CHAPTER I
INTRODUCTION

Human beings are specific among all species for its cultures and traditions which has been transmitted from generations to generations. This unique possession has been successfully edificed in every society through many institutions. Education is one of the important social institutions which trained new born human beings to adapt and adjust in the society. Questions concerning education were the most serious questions of the era. All those who worked in this sphere knew that in solving those problems, they faced with innumerable difficulties arising from the moral, social and economic disorder of the world today. It would be dangerous to take account only of material conditions in solving them. The right of all to education was indisputable. The right to share in the heritage of mankind formed the basis of our civilization, and could not be denied to anyone. Without education, the individual could not develop his personality, which remain an inalienable aim of human life and the most basic foundation of society. Education was the first prerequisite for progress. This means that education is regarded as something that is necessary for all human beings at all times in all societies and that the society is responsible for fulfilling or making it possible to fulfill this right for everyone.

In modern societies the educational institution is considered the principal socialization agent outside the family, and it is also one of the most important social dividing mechanisms. In the West, education has been associated with "progress," "civilization," and "development" for the last two to three centuries. After the Second World War, during the period of national restoration and the gaining of independence from colonization, theories of development proliferated and education in various forms became an important factor in the "development process." On the one hand, education can facilitate consciousness-raising and contribute to personal development and the shaping of identity and integrity. On the other hand, education can be a means of improving life on both the individual and the collective level. Education can secure good jobs, good wages, social status, social mobility, and national development. It
imparts skills and knowledge to be used in family life and is a source of power individually and in the community.

1.1 Theoretical Orientation:
Issues related to equality social justice, human rights and democracy remained a concerned for social commentators and researchers since many years; these people have often based their work on one theoretical framework or the other. 17th century English philosopher John Locke used the concept of natural rights in his work. He identified a natural right as being a right that was of such fundamental importance for the individual that it could not be surrendered to the State for the purpose of social contract (Locke, 1991). Locke’s theory which reserved natural right as the basis of the maintenance of fundamental liberties, insisted that human beings have some fundamental rights that need not to be derogated, because they belong to the individual by nature and have not been surrendered to the state and cannot be limited or denied by the state. His works on natural rights was influential in shaping the concepts of human rights; especially post Second World War, as evidenced from the draft papers for the Universal Declaration of Human Rights (1948) which was adopted by the UN General Assembly Resolution 217 on 10 December, 1948 (UNHR). John Rawls (1971; 2001) has argued for a theory of social justice by utilizing some of the familiar devices of the social contract tradition. The result of his work culminated in a theory presented in his seminal work, A Theory of Justice, in 1971 (see also Rawls, 2001). Fundamental to his theory are two principles of justice: the liberty principle and the difference principle.
According to Rawls (2001), the liberty principle requires that all individuals in a given society, be given equal rights to basic liberties. Rawls argued that certain rights and freedoms are more important or more ‘basic’ than others. For example, Rawls believes that “personal property” (this includes intellectual properties or personal skills) constitutes a basic liberty, but an absolute right to unlimited private properties
is not. Rawls argues that those basic liberties are inalienable and that no government can amend, infringe or remove them. The difference principle regulates inequalities, by allowing inequalities only when they work to the advantages of the worst-off in that society. Rawls argument could be interpreted as requiring a system where wealth is ‘diffused up’. This diffusing up of wealth will guarantee the worst-off in the society a fair and proportionate deal. However, Rawls was mindful of some properties that some individuals acquire by virtue of their natural endowments of talents or skills. Such inequality is understandable even by the least well-off. Rawls (2001) argues that the two principles would be chosen by representative parties in the original position — a thought experiment in which the parties are to choose among principles of justice to order the basic structure of their society from behind a “veil of ignorance” — depriving the representatives of information about the particular characteristics (such as wealth and natural abilities) of the parties that they represent. In order to overcome the inequalities of natural contingencies, in human life, Rawls argues that society should select institutions that are the most beneficial to the least advantaged people as a means of improving their lives. There is little doubt that schools are such institution, so that segregated schooling has the effects of reducing excluded peoples opportunity (Oliver, 2001). Educational institutions are widely believed to be among the most important institutions for the improvement of peoples’ lives and if persons with disabilities are excluded from those important institutions, it is arguable that the society is basically endangering their lives. It could be argued that the Pareto improvement principle offers a good way for thinking about how the most disadvantaged members of a society can improve their living conditions. It is argued here that the use of affirmative action through human right principles are consistent with the Pareto improvement principles and will easily and rapidly improve a society’s awareness and implementation of inclusive education for all.

