve universal primary education in all countries before the year 2015? Reduce the female illiteracy rate, especially among rural. migrant refugee, internally displaced and disabled among women to at least half the 1990 level;
- Eradicate illiteracy among women worldwide;
- Improve women's access to vocational training, science and technology and continuing education;

¹⁰⁰ The Fourth World Conference on women, Beijing, 4th to 15th September 1995

- Develop non-discriminatory education and training by developing and using curriculums, textbooks and teaching aids free of stereotyping for all levels of education;
- Allocate sufficient resources for and monitor the implementation of education reforms;
- Maintain or increase funding levels for education in structural adjustment and economic recovery programmes;
- Promote lifelong education and training for girls and women, and create flexible education programmes to meet their needs.

E: INDIAN FRAMEWORK

Education has many facets within and beyond the constitution as well as its contents and development in pre-independent period. The concept of education primarily meant the learning and imparting of knowledge. This issue may involve a variety of the question relating to the opportunities available, liberty of the people to learn their assessability in their area and the right to education. It further involves various modes and methods of education centres, including the issues as to eligibility and availability of education to various classes of beneficiaries. When we talk about education it becomes significant that what does it mean and how far it is desirable looking to the needs and recourses of the country. Whether it means and includes the primary education or it should be strengthen over to the higher levels also. It is very difficult for any country more particularly for developing one like India to afford the entire cost of education at all levels. Therefore a discussion under the sub chapter centers around the constitutional guarantee of education and how far it would go to fulfill needs of the Indian people.

(I). Constitutional Provisions:

The expression “ Education “ in the different Articles of the Constitution means and include education at all levels, i.e. from the primary school levels up to the post-graduate levels. It includes professional education also. The expression “Educational Institution” means institutions that impart education. What education is understood here as in above.

The “Educational Institution” are of different types. They have been classified broadly in Government/Private educational institutions. There is further classification on the basis of receipt of aid, i.e. classification into aided and un-aided educational institutions. A further classification exists on the basis of levels of education that it imparts, e.g. schools, undergraduate or post-graduate colleges and professional institutions.

The framers of the Constitution have provided for legislation an education by competent legislature the Forty-Second Amendment to the constitution included in the concurrent list under Entry 25. That however does not in any way change the position with regard to the determination of a “religious” or “linguistic minority” for the purpose of Art.30. By transfer of entries the character of the entries is not lost or destroyed. In this view of the matter by transfer of contents of Entry 11 of the list II to list III as Entry 25 has not denuded the power of State legislature to enact law on the subject ‘Education’ but rather has also conferred power on the Parliament to enact law on the subject.

As regards legislative competent regarding education, following entries may be refers to.

(a) Entries Mentioned in the Union List

Entry 63: “ The institution known at the commencement of the Constitutions of Benaras Hindu University, the Aligarh Muslim University and the Delhi University; the University established in the pursuance of the Arts 371-E; any other institution declared by Parliament by law to be an institution of national importance”.

Various universities like Jawaharlal Nehru University have been established by Parliament under the Entry.

Entry 64: “Institution for scientific or technical education financed by the Government of India wholly or in part and declared by parliament by Law to be an institution of natural importance.”

Various IITs have been established by Parliament under this Entry.

Entry 65: Union agencies and institution for:

- (a) Professional, vocational or technical training including training of police officers;
- (b) The promotion of special studies of research, or;
- (c) Scientific or technical assistance in the investigation or detection of crime.

Entry 66: Co-ordination and determination of standards of institutions for higher education of research and scientific and technical institutions.

The University Grants Commission has been established under this Entry.

(b) Entry mentioned in the Concurrent List

Entry 25 : "Education including technical education, medical education and universities subjects to the provisions of Entries 63,64,65 and 66 of the list I, vocational and technical training of labour."

Entry 26: Legal, medical and other professions.

