CHAPTER-7

TREND OF EDUCATION AND PRESENT SCENERIO
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7.1 Education

Education has to be meaningful, but the present system of education can be no search of imagination, be said to be meaningful. The present educational practice is "a neutral, value-free pursuit devoid of all ideology and ethics", which breed and attitude of social irresponsibility. Out educational practice may impart knowledge, but it does so in forms that ensure subjection to the dominant ideology of the status quo, according to experts. In fact, the prevailing system of education is a hangover of the British period and requires an attitudinal change. In other words, the entire educational system in the country needs to be revamped.

It is seldom raised that the origin of many of the country’s present difficulties lies in the large numbers that crowd our educational institutions for admission. This quantitative explosion is itself a big problem. Because of this perhaps, it has not been possible to pay adequate attention to quality¹.

Indian higher Education system has grown manifold since 1857. Now it has become one of the main strengths of the country. It has lead to development of skilled human resources, which are sought after throughout the world. The main strengths of our higher education system are—it is highly subsides, certain institution are of International standards. The weakness is being majority institutes are lacking in quality and are becoming complacent (Srinivas. G.2000). But the main issues of today’s Indian education are:
Increasing numbers of population to be accommodated in higher Education., Distance/online programmers, Establishment of private Universities, Entry of various foreign Universities, Complacency in higher Education Institutes

¹ New Education Policy Edited by D. N. Thakur. P. No 1
7.2 Elementary Education in India

Before 1976, education was the exclusive responsibility of the States. The Constitutional Amendment of 1976, which included education in the Concurrent List, was a far-reaching step. The substantive, financial and administrative implication required a new sharing of responsibility between the Union Government and the States. While the role and responsibility of the State in education remained largely unchanged the Union Government accepted a larger responsibility of reinforcing the National and integrative character of education, maintaining quality and standards including those of the teaching profession at all levels, and the study and monitoring of the educational requirements of the country.

The Central Government continues to play a leading role in the evolution and monitoring of educational policies and programs, the most notable of which are the National Policy on Education (NPE), 1986 and the Programme of Action (POA), 1986 as updated in 1992. The modified policy envisages a National System of Education to bring about uniformity in education, making adult education programmes a mass movement, providing universal access, retention and quality in elementary education, special emphasis on education of girls, establishment of pace-setting schools like Navodaya Vidyalayas in each district, vocationalisation of secondary education, synthesis of knowledge and inter-disciplinary research in higher education, starting more Open Universities in the States, strengthening of the All India Council of Technical Education, encouraging sports, physical education, Yoga and adoption of an effective evaluation method, etc. Beside, a decentralized management structure had also been suggested to ensure popular participation in education. The POA lays down a detailed strategy for the implementation of the various policy parameters by the implementing agencies.
ELEMENTARY EDUCATION IN INDIA
PROGRESS OF ENROLMENT
LAKH PERSONS

Primary Level (class I-V) Age 6-11 years
Middle Level (Class VI-VIII) Age 1-14 Years

sources this table “India 2006” p. 218-219
The National System of Education as envisaged in the NPE is based on a national curricular framework, which envisages a common core along with other flexible and region-specific components. While the policy stresses widening of opportunities for the people, it calls for consolidation of the existing system of higher and technical education of at least six percent of the national income.

The Central Advisory Board of Education (CABE), the highest advisory body to advise the Central and State Governments in the field of education, was first established in 1920 and dissolved in 1923 as a measure of economy. It was revived in 1935 and had continued to exist till 1994. Despite the fact that in the past, important decisions had been taken on the advice of CABE and it had provided a forum for widespread consultation and examination of issues relating to educational and cultural development, it was unfortunately not reconstituted after the expiry of its extended tenure in March 1994. CABE has a particularly important role to play at the present juncture in view of the significant socio-economic and socio-cultural developments taking place in the country and for the review of the National Policy on Education which is also due. It is a matter of importance therefore, the at the Central and State Governments, and educationists and people representing all interests, should increase their interaction and evolve a participative process of decision making in education, which enhances the participative process of decision making in education, which enhances the federal structure of our polity. The National Policy on Education, 1986 (as modified in 1992) also envisages that the CABE will play a pivotal role in reviewing educational development, determining the changes required to improve the system and monitoring implementation, and will function through appropriate mechanisms created to ensure contact with, and coordination among, the various areas of human resource development.