“Justice as Fairness” is the phrase used by Rawls to refer to his distinctive theory of justice. Justice as Fairness consists of two principles: First, each person is to have an
equal right to the most extensive basic liberty compatible with similar liberty for others. Second, “social and economic inequalities must satisfy two conditions: (a) They are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and (b), they are to be to the greatest benefit of the least advantaged members of society”. The first of these two principles is known as the equal liberty principle. The second principle is split into two parts; the first, known as fair equality of opportunity, which asserts that distribution of social needs, should not benefit those with advantageous social contingencies, to the detriment of their less privileged others; for the purpose of this thesis it will mean the non-disabled members of such society. While the second, is reflective of the idea that inequality is only justified if it is to the advantage of those who are less well-off. This is consistent with human rights, social justice and democracy, because with the use of affirmative action to equalize the unfair and unequal treatment of disabled people. Any complaints or argument of inequality from the non-disabled members of the society will be justified because it is to the advantages of those (disabled people) that have long been the less well-off. Of the many ideas of justice as fairness as enumerated by the work of John Rawls, the present study will focus on the ideas of (1) citizens as equal in a democratic society and (2) the principle of a well ordered democratic society as discussed by Rawls (2001, p.6). Both of which are considered in the hypothetical assumption of a democratic society that is effectively regulated by a public conception of justice as fairness. Though citizens may have conflicting religious, philosophical, and moral views and so they affirm their political conception from within different and opposing comprehensive doctrines, and also affirm it in part at least, for different reasons (Rawls, 2001, p.32). However, in a well ordered society, reasonable and rational minded citizen have a common and acceptable notion of concepts of justice. Though their reasons for coming to a conclusion of what is or is not justice may vary, nevertheless their “reasonable overlapping consensus” does not prevent them from identifying that in their society, there is a shared assumption that this or that is justice and this or that is injustice on a socially serious matter like
human rights, inclusiveness, social justice, and equality. 
Walzer (1983) suggested that every human society must educate its children, its new and future members. Education according to Walzer is a program for social survival. And so it is always relative to the society for which it is designed. The purpose of education, according to Walzer, is to reproduce in each generation the type of characters that will sustain the constitution of society. In any civilized society, it could be argued that social cohesion will be better sustained by proving equal opportunity and allowing every citizenry to equally obtain, similar education, through an approach of inclusiveness. Education should be supportive of learners’ lives so they can achieve their social capitals. The concept of social capital highlights the value of social relations and the role of cooperation amongst people in a given society as they cooperatively share collective, socio, political and economic burdens and benefits which will translate into progress and development of the society. The term ‘social capital’ is frequently used by different social scientists and scholars in different ways. It is a wide term, and that is why it can be defined accentuating different aspects depending on the perspective. It is the fruit of social relations, which consists of the expectative burdens and benefits derived from the equal treatment and cooperation between individuals and groups in a society. It arguably follows that education must appeal from school to society, and from conception of educational justice to a conception of social justice (Walzer, 1983).
It is needed to maintain an egalitarian society, as globalization brings learners with different physical, cultural and family backgrounds together. Also, since education also serves as an egalitarian business, Walzer (1983) rightly suggested that “when schools are exclusive, it is because they have been captured by the social elites, not because they are schools”. It may be good to begin to see educational equality as a form of welfare provision, where all children, conceived as future citizens, have the same needs to know, and where the ideas of membership is not allowed to hang on their caste, religion, creed, poverty, physical or mental ability but on their being human beings, who are interested in education.
This will sort out a one-sided and unequal balance of educational settings because of the dividing lines between inclusive and exclusive education settings, thereby, using exclusion to reinforce inequality from schools to society.

The notion of the social contract as most famously discussed by philosophers like Hobbes, Locke, and Rousseau, implies that the people in any given society gave up their individual sovereignty to a government or other authority in order for them to receive or maintain social order through the rule of law. It can also be thought of as an agreement by those being governed and those governing them to use some sets of rules by which they are governed in order to achieve their common good. It follows that any such rule by which they are governed which unfairly prejudices the possibilities of known members of that society to lead and maintain a normal life is ‘iniquitous’ rules and injustice. Rules and practices that minimize the opportunities of disabled people to improve their life clearly demonstrate the impact of iniquitous rules and its accompanying injustice, which need to be removed.

In criticising utilitarianism Rawls (1971, 2001) argued that utilitarianism would in general give little comfort if it did not respond to distributional inequality of the most blatant type as suffered by the disabled members of most civilized societies, a fortiori in developing societies. Whilst Rawls theory is not directed against utilitarianism alone, it appeared to be directed against ineffective doctrinaire social theories in general. Utilitarianism requires that moral worth of policies, action or inaction, must be determined by its utility in maximizing social satisfactions of greater number of people. For the purpose of inclusive education as fundamental human rights of those excluded, in particular and society’s wellbeing in general, it is arguable that the principle of utilitarianism is an attempt to lay down an objective principle for determining when a given action was right or wrong (Popkin et al. 1982). It is arguable that if the principle of utilitarianism is applied in the context of fairness and justice it may become clear that exclusion serves to marginalise a number of compulsory school aged children. This can be argued as being inconsistent with democracy, human rights and social justice, and equality.
According to Nussbaum (2006), the social contract idea is that justice is the outcome of an agreement among persons in a given society. This idea can be interpreted in various ways because the social contract tradition is heterogeneous. On social contract accounts of social justice, Martha Nussbaum proposes a fresh start. Her suggestion is that societies start directly with the idea of the dignity of each individual and what is required to live a life of dignity. For humans, this yields the idea that justice at a minimum requires that we secure for each and every individual the capabilities to function at a threshold level in every way that is required for a decent human existence. She contrasts this approach with the approach of utilitarianism, which takes desire satisfaction to be the relevant measure of people’s condition for moral principles.