Thus, State legislature may establish universities under *Entry 25*. But these universities may also be controlled by Union List Entries mentioned as above. Hence, every legislature seeking to establish a State university is required to be cleared by the Union Government under the provision of the Constitution. By virtue of Entry 25 List II (Concurrent List) *predominance has been given to the centre in matter of education.*

Art. 30 confers fundamental right to linguistic and religious minorities to establish and administer educational institutions of their choice. The test who are linguistic or religious minorities within the meaning of Art. 30 would not be one and the same either in relation to a State legislature or central legislation. There can not be two tests; one in relation to central legislation and other in relation to State legislation. The meaning assigned to linguistic or religious minorities would not be different when the subject 'education' has been transferred to the concurrently list from the State list. The test who are linguistic or religious minorities as settled in Kerala Education Bill's case continues to hold good even after the subject 'education' was transposed into Entry 25 List III of the seventh Schedule by the Forty- Second Amendment Act, 1976.

Justice V.N Khare *said in T.M.A Pai Foundation v. State of Karnataka*¹⁰¹ that entries in List of VII Th Schedule are not powers of legislation but field of legislation.

¹⁰¹ AIR 2003 SC 355.

Other provision Contained in the Constitution Relating to Education:

Provisions relating to education under Indian Constitution are of different nature. Some provisions are fundamental rights of citizens and some are only directory to the government.

(c) As Directive Principles of State Policy:

Directive Principles of State Policy include following provisions relating to education:-

(a) Newly substituted Art 45 provides for provision for early childhood care and education to childhood below the age of six years. It says that State shall endeavor to provide early childhood care and education for all children until they complete the age of six years¹⁰²

Before Constitution (Eighty-sixth amendment) Act 2002, Art 45 required the State to make provision within ten years for free and compulsory education for all children until they complete the age of fourteen years. The object of this Article was to abolish illiteracy from the country.

In a landmark judgment in *Unnikrishnan v. State of Andhra Pradesh*¹⁰³ the Supreme Court held, the “Right to Education” up to the age of 14 years is a fundamental rights within the meaning of Art. 21 of the Constitution, but thereafter the obligation of the state to provide education is subject to the limit of its economic capacity. “The *right to education flows directly from rights to life*”, the court declared. Fortunately, this judicial verdict has been given a final place in the Constitution by Constitution (Eighty- Sixth Amendment) Act, 2002. Right to education has been added as a fundamental right in Art, 21- A which provides that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

(b) Art 46 speaks about promotion of education and economic interest of Scheduled caste, scheduled tribes and other weaker sections. It says that the State shall

¹⁰² Substituted by the Constitution (Eighty-sixth Amendment) Act 2002 for Art 45, which provides provision for free compulsory education for children. The State shall endeavor 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.

¹⁰³ AIR 1993 SC 2178

promote with special care the educational and economic interests of the weaker section of the people, and in particular of the scheduled caste and the scheduled tribes and shall protect them from injustice and all forms of exploitation.

(c) Art 41 relates to right to work, to education and to public assistance in certain cases. It directs the State to ensure the people within the limits of its economic capacity and development

(i) employment

(ii) education and

(iii) Public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want.

But policy and plans established new schools should be cleared explained by the State Government¹⁰⁴.

Under the constitution, these directive principles are fundamental in the governance of the country, but they cannot be enforced through court of law¹⁰⁵. However the Supreme Court has interpreted the directive principles in a very liberal manner and have even enforced some of them under appropriate situations.

(d) Having Flavour of Fundamental Duties.

Under Article 51-A, the Constitution includes a number of 'Fundamental Duties'.

Following fundamental duties relates to the type of education to be imparted in the educational institutions.

(a) To render social service when called upon to do so.

(b) To promote harmony and the spirit of common brother hood amongst all the people of India transcending religious, linguistic and regional and sectional diversities, and to denounce practice derogatory to the dignity of women.

(c) To value and preserve the rich heritage of our composite culture,

(d) To protect and improve the natural environment including forest, lakes, river and wild life and to have compassion for living creature and

(e) To developed scientific temper, humanism and spirit of enquiry and reform.