Accordingly, the CABE has since been reconstituted by the Government in July 2004 and the first meeting of the reconstituted CABE was held on 10 and 11 August 2004. The Board consists of nominated members representing various interests in addition to elected members from the Lok Sabha and the

In the meeting of the reconstituted CABE held on 10 and 11 August 2004 some critical issues had emerged needing detailed deliberations. Accordingly, seven CABE committees were set up to examine: (i) Free and Compulsory Education Bill and other issues related to Elementary Education, (ii) Girls Education and the Common School System, (iii) Universalisation of Secondary Education, (iv) Autonomy of Higher Education Institutions, (v) Integration of Culture Education in the School Curriculum. (vi) Regulatory Mechanism for the Text Books and parallel text books taught in schools outside the Government system, and (vii) Financing of Higher and Technical Education.

The above-mentioned Committees were set up in September 20004. The reports of these Committees were discussed in the 53rd Meeting of the CABE held on 14-15 July 2005 at New Delhi. Necessary steps are being taken to identify the action points emerging from all these reports and to prepare a road map for acting on them in a time-bound manner. In the meeting it has also been decided, inter alia, to constitute three Standing Committees of the CABE, viz. : (i) A Standing Committee on Inclusive Education for Children and Youth with Special Needs to oversee the implementation of the new education policy on this subject. (ii) A Standing Committee on Literacy and Adult Education to guide the National Literacy Mission. (iii) A Standing Committee for looking at the integration and coordination of efforts for children’s development, taking into account different schemes of education, child development, nutrition and health aspect.

In order to facilitate donations including smaller amounts from India and abroad for implementing projects/programmes connected with the education sector, the Government has constituted “Bharat Shiksha Kosh” as a Society registered under the Society Registration Act, 1960. Launched officially on 9 January 2003 during the celebration of Pravasi Bharatiya Diwas, the Kosh will receive donations / contributions/endowment from individuals and corporate,
Central and State Governments, Non-Resident Indians and People of Indian Origin for various activities across all sectors of education.

(1) **Expenditure**

In line with the commitment of augmenting resources for education, the allocation for education has, over the years, increased significantly. The Plan outlay on education has increased from Rs 151.20 crore in the First Five Year Plan to Rs 43,825 crore in the Tenth Five Year Plan (2002-2007). The expenditure on Education as a percentage of GDP also rose from 0.64 percent in 1951-52 to 3.74 percent in 2003-2004 (BE). The outlay for Education in the Tenth Five Year Plan of Rs 43,825 crore is higher than the Ninth Plan outlay of Rs 24,908.38 crore by 1.76 times. Rs 30,000 crore has been provided for the Department of Elementary Education and Literacy and Rs 13,825 crore for the Department of Secondary and Higher Education. The outlay for education during 2005-06 is Rs 12531.76 crore for the Department of Elementary Education and Literacy and Rs 2712.00 crore for the Department of Secondary and Higher Education. The expenditure during the plan periods on the different sectors of education is given in table 10.1.

(2) **Elementary Education**

The Parliament has passed the Constitution 86th Amendment Act, 2002 to make elementary education of Fundamental Right for children in the age-group of 6-14 years. It is proposed to bring in a follow-up legislation with detailed mechanism to implement this act.

(3) **Sarva Shiksha Abhiyan**

The Scheme of Sarva Shiksha Abhiyan (SSA) was launched in 2001. The goals of SSA are as follows: (i) All 6-14 age children in school/Education Guarantee Scheme Centre/bridge course by 2003, (ii) All 6-14 age children complete five year primary education by 2007; (iii) All 6-14 age children complete eight years of schooling by 2010; (iv) Focus on elementary education of satisfactory quality with emphasis on education for life; (v) Bridge all gender and social category gaps at primary stage by 2007 and at elementary education level by 2010; and (vi) Universal retention by 2010.
(4) **Education Guarantee Scheme And Alternative And Innovative Education**

Education Guarantee Scheme and Alternative and Innovative Education (EGS and AIE) is an important component of Sarva Shiksha Abhiyan (SSA) to bring out-of-school children in the fold of Elementary Education. The scheme envisages that child-wise planning is undertaken for each out-of-school children...