The main point here is an assumption that the primary subjects of justice are identifiable with the society entering into contract, i.e. that is the parties in the social contract are basically formulating principles as though they will live under the contract. This leads to the principle of justice assumption that those entering into the social contract are doing so on the grounds of reasonable and foreseeable personal benefit to them. All these are closely connected to what has been called the Humean Circumstances of Justice so that if there were great disparities in physical and mental abilities between the contractors, then there is a likelihood that the one who enjoy more opportunity would probably benefit far more than those who enjoy less opportunity. This opportunity is based on socially, physically and psychologically constructed phenomenon.

Affirmative action refers to legislations or policies that take factors including ethnicity, race, colour, religion, ability, and gender, linguistic, cultural, or national origin, into consideration in order to benefit a group recognized as being underrepresented, stigmatized, excluded or marginalized, usually as a means to counter the effects of a history of discrimination, which that group had suffered from. The focus of such policies ranges from education, employment and property rights, to public contracting and other programs. For example in India the principle of
affirmative action was the type of policy that was adopted since its independence, to increase the representation of women and ethnic or racial minorities in areas of employment, education, and property ownership, from which they had been historically and socially excluded. This has also influenced affirmative action to inclusive education/schooling through other principles, like, the human right, social justice, equality and democratic perspectives.

When the law of a country discriminates against a certain group of people in its territory, the implication is to create in the minds of the affected people a sense of devalued personality reducing them within the vicious circle. Such law makes some person of the underprivileged sections of the society to accept their devalued status as being legitimate. While others with the requisite phlegm press harder in an attempt to overcome their stigmatized life. Nevertheless in the absence of social and legislative equality, the extent to which the strongest person from such section of the society can overcome his/her devalued status largely depends on mere luck.

Since second world war, many nations enjoy the tagged of developed, developing and under-developed. The different theories of education that have been most common in the national development context can roughly be grouped into human capital theories and theories of consciousness-raising. The human capital theories attempt to prove that education (investment in human capital) will promote economic growth. This theory postulates the need for skilled technicians and professional experts in capitalist societies. Government agencies, private foundations, and international organizations such as the World Bank and the International Monetary Fund, were actively involved in the ideal of investing in human capital. There was a definite belief that investing in education and training, which was socialization to the capitalistic, technical society, would lead to economic growth and progress, especially in third world countries. Neo-Weberian and neo-Marxist theories of education have focused on the negative aspects of education, such as the reproduction and reinforcement of inequality of social structures and systems and educational wastage, i.e., dropping out of school or repeating classes - the "loss" of attained knowledge and skills in general. The
Weberians have focused on how different status groups in society compete for wealth, power, and prestige where education is an important element in this competition. Education serves to reinforce the "status cultures" by defining "insiders" and "outsiders" of the dominant culture. The Marxists and others focus on the reproduction of inequality inherent in the educational system, and maintain that the educational system therefore is no more than one of the systems of domination of the ruling class. Thus, education is also an arena for political struggle. Class society is reproduced and reinforced on both the individual and collective level: class-based personality traits are reinforced as well as the whole culture and structure of the classes. Wider patterns of power, interests and control are reflected in the educational system and underlie the values that are taught. The educational system is part of the class structure which reproduces and reinforces class consciousness and social inequality. There is a focus on the waste and dysfunction of education, the inefficiency of the educational systems, and the inequalities of opportunities and results. This critical theoretical approach has been applied to many of the colonial systems where the educational system was controlled and managed by the colonial power and where an indigenous elite often was picked out to be educated. This elite was socialized into the colonial power's culture and consciousness and often internalized the colonial norms and values of domination. The Weberian and Marxist approaches also stress education as a very important socialization mechanism. They have focused on positive aspects of education, such as the teaching of class consciousness and the learning of cultural values and norms. The Marxist-inspired conscientization theory and program of Paolo Freire is one example. His theory and praxis is that learning how to read and write is part of learning how to "read" and interpret reality. He focuses on the inner aspects of education, how education is essential for the personal development of a human actor, for the ability to comprehend the structures and systems of action surrounding the actor. This theoretical approach also poses education as the key to escape a life situation of poverty and oppression. Previous research on education has, in line with these theories, primarily focused on
the outcomes of education. For the human capital theorists especially, it was important to legitimate education as an essential part of national "development" and "progress."

1.2 Research Problem:
If there was no child in the universe, there will be no humanity and without humanity there is not proper growth. Therefore, the future of the country would be in dark. Today's children are prospective leaders, wealth of nations, and future of the nations. All these are possible only when all the children of the nations are educated. Education is the key to success of the nation. Therefore, it is necessary to provide all the children free and compulsory education in early time. The literacy ratio of India is very low. Our Constitution framers were aware about the problem of illiteracy and compulsory education in India. So they framed Directive Principles of State Policy in Part IV under Article 45. After 2002, Right to Education become fundamental right.