¹⁰⁴ *Gram Vikas Shikahan Prasarak Mandal v. State of Maharashtra* AIR 2000 Bom.437

¹⁰⁵ Art. 37 of Indian Constitution

Clause (k) has been inserted in Art. 51-A by the constitution (Eighty-Sixth Amendment) Act, 2002 Art-51-A (k) imposes a fundamental duty upon every 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 year. Art.-51A is confined to “citizens” unlike some of the Articles relating to fundamental rights (e.g. Art-21) which extent to all “persons”. The courts may look at the fundamental duties while interpreting equivocal statutes which admit of two constructions.

The unfortunate aspect of fundamental duties is that they cannot be enforced by writs. They can be promoted only by constitutional methods. However, they cannot be used for interpreting ambiguous statutes. Where the constitutionality of an Act is challenged, the court may looked at Art.51-A to uphold it. It would be for the educational institutions to impress on the minds of the taught the significant of these fundamental duties so that later in life they may behave in manner consistent with these duties.

(e) Fundamental Right;

Following Articles of the Constitution makes provision for education:

Article 19(1) (g): all citizens shall have the rights to practise any profession, or to carry on any occupation, trade or business¹⁰⁶

This rights is intended to ensure that ‘citizen’ rights to business does not depends on grant by the State and the State cannot prevent a citizen from carrying on a business, except by a law imposing a reasonable restriction in the interest of the general public.

(f) Article 21 –A: Right to Education

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 determine¹⁰⁷. Till 2002s Constitution Eighty-Sixth Amendment, right to education was not a specially guaranteed fundamental right under the constitution, it was only *Unnikrishnan v. State of Andhra*

¹⁰⁶ Education is included in Art (19) (g) in the case of *T.M.A Pai foundation v. State of Karnataka*. AIR 2003 SC, 355. In this case the term ‘education’ covered in terms ‘occupation’.

¹⁰⁷ Inserted by the Constitution (Eighty-Sixth Amendment) Act 2002.this Art is substituted for Art. 45 before this Amendment, which is as follows: “provision for free and compulsory education for children the State shall endeavor 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”

*Pradesh*¹⁰⁸ which had, widely interpreting Art 21, recognized rights to education as one of the aspects of personal liberty. This was done by the judiciary exercising its role of judicial activism not by our legislatures who are deemed to be reflecting the wishes of the people. However, through at a very late stage, right to education has been made by the Constitution (Eighty-Sixth Amendment) Act 2002. A fundamental right¹⁰⁹. A fundamental duty has also been cast regarding this upon the parents and guardians¹¹⁰.

(g) Education, Minorities and Weaker Sections:

The Constitution makes special provisions for education by and to minorities. They are as follows:

Article 26 (a): Subjects to public order, morality and health, every religious denomination or any section thereof shall have the rights to established and maintain institutions for religious and charitable purpose. Religious denomination or any section thereof will definitely include religious minorities. But under Art. 28 certain restrictions may be inferred regarding educational institution established by religious minorities. They are

- (1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- (2) Nothing in clauses(1) shall apply to an educational institution, which is administered by the States but has been established under any endowment or trust, which requires that religious instructions shall be imparted in such institution.
- (3) No persons attending any educational institution recognizes by the State of receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such instructions or to attend any religious workship that may be conducted in such institution or in any premises attached thereto unless such persons or, if such persons is a minor, his guardian has given his consent thereto.

¹⁰⁸ AIR 1993 SC 2178

¹⁰⁹ Art 21-A of the Indian Constitution

¹¹⁰ Art 51-A (k) of the Indian Constitution

Art. 29 specifically protect the interest of minorities having different culture or language.

It states that:

- (1) any section of the citizen residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have right to conserve the same.
- (2) No citizen shall be denied admission into any educational institution maintained by the States or receiving aid out of State funds on ground only of religion, race, caste, language or any of them.

Article 30 of the Indian Constitution provides right of minorities to establish and administer educational Institutions. *Art. 30* states that:

- (1) All minorities whether based on religious or language shall have the right to establish and administer educational institutions of their choice. 1(A) 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 States 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
- (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 religious or language.