Bridge courses and Back to school camps can be residential or non-residential depending upon the need of children.

(5) **Mid - Day Meal Scheme**

The National Programme of Nutritional Support to Primary Education (NPNSPE), popularly known as the Mid-Day Meal Scheme, was formally launched on 15 August 1995. The objective of the programme is to give a boost to universalisation of primary education by increasing enrolment, attendance and retention, and also improving nutritional status of children in primary classes studying in Government, Local Body and Government aided schools........During 2004-05, (upto December 2004) about 10.88 crore children were covered under the Programme.

As on December 2004, the cooked Mid-Day Programme was fully under implementation in 20 states and all the seven Uts. Eight States, where the programme to being implemented partially have also decided to universalize the MDM programme forthwith.

(6) **District Primary Education Programme**

The Centrally-Sponsored Scheme of District Primary Education Programme (DPEP) was launched in 1994 as a major initiative to revitalize the primary education system and to achieve the objective of universalisation of primary education........improvements in classroom processes, etc.

(7) **Major Achievements of DPEP:**

(8) **Operation Blackboard**

(9) **Lok Jumbish Project**

(10) **Shiksha Karmi Project**

(11) **Mahila Samakhya**

(12) **Janshala Programme**
(13) Teacher Education
(14) National Council For Teacher Education
(15) National Bal Bhavan
(16) Education Of Scheduled Castes And Scheduled Tribes

(17) Constitutional provisions:

Article 46 of the Constitution states that, "The State shall promote, with special care, the education and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of social exploitation.” Articles 330, 332, 335, 338 to 342 and the entire Fifth and Sixth Schedules of the Constitution deal with special provisions for implementation of the objectives set forth in Article 46. These provisions need to be fully utilized for the benefit of these weaker sections in our society.

(18) Commitment in NCMP:

(19) Special provisions:

After independence, the Government of India has taken number of steps to strengthen the educational base of the persons belonging to the Scheduled Castes and Scheduled Tribes……..The Constitutional (86th Amendment) Bill, notified on 13 December 2002 provide for free and compulsory elementary education as Fundamental Right, for all children in the age group of 6-14 years.

(20) Sarva Shiksha Abhiyan (SSA):

SSA is a historic stride towards achieving the long cherished goal of Universalisation of Elementary Education (UEE) through a time bound integrated approach, in partnership with States. SSA, which promises to change the face of elementary education sector of the country, aims to provide useful and quality elementary education to all children in the 6-14 age group by 2010. The main features of the programme are:-

(i) Focus on girls, especially belonging to SC/ST communities and minority groups.
(ii) Back to school camps for out of schoolgirls.
(iii) Free textbooks for girls.
(iv) Special coaching/remedial classes for girls and a congenial learning environment.

(v) Teacher’s sensitization programmes to promote equitable learning opportunities.

(vi) Special focus for innovative projects related to girl education.

(vii) Recruitment of 50 percent female teachers.

(21) District Primary Education Programme (DPEP):

(22) Janshala:

The objective of Janshala is to support the efforts for UEE by providing primary education to the children from SCs, minorities, working children and children with special needs. Janshala emphasizes on active involvement of community in primary education programmes and training of teachers. Janshala programme is in operation in 139 Blocks of 9 States viz. Karnataka, Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Jharkhand, Orissa, Maharashtra, Rajasthan and Uttar Pradesh, The programme also covers the cities of Hyderabad, Bhubaneswar, Puri, Cuttack, Jaipur, Lucknow, Ajmer, Bharatpur, Jodhpur and Bilai.

(23) Mahila Samakhy (MS):

(24) National Programme for Education of Girls at Elementary Level (NPEGEL):

(25) Shiksha Karmi Project (SKP):

(26) Kasturba Gandhi Balika Vidyalayas:

(27) Jan Shikshan Sansthan (JSS):

(28) Central Institute of Indian Language (CIIL):

The Central Institute of Indian Languages, Mysore has a scheme of development of Indian Languages through research, developing manpower and production modern Indian Language including tribal languages. The Institute has worked in more than 90 tribal and border languages.

(29) Kendriya Vidyalayas (KVs):

(30) National Institute of Open Schooling (NIOS):
(31) National Council for Educational