Now, Right to free and compulsory education become a fundamental right of every child between the ages of 6-14 years. The right of children to free and compulsory act, 2009 has been passed and came into force with effect from 1st April, 2010. According to the census of the 2011, India has child population of 422 millions of which 300 millions were in the school. It increases a compulsion to compel to pass only but not at the rate and quality the Government desire. After making so many efforts the Rights to Education is still in the word of statute only. The Union and State Government has made many alternative schemes to send poor children to schools but their efforts make little improvement. In such a condition, it is found that defect is within the system, implementation and observation of the scheme as well as the Act.

Therefore, the present researcher would conduct his research study on the topic entitled:
"Right to Free and Compulsory Education Act, 2009: A Critical Analysis of Right to Education with Special Reference to Human Rights Jurisprudence in India"
1.3 AIM
The main aim of the present researcher is to critically evaluate Right to Free and Compulsory Education Act, 2009 and its Effective Implementation for Ensuring the Human Rights of Children

1.4 Review of Literature:
J. P. Naik & Syed Nurullah (1943) in their book "History of education in India", wrote that the history of the evolution of the modern system of education in India may be likened to a great drama. They categorised the actors in this drama divided into three groups: the missioneries, the European officers of the Education Department and the Indian people. They discussed about the surveys of indigenous education that were carried out in Madras, Bombay and Bengal. For the first time in India, Thomas Munroe collected statistics of children under domestic instruction and felt that some allowances must be made for the children under domestic instruction. By the end of the nineteenth century, therefore, the old indigenous system of education disappeared almost completely from the field and a new system of education, which aimed at the spread of Western Knowledge through the medium of the English language, was firmly established in its place. As early as 1880's school of thinkers including enlightened Indians felt the introduction of compulsory elementary education for the masses and also encouraged private enterprises. The Charter Act of 1813 secured comparatively large amount annually for educational activities. They classified the second period into six topics beginning with Wood Despatch 1854 upto 1921. For the first time in India Government assumed full responsibility for the mass education giving importance to expansion of primary education. Focussed areas remained to grant-in-aid to primary schools and indigenous schools. But in 1911-12 the literacy rate remained about 6 percent only. The most important event was the passing of Compulsory Education Acts during the decade 1917-1927 in many provinces of British India. They concluded the faith of primary education before independence as 'All thigs considered, it may be concluded that the improvement in quality was not
appreciable and way by no means an adequate compensation for the loss in quantity'.
Sureshachandra Shukla (1983) in his article "Indian Educational Thought and Experiments: A Review" wrote that those characteristics of thoughts and experiments of the British in terms of ideas that were modified, when they were not totally opposed, by Indian leaderships. Some of the characteristics of the Indian response which took place within the framework of the official system, and somewhat modified it even during the period of British rule are: Scientific rationalism and egalitarian socialism, tempered with a relative reluctance to probe Indian social structure or British Imperialism too deeply, a continuous conflict as well as combination between tradition and modernisation. The differing balances between the two poles of this dichotomy are represented by men like Radhakrishnan and Nehru and Gandhi. In each case, the essential concern is with a definition and strengthening of identity--the identity of the Indian. In each, reliance on the past, on tradition, is needed in order to find a base for this identity and in each case its modification by contemporary and modernistic influences is attempted. (Radhakrishnan looks more backward than forward, while Nehru appears to do the opposite. But both of them look in both these directions and in fact their visions of the present and of the desirable future are different, Nehru representing a greater fascination with socialism and science.) The position of the individual in relation to his group or collectivity. This exhibits some emphases which are more collectivistic. From the view point of education, the stress, the change towards individuality and the need to recognise the individual in the process of education, even when it is intended not to stress it too strongly in the goals, is seen in men like Zakir Hussain and Saiyidain as well as in Gandhi. But Gandhi's strong collective orientations are much more earth-based and closer to the common man than those of the formal educationists. He stresses the individual least of them all, notwithstanding his appeal to the 'inner voice'. The socialists seem to have had very little to contribute because they were: (a) caught up with modernism, and (b) preoccupied with the tremendous problems of organising and conducting a minority-based mass movement of workers, sometimes peasants,
tribals or scheduled castes, with the instrumentality of an essentially middle-class 'modernised' leadership. They had, therefore, neither the time and energy nor the theoretical-ideological motivation for defining distinct educational positions or conducting educational movements. Exceptions here would be the movement of tribal education (Thana) in the 1930s and 1940s and some similar examples.