(II) Education and Rights to Life

In India the Judiciary has given an extended meaning to constitutional expression like “life” and personality liberty” and has in unequivocal terms recognized ‘rights to education ‘as fundamental rights. The Supreme Court of India in *Francis C. Mullin v. Administrator, Union Territory of Delhi*¹¹¹ has remarked:

Whether 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 the right to live with human dignity and all that goes along with it, namely, the bare necessities of

¹¹¹ AIR 1981 SC. 746

life such as adequate nutrition, clothing and shelter over the head and *facilities for reading, writing and expressing oneself in diverse forms, freely* moving about and 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 basis necessities of life and also the right to... constitute the bare *minimum expression of the human self*.

The observation of the court gives due legitimacy to the right to education as a basis necessity of life and as one of the activities constituting "*the bare minimum expression of human self*." In 1984, the Supreme Court of India in *Bandhua Mukti Morcha v. Union of India*¹¹² held that the education is implicit in flows from 'the rights to life'. Later in *Bapuji Education Association v. State*¹¹³ Justice **Rama Jois**, of the

Karnataka High court found right to education to be an essential attribute of personal liberty. He observed that "the right of an individual to have and /or to impart education is one of the most valuable and sacred rights", and further observed that "among various types of personal liberties which can be regarded as include in the expression 'personal liberty' and in article 21, education is certainty the foremost".

The question whether a 'right to education 'is guaranteed to the people of India under the constitution was dealt with by the Supreme Court at length in *Mohini Jain v. State of Karnataka*¹¹⁴ . The main question in this case related to the admission of Mohini Jain who was selected for MBBS courses but was asked to pay a tuition fee of Rs. 60,000 per annum and a capitation fee of four and half lakhs. The matter assumed extraordinary significant after reaching the court. Justice Kuldeep Singh referred, to the preamble of the constitution which: promises to secure to all citizens of India "justice-social economic and political," liberty of thought, expression, belief, faith and workship." provides for "equality of status and opportunity " and assures dignity of individual. The court also referred to article 21, 38, 39 (a), 39(f) and 45 of the constitution which guarantee the protection of life and personal liberty and direct the State to secure: a social order for the promotion of welfare of the people: protection against exploitation; right to work. To

¹¹² AIR 1984 SC. 802

¹¹³ AIR 1986 Kant. 119

¹¹⁴ AIR 1992 SC. 1858

education and public assistance in certain cases and provision for free and compulsory education for children.

After referring to the aforesaid constitutional provisions the court observed that 'right to education' has not been guaranteed expressly as fundamental rights under part III of the constitution but the framers of the constitution have made it obligatory for the state to provide education to its citizens. The court forcefully put forward the view that the preamble of the constitution promises to secure to all citizens' justice –“social, economic and political”, combining social and economic rights along with political and justifiable legal rights. In order to establish social justice and to make the masses free in the possible sense the state was to strive to achieve the goals set out in the preamble of the constitution. As regard social justice it has been specially enjoyed as an object without providing education to the large majority who are illiterate. A dispassionate consideration of the matter leads to the conclusion that these objectives shall only remain on paper unless the people in this country are educated. The court observed:

*The three pronged justice (social, economic and political) promised by the preamble is only an illusion to the teeming-millions who are illiterate. It is only the education which equips a citizen to participate in achieving the objectives enshrined in the preamble.*¹¹⁵

Bringing to focus another significant aspect of the issue the court remarked that the preamble also assures the dignity of the individual and the constitution seeks to achieve this objects by guaranteeing fundamental rights to each individual which he can get enforce, if necessary through a court of law. The directive principles in part IV of the constitution are also with the same objective. The court made it clear that:

The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primary education which brings forth the dignity of a man... The framers of the Constitution were aware that more than seventy percent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out from the country. It was with that hope that Article 41 and 45 were brought in chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to that is to education him. This is why the Universal Declaration of Human Rights, 1948

¹¹⁵ *Supra note 114*

emphasis “Education shall be directed to the full development of the Human personality...”¹¹⁶

Another vital question that was considered by the apex court related to recognizes of an individual’s right “to education” in article 41 of the constitution which provides that “the ‘State shall, within the limit of its economic capacity and development, make effective provisions for securing the right....to education”. The court observed that although a citizen cannot enforce the directive principles contained in chapter IV of the constitution but these were not intended to be mere pious declarations in support of its argument the court invoked the following words of Dr. Ambedkar:

*In enacting this part of the Constitution, the Assembly is given certain directions to the future legislative and the executive to show in what manner they are to be exercise the legislative 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 legislation and executive action that they may be taking hereafter in the matter of the governance of the Country*¹¹⁷

The court accordingly concluded in this respect as follows:

The directive principles 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. Without making ‘right to education’ under Article 41 of the constitution a reality the fundamental rights under chapter III shall remain beyond the reach of large majority which is illiterate.¹¹⁸

¹¹⁶ *Supra note* 114

¹¹⁷ Constituents Assembly Debates (CAD.) vol. VII p.476

¹¹⁸ *Supra note.* 112 p. 1864.

The court also beneficially referred to its earlier observation regarding right to life with human dignity and directive principles of State policy in *Bandhua Mukti Morcha v. Union of India*¹¹⁹.

The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particular clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include...educational facilities... in order to enable a person to live with human dignity...

After a due consideration of all the above given observation the court held that the right to education flows directed from the right to life. It said:

‘Rights to life’ is the compendious expression for all those rights which the courts must enforce because they are basis to basic to the dignified enjoyment of life. It extends to the full range of conflict which the individual is free to pursue. *The rights to education flows directly from the right to life. 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. The State government is under an obligatory to make endeavor to provide educational facilities at all levels to its citizens.*¹²⁰

The court continued to observe that 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 individual dignity. The ‘right to education’ is therefore, a concomitant to the fundamental rights enshrined under part III of the constitution and the state is under a constitutional mandate to provide educational institutes at all levels for the benefit of the citizens.¹²¹

The basic question whether the constitution of India guarantees a fundamental rights of education to its citizens came again for consideration before the Supreme Court in *Unni Krishnan v. State of A.P.*¹²² where writ petition were filed by private educational institutions engaged in imparting medical and engineering education called in question

¹¹⁹ *Supra* note 110. p. 811

¹²⁰ *Supra* note 112.

¹²¹ *Ibid.* p. 1864.

¹²² (1993)1 SCC. 645

the Mohni Jain decision¹²³. The views expressed by the concerned judges in this case are of great significance. The matter was heard by L.M Sharma, C.J and S.Ratnavel Pandian, S. Mohan, B.P. Jeevan Reddy and S.P Bharucha, JJ. The judges deliver three separate judgments each with a novel import. In one of the judgments Sharma C.J. (for himself and Bharucha, J.) (Partly dissenting) said that article 21 guarantees no fundamental right to professional education. As regards the question whether the right to primary education mentioned in article 45 of the constitution is fundamental or not, Sharma C.J., in view of financial and other implications left it to be decided in some subsequent case by a larger bench. The other three judges viz., S. Mohan, Jeevan Reddy and S.Ratnavel Pandian upheld the right to education as a fundamental right, S.Mohan J. in his separate (concurring) judgment laid much emphasis on the importance of education and held that the state is obliged to provide education to all up to 14 years of age, within the prescribed time-limit.

The court tracing the nexus between life, living and education observed that 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 systematic process of development of the body, enrichment of the mind, sublimation of emotions and illumination of the spirit. Education is a preparation for a living and for life; it is a social and political necessity in a country like India.

On the basis of all these and similar other views the Supreme Court declared right to “education” as a fundamental right” of all citizens and connected it with right to life and personal liberty under article 21 of the constitution of India.

(iii) Education and Right to Equality

In the constitution field of education the broad objectives is “to promote freedom, progress and equal opportunity” for all Indians. The state is under the constitutional obligation to secure to the people of India, the right to education. But the unfortunate part was that the state hardly moved in this direction and it was the judiciary who had to take initiative to see that the state rises from hibernation. A fundamental right to education was given a place by the judiciary under part III of the Constitution of India. The second

¹²³ *Supra note 112*

fundamental right, which was mostly availed in the area of reservation, was the right to equality in educational institutions. To these claims of fundamental rights, article 51A was added to provide correlative fundamental duties which include to respect the ideals of the Constitution, to follow the nobles which inspired the freedom struggle, to promote harmony and the spirit of common brotherhood amongst all the people of India, and last but not least, to strive towards excellence in all spheres of individual and collective activities. The discussion cannot stop here. There is the provision of centre-state relationship in the field of education. It started with state's exclusive power except in the matters allotted to Parliament. But latter on the exclusive power was transferred to the concurrent power where both the state legislature and Parliament or either of them may legislate on education matter. The present study highlights the directions of the constitutional vision of the sixty years in the present field of reservations¹²⁴

The provision relating to equality of educational opportunities are contained in the preamble to the Constitution as also in Parts IV thereof containing respectively the Fundamental Rights and Directive Principles of the State policy. It may be noted here that fundamental rights and directive principles had their roots in the struggle for independence¹²⁵. The rights and principles respectively denote the negative and positive obligation of the state towards fostering the goals of social revolution in the country¹²⁶. It will be relevant to mention here about, the nature of social revolution that has been going on in our country.

India attained the independence in August 1947, which marked the culmination of the national revolution, but the social revolution was to be carried on further, Writing in 1938. Nehru had felt that with independence, the national revolution would be completed, but the social revolution, must go on. Freedom was not an end in itself, only a means to an end, that end being the raising of the people... to higher level and hence the general advancement of humanity. The social revolution, according to him, was to be aimed at ending of poverty and ignorance and disease and inequality of opportunities.

¹²⁴ C.M Jariwala. "Reservation in Admission to Higher Education: Development and Directions." JILL, vol. 42. No 2-4, 2000 p. 240

¹²⁵ M.L Updhyaya, *Towards Social Justice*. (1973), Stu. Pol. SC. quoted in JBCI (1974) VOL.III p. 133.

¹²⁶ G, Austin, *The Indian Constitution :Cornerstone of a Nation*, oxford, 1966, p. 50.

The aforesaid ideals we are taken into account and incorporated in preamble of the constitution of India and in various other articles. The preamble to the constitution of India states in sonorous terms the solemn resolve of the people of India to secure to all its citizens, among other things, equality of Status and of opportunity. The constitution makers gave to the preamble “the place of pride and has incorporated the concept of equality of opportunity.

The concept of equality is further elaborated in part III of the constitution under Article 14¹²⁷. It was accepted long back ¹²⁸ that art 14 provides further protection to the right to life and personal liberty guaranteed under Article 21. Therefore, it is irrelevant to discuss the right to equality here as it would provide further protection and strengthen the right to education included under Article 21.

This is followed by article 15 which contains a prohibition on certain grounds only for religion, race, caste, sex, and place of birth or any of them.”

This is later reinforced by a specific guarantee as to right of every citizen to admission into a state maintained or state aided educational institutions. This guarantee is incorporated in Article 29(2)¹²⁹.

It should however, be noted that all these provision namely right to equality before the law, equal protection of laws, prohibiting against discrimination and guarantee of non-discrimination in education to state educational institutions review the situation only from the point of view of the individual. These rights are not absolute but are subject to restriction and regulation in the larger interest of society.

It is true that these provisions are included in the list of fundamental rights contained in part III and are specifically made justifiable and the constitution declares any unauthorized curtailment or abridgement thereof obnoxious under article 13(2) and 32 of the constitution of India.

But then there are exceptions to these general rights either specifically written into the constitution itself or inserted by judicial constitution of these provisions by the judiciary.

¹²⁷ Article 14 says, “The state shall not deny to any person equality before the law or the equal protection of the law within, the territory of India.

¹²⁸ *Kathi Ranning v. State of Saurashtra*. AIR 1952, SC.123, Per Patanjali Sasteri, C.J

¹²⁹ Article 29(e) says, “No citizen shall be denied admission into any education institution maintained by the states or receiving aid out of state funds on grounds only of religious, race, caste, language or any of them.”

The court ¹³⁰ has recognized the states power of reasonable classification when a group of person can be singled out for a preferential treatment provided they are selected for a different treatment on the basis a rational or intelligible differentia which is related to the object of the Act. Thus, the doctrine of classification ensures that all are not equal and there is no such things as absolute equality. It is possible to discuss in detail about the right to equality under the present study as it merit another study. A brief reference however, is made here to the relevant provisions so as to better appreciate the right to education and matters related thereof under that Fundamental Right.