Some of the other more significant episodes in the history of educational thought and experiments in modern India may now be reviewed by way of illustrating the lessons for designing a future. When the British started building up the base of the new system of formal education--of which the superstructure emerged in the form of the three affiliating universities in 1857-they sought to integrate and incorporate the existing indigenous elementary schools within a uniform system leading up to the University through the high schools. Throughout the nineteenth century one notices two conflicting elements in British policy; namely, the desire to make elementary schools functional to occupations arid the desire to make them a better preparation for the later stages of education. This meant, initially, that reading and writing for lower level administration was to some extent counterposed to more liberal cultural content. Towards the end of the century, as the higher and secondary stages became firmly established, the latter trend became stronger. However, in this period, particularly because of the collapse of the rural economy (dramatically illustrated by the famines) and also because of a faint emerging awareness of the needs of industry, the practical aspects of an elementary school curriculum again received official attention, though without any substantial practical success. The indigenous elementary schools had a largely vocational character--though the picture varied from one part of the country to another depending on the extent to which brahmans used these schools--in as much as they taught agricultural or business accounts along with correspondence and keeping of records. However, in many parts of the country, for instance, in Bengal, they also had a more distinctly cultural character. The elementary schools, which were promoted through the system of inspection and promulgation of textbooks by the Government, did not appear sufficiently cultural to sensitive Indians like Iswar
Chandra Vidya Sagar. As an Inspector of schools he therefore sought to introduce Bengali literature and even Sanskrit into these elementary schools. This trend was not sustained over a long period by official British policy when the effort was more and more to reorient the existing indigenous schools, themselves having a quasi-vocational character, towards the administrative and revenue system established by the Government. Some new vocational content replaced the old and the system of payments by results tended to emphasise the mastery of prescribed content which would be more or less uniform in all the schools. This had very little cultural content. Later in the century, particularly after the famines of the 1870s, the effort to rejuvenate the rural economy by paying attention to handicraft industry, agriculture and the improvement of revenue records led to efforts for introduction of certain elements of agricultural and even object lessons and nature studies in the rural elementary schools. There was even a suggestion from the Director of Education in the Punjab to adjust timings and holidays to suit the needs of farmers. The later efforts and directives of Lord Curzon to orient elementary education in a rural and practical direction are well known. All of these have, however, come to very little, and elementary education has retained its primarily verbal and bookish character. This is easily understood in terms of: (a) the weakness of effort in schooling; (b) the weak influence of productive activities on education; and (c) the stronger pull exercised by the high school and college as these became more widespread and more strongly established. The strength of the last factor is illustrated by several facts from the history of nineteenth century education. In Uttar Pradesh (then North Western Provinces) and the Punjab, where for many reasons higher education in English developed slowly, the influence of the traditional Persian or the business scripts of Kaithi and lande respectively (see glossary), remained strong for a long time. Indeed, even government employment could often be obtained without a formal English education. By contrast, in Bengal, the absorption of indigenous schools into the government system proceded much more rapidly. Gokhale's argument in favour of allowing the municipalities to enforce compulsory educa-tion can most justifiably be
viewed as a liberal attempt to make India similar to the Western liberal societies—an unsuccessful effort, for India under British rule was not advancing in that direction. Gokhale's policy was the sheet anchor of successive Indian governmental efforts in the 1920s and 1930s, and remains to this day. However, by itself it does not represent any major change in terms of educational ideas and programmes. For that, India had to wait for Gandhi, whose contribution has already been reviewed. One consequence of this has been the lack of creativity within education itself.

K.P. Malik (2010) in his book "Right to Elementary Education" wrote the rise in numbers of total enrollment in primary schools, from 192 lakhs to 1098 lakhs in 2001. In 2001, there were 60,840 pre-primary and prebasic schools, and 664,041 primary and junior basic schools. Citing importance of literacy, he lamented about literacy gaps between rural and urban, and also the gender preference in education as in India female population is kept away from schools.

Myron Weiner (1996) "Child Labour in India: Putting Compulsory Primary Education on the Political Agenda" wrote that on educating its children India remains so behind the rest of Asia that it will take a major infusion of resources and political leadership to catch up. Deep class/caste divisions have been barriers to the development of a national drive for mass education by those who have made it to the upper strata. As the economy opens and employment opportunities grow with the expansion of the country's consumer industries, the governing middle class may recognise that the country needs a more literate population and therefore must invest in its children. But it will take a major coalition of locally based groups, the active participation of the media, the contribution of researchers and the information they disseminate, the support of investors, educators, social activists and trade unions and international donor agencies to get India to address the way it treats the children of the poor. They conceptualise a distinction between the children of the poor and their own children, between children as 'hands' who must be taught to work and children as 'minds' who must be taught to learn. It is this conception that leads middle class officials to criticise India's primary schools for their failure to emphasise 'work', vocational
training, and agriculture; as if the poor need to be taught how to work. The reason for these high primary school drop-out rates and high illiteracy rates, Indian government officials say, is that many children don't want to go to school or are too poor to attend. So much for the numbers.

Jandhyala B. G. Tilak (1996) in his article "How Free Is 'Free' Primary Education in India?" based on data generated by the National Sample Survey Organisation on household expenditures on education shows that high households expenditure on primary education more specifically paying tuition fee, examination fee and other fees even in government primary schools. The financial and material incentives provided by the government are found to be available only to a small fraction of students. There are large scale inter-state and inter-group (by gender and by region - rural and urban) variations with respect to several aspects relating to public provision of incentives and also to the levels of household expenditure on education. According to the Constitution of India, elementary education of eight years duration has to be provided free to all by 1960. This elementary education, considered as a basic need in many countries, and as a minimum need in India, has neither been compulsory in all the states in India, nor is it provided free to all. He lamented that despite significant quantitative expansion, the goal of universal elementary education still eludes the Indian society and added household economic factors have been generally found to be the most important factors contributing to non-enrolment and drop-out of children from schools. He suggested the possibilities if elementary education can be made really totally free by providing free textbooks, learning materials, uniforms, noon-meals, etc, to all, and also scholarships in such a way that the need for household expenditure on elementary education does not arise. One might not favour any differentiation by gender at least in primary and upper primary schools, though in general protective discrimination in favour of girls is promoted. In regard to his article, later on free and compulsory education has been enacted as an Act in the year 2002 in India.