The position is slightly different under article 15 which while prohibiting discrimination on certain grounds in its first part recognizes in the subsequent parts the power of the state to make positive discrimination or Protective discrimination in favour of certain weaker section of society. Cl (3) of article 15 specifically recognizes the power of the state to make special provision for women and children likewise Cl (4) says that state can make special provision for advancement for any socially and educationally backward classes of citizens or for the scheduled caste and the scheduled Tribes.

These were thus the fundamental rights that had some bearing on the question relating to quality of educational opportunity. Now let us make a brief reference to some of the directive principles of state policy that have a similar bearing on the question. As focused ¹³¹ to the principles to equal educational opportunities, now, we must take a careful note of the two general principles which in a way regulate the application of all other principles. Firstly, the directive principle is not enforceable but is nevertheless fundamental in the governance, of the country and it shall be the duty of the state to apply them in makings laws.¹³² Secondly, the state shall strive to promote the welfare of the people by securing and protecting as efficiently as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.¹³³

It is against the background of these constitutional provisions that an effort was made to examine the problems that have arisen in the realm of constitution law in this country after the commencement of the constitution. The Supreme Court always found with the

¹³⁰ *Chiranjit Lal v. Union of India*, AIR 1951 SC.42

¹³¹ *Supra note* 128.p. 12-13

¹³² Article, 37.

¹³³ Article, 38.

task of adjustment between two very importance fundamental rights of citizens on the one hand namely non-discrimination on communal ground and non-discrimination in admissions and the special provision on reservation in favour of people belonging to backward classes or scheduled castes or Tribes on the others.

It becomes now relevant to examine whether the Supreme Court has widened the scope of Article 14 beyond the intent of the framers of the constitution. Justice Krishna Iyer aptly observed:

“(Right to) equality is not merely equality of treatment before the established system of law and order but also of opportunity for self expression or self realization that may be inherent in every human being.”¹³⁴

In *Pradeep Jain v. Union of India*¹³⁵, the Supreme Court held that admission in courses such as MBBS, MS, MD. Etc should be made primarily on the basis of merit and not on the basis of residential requirement or institutional preference. The equality of educational opportunity cannot be made dependent upon residence because it would not be justified on the touchstone of article 14.

Again in *Mohini Jain v. State of Karnataka*¹³⁶, the question before the Supreme Court was whether charging the capitation fee to educational institution is violative of right to equality under article 14; the court held that, the capitation fee brings to fore a clear class bias. It enables the rich to take admission whereas the poor has to withdraw due to financial inability. A poor students with better Merit can not get admission because he has no money whereas the rich can purchase the admission. Such a treatment is patently unreasonable, unfair and unjust. There is, therefore, no escape from the conclusion that charging of capitation fee in consideration of admission to educational institution is wholly arbitrary and as such infract article 14 of the constitution.

In the *Mohini Jain* case the court also looked into the provision of Directive principles of the state policy and connected with the equality of opportunities with regard

¹³⁴ Krishna Iyer, in his forward, to the *Role of Supreme Court with Regards to the Right to Life and Personal Liberty*, by .Nishtha Jaswal, New Delhi. Ashish Publication House (1990), quoted in students Advocate, vol. 5, (1993) p. 80.

¹³⁵ (1984) 3. SCC, 654

¹³⁶ AIR. 1992 S.C 1858, 1867.

to education, and linked those provisions with article 14¹³⁷. The obligation of the State to “promote with special care the educational and to economic interest of the poor section of the people,” and to protect them from social injustice and exploitation was utilized to struck down the capitation fee as violative of the constitutional mandate as well as art 14. However, it is submitted that while protecting the educational interest of the particular section of the weak people, the court should remember that it is equally in the national interest that qualified competent and otherwise deserving candidate belonging to other classes must not be unreasonable excluded from education particularly the higher university education.

¹³⁷ Articles. 41,45 and 46 of the Constitution of India