Kaneko, Motohisa (2007) in her thesis "Political Economy of Universalization in
Primary Education" wrote that the universalization of primary education in accordance with the idea of education as a human right was delayed. Sufficient governmental subsidies to support it were realised only in the 20th century in the processes of forming the welfare states. However, recently, the images of the welfare states and the conventional forms of formal primary education system as being led by the state have begun to change. In the meantime, developing countries implemented the systems that evolved in developed countries, thus their primary education systems had, from the beginning, a tendency towards being spearheaded by the state, including the financial aspects. However, this total dependency upon the state found itself in serious straits in 1980s when the international economic recession, which shrank the government's budgets in general, and particularly in educational items, began. Recently, the skepticism and reconsideration about having the state lead the educational system, which have appeared in the developed countries, have been influencing educational policies in developing countries. This has been bringing about confusion and complicated factors with respect to the enterprise of the universalization of primary education because the universalization of primary education inherently has orientation towards universality which requires the government to take the necessary proper role in its evolution.

S. Chandrasekhar and Abhiroop Mukhopadhyay (2006) wrote that in an attempt to attain the goal of universal primary education, many developing country governments, including India, have abolished official fees in primary education. The 86th amendment to the Indian Constitution made free and compulsory education a fundamental right for all children in the age group 6-14 years. Article 45 of the Constitution pertaining to primary education being only a directive in nature is not justiciable. The 86th amendment to the Indian Constitution enacted in December 2002 made free and compulsory education a fundamental right for all children in the age group 6-14 years. The bill specifies that every parent or guardian of a child has to "enrol his child, or, as the case may be, ward in a recognised school, cause the child to attend such school with at least such minimum regularity as may be prescribed; and
provide the child full opportunity to complete elementary education". Following up on this amendment, the Free and Compulsory Education Bill, 2004 was proposed and has since then been studied by the Central Advisory Board of Education. There are other direct and indirect costs that can deter children from going to school. In this paper, using a rich nationwide data set, the authors construct the incompressible direct costs of attending primary school in India. After controlling for the opportunity cost of going to school (as proxied by the ratio of children's wages to adult's wages), it is found that the direct costs of education adversely affect the probability of children going to school, more so for children from poorer households. The results show that relative to boys, girls are more likely to be affected by the direct costs of schooling. The authors show that making primary education completely free will not increase the attendance rates to 100 per cent. They found that the government will have to incur an additional minimum expenditure of over Rs 2,900 crore every year in order to defray the basic or incompressible cost of attending school. They use the 52nd round (1995-96) nationwide data of the National Sample Survey Organisation (NSSO), India, to examine the factors affecting schooling decisions in rural India. They focussed on direct costs of primary schooling, viz, fees, books, and stationery. an issue of paramount importance if the MDG have to be met. As is evident the contribution of this paper is in terms of quantifying the impact of cost of primary education. Tuition fee apart, there are a host of other expenditures (books, stationery, etc) which households incur on school going children. Without incurring these costs it might not be possible to accrue the benefits of going to school. They show that after conditioning on the standard controls including opportunity cost of schooling, such direct costs adversely affect the likelihood of attending primary school. They have shown that both direct and indirect cost of schooling lower the probability of school attendance. However they also found that making primary education free will not translate into 100 per cent primary school attendance, since there are other factors (sex, opportunity cost of education, attitudes towards education, etc) that influence attendance decisions. Direct costs of schooling affect girls and boys differently. Girls
are less likely to school on account of direct costs of schooling therby suggested that the government will have to incur an additional expenditure of over Rs 2,900 crore every year in order to defray the basic or incompressible cost of attending school. Given the increase in enrolment rates, the government simultaneously needs to step up expenditure on school infrastructure, wages and salaries of teachers and other expenses including mid day meals, etc. which they suggested shall be a topic for future research.

Kamal K. Sridhar (1996) in his article "Language in Education: Minorities and Multilingualism in India" noted the question of education in India cannot be properly discussed without referring to its socio-linguistic context. India's linguistic diversity can be attributed to: (i) different waves of invasion and colonialization (the Aryans, the Moghul, the Portuguese, the British); (ii) free migrations within and between the different states and union territories; (iii) political influences leading to the linguistic reorganization of states following Indian Independence in 1947; and (iv) presence of different ethnic and religious minorities distributed throughout India (Buddhists Jains, Sikhs, Muslims, Christians, Zoroastrians, and others). This paper provides background information on the linguistic profile of India. The term "minorities" in the Indian context is defined, and the protection offered to linguistic minorities in the Indian Constitution is examined. A discussion of language policy in Indian education follows in which the recommendations of the different education commissions are analysed. The important issues covered include: the number of languages that are taught, the medium of instruction, and the educational policies regarding speakers of minority languages. The article also discusses different language movements and their impact on Indian education. Regarding the use of minority and tribal languages, while there is an implicit recognition of the need to preserve and foster all languages and the principle that primary education at least should be imparted in the mother tongue, the problem has been at the level of implementation. Against this background, the government and the experts have forged a compromise - one that institutionalizes multilingualism by actively promoting the study of three languages. Some minority
communities in India are slowly becoming aware of their rights and are demanding a
definite place in the Indian educational system. Others are using the strategy of
selective adaptation and assimilation. The three language formula, together with an
ongoing massive literacy campaign, constitutes one of the greatest experiments in
language education that mankind has ever seen. Developments in the next few years
will be crucial for answering the question: whether major languages such as Hindi or
English will be "replacive" or whether the minority language speakers will assert their
right to be educated in the mother tongue, thereby extending a tradition for bilingual
education, in which minority languages will have a place of equal importance.

Santosh Mehrotra (2006) in his article "Reforming elementary education in India: A
menu of options" pointed out different findings from a large sample survey in the
states of India that account for two thirds of the children out of school. It then
examines the feasibility of the central government’s goals to ensure all children
complete 5 years of school by 2007, and 8 years by 2010. He asserted that it would
be difficult to assure the goals without significant reforms by the central and state
governments on key issues like the public spending pattern; improving teacher
accountability and work environment; incentives to improve demand for schooling;
and the private sector. It argues that central to universalising elementary education
will be improving the level, equity and efficiency of public spending. However, even
with these reforms, improving teacher accountability will still remain key to the
achievement of the goals. Unlike the progress in enrolment during the last two
decades, the trends in retention and quality are not very encouraging. Drop out in both
rural and urban areas is higher at the upperprimary (classes 6–8) than primary level
(classes 1–5). That is, older children are not remaining in school.

Education facilitates social mobility, leads to high status occupations, correlates with
high wages, leads to power positions in the political and economic sphere, influences
child care and domestic work, etc. During the last ten to fifteen years, research has
focused more on the context of education. This includes class interaction, contents of
school books, and the role and action of the teacher and pedagogical programs. The
contents of education reflects the social organization of knowledge; the curriculum defines which knowledge is valid and the pedagogy defines what type of transmission of knowledge is valid. There have been studies on the degree of power, control, and influence held by teacher and pupil in deciding the selection, organization, pacing, and timing of the knowledge transmitted and received. But, besides having “education for all”, India is still far steps to cover its target which was set at the time of independence.

The expansion of schooling facilities within a reachable distance and teacher supply are insufficient and incapable of meeting the growing demand for education. In addition, historically, teacher absenteeism from school has been seen to be a major problem in India. It is interesting that the states that have better elementary education indicators have a lower incidence of teacher absences. the private unaided subsector is very large in the States with the most children out of school (Uttar Pradesh, Bihar, Rajasthan, AP)—a clear indication that where the public system is dysfunctional private providers fill the gap. The private-aided schools’ share in enrolment tends to rise with the level of education: except in some States, it is relatively low at the primary level, rises sharply at the upper-primary level, and is the highest at the secondary level. India has been the chronic under-funding of the elementary sub-system. lack of school facilities remained a serious problem for certain sections of the population.

1.5 Objectives:
For the effective conduct of the proposed research study, the present researcher has set the following objectives:

i. To analyse the concept of Human Rights.

ii. To understand the relationship between Right to Education and Human Rights.

iii. To understand and analyse the International Instruments on Human Rights.

iv. To understand the constitutioanal framework available for Right to Education in India.
v. To examine the impact of the Government policies related Right to Education.
vi. To examine impact of landmark judgements on Right to Education.
viii. To identify problems which affects the Right to Education.

1.6 Hypothesis:
In order to conduct the research study and for the achievement of the objectives, the present research has formulated the following hypothesis:

i. The definition of Human Rights is not possible jurisprudentially, what is possible is the identification of Human Rights.

ii. The Right to Education will increase the development of the country and help in overcoming the problems of unemployment and poverty.

iii. The Constitution of India provides guarantee to free and compulsory education between 6 to 14 years. It excludes the children below from their fundamental rights to nutrition, health and pre-primary education.

iv. The Government schools are supposed to provide good education but there are very few which actually doing so, the Government schools on the other hand faces many problems in the form of scarcity of teacher, no school building, and lack of equipment etc.

v. The Government playing double game in relation to its responsibilities where there is financial question, where there is financial question the Union Government speak the language of concurrent and decentralised responsibilities while on the issues of the content, curriculum, minimum standard etc. it seeks exercise all the possible control on the state.

vi. The Union and State Government have many attractive scheme to send the children to school like, "Sarva Siksha Abhiyan", "Mid Day Meal", "Dress Distribution", "Scholarship" etc. but it make a little improvement.

vii. The lack of financial memorandum to compel the State to provide adequate
1.7 Research Methodology & Collection of data

The Webster’s International Dictionary proposes a very intensive definition of research as “a careful, critical inquiry or examination in seeking facts or principles; diligent investigation in order to ascertain something”. The term ‘methodology’ is a general approach to research. It simply refers to techniques and procedures used, i.e., either quantitative, qualitative or both, for exploring social reality and producing evidence.

Every scientific research follows scientific method that is a systematic steps or procedures for its investigation or inquiry. Certain characteristics of the scientific methods are objectivity, reliability and validity. Kerlinger (1964) wrote that “Scientific research is systematic, controlled, empirical, and critical investigation of hypothetical propositions about the presumed relations among natural phenomena.” The present study is a systematical investigation of the Right to free and compulsory education in India. All research begins with a question or problem. Problems initially chosen almost always require more precise formulation to be amenable to research.

After the selection and formulation of the research problem, the next step is to develop an overall plan or framework for the investigation. Design is specifically related to the research problem. Wilkinson and Bhandarkar (1998) wrote an accurate meaning of design as “To design is to plan, that is, designing is the process of making decisions before the situation arises in which the decision has to be carried out.” Research design is to anticipate all of the subsequent stages of the research project. It needed an appropriate strategy for making the research. Depending upon the purpose, the study is a descriptive and analytical study. In comparison to other types of study, descriptive study is more rigid and specific in design than any other methods of research design. The procedures to be used need to be carefully planned in order to obtain complete and accurate information. The objective of a descriptive study is to describe some phenomenon. A descriptive study is much more structured. The
information is gathered from a set of cases that are carefully selected to enable the researcher to make estimates of the precision and generalizability of the findings. Along with this the present study is also an attempt to decipher the cause and effect relationships of the right to free and compulsory education in India proving that it is also analytical study. It is concerned mainly with control and accuracy of the study. The research work is carried out with the collection of secondary data. Information thus collected have been analysed. Secondary data have been collected by literature survey such as primary laws, reference books, journals, reports, opinion of legal scholars and statistics available on the subject of research. The present study follows systematic procedures of scientific investigation, such as Introduction, review of literature, formulating the objective of the study, designing the method of data collection, collecting information, processing and analyzing the data and reporting the findings.

1.8 Significance of the Study at:

National Level

The study will provide baseline data regarding the socioeconomic condition of children in India. Further, it will help the legislature to make law on free and compulsory education.

International Level

The study ensures a deeper understanding on the concept of free and compulsory education for child. The study will further help in reflecting and development understanding of the administration of justice under Indian jurisprudence at International level.

Contribution to Knowledge

The study will be useful to those who are engaged in generating and spreading knowledge. Further, it will be useful to those who are engaged in administration of justice. This study will help immensely to legal scholars, academicians, and students to further their knowledge of the relatively new and rapidly growing subject of free
and compulsory education to children. This will also serve as a reference book to the students of law especially in India where is negligible contribution to this subject by Indian Legal Scholars.

Utility of Study in Present Context

This research work will help to formulate future policy as well as we will come to know that what is lacking in concern to Right to Education. This study will inspire students, legal scholars, academicians, teachers, NGO’s and even legislature to take initiative in formulating and regulating socioeconomic and legal of children. This study will work as inspiring tools to authorities for making statutory provisions at national level for protection of right to free and compulsory education.

1.9 Report Writing:
Primarily a report is the preparation of a detailed report such as a thesis or a monograph. Regarding the importance of a report, Wilkinson and Bhandarkar (1998) wrote that “The audience for whom the report is intended, needs know enough about the study to be able to place it in its general scientific context, and thus, to judge the adequacy of its methods and arrive at an evaluation of how seriously the findings may be taken or to what extent these should be depended upon as guides to future scientific activity and social action.” The present study consists of three parts, i.e., prefatory items, body of the report and terminal items.

The prefatory items begins with the certificate of the research supervisor followed by acknowledgements given by the researcher to his respected supervisor, chairperson and other persons whose help and support enabled the completion of the present study. And, also attach a note of gratitude to all respondents for providing their vital time and information for the present study. This is trailed by the item page and list of tables of the present study. The present study consisted of six chapters.

As a beginning of the body of the report, the first chapter entitled ‘Introduction’ provided a brief conceptual explanation of the term ‘Compulsory education for all’, various theoretical contributions on approaches to understand the intricacies of
compulsory education for all. Review of pertinent literature preceded the problems to be investigated, followed by an explanation about the area of study. It is followed by objectives and hypothesis of the present study. Significance of the study is also presented. The first chapter concluded with the research methodology utilised in the present study.

The second chapter examines the concepts of Human Rights and Right to Education and also analysed in the context of substantive legal right to education under international law. The third chapter presented the constitutional provisions and policies for the right to education in India.

The fourth chapter provided insight on the discussions and analysis of different landmark judgements regarding free and compulsory education in India. The fifth chapter presented the various factors which affected and hindered the successfull of free and compulsory education for all the children.

The sixth chapter presented the analysis and main findings of the relationship between Right to Education and Human Rights. In addition, the final chapter also inferred the constituional framework available for Right to Education in India and the impact of the Government policies related Right to Education.

The final section of the present study, i.e., terminal items included references consisted of an alphabetical list of the books, articles and other sources used in the present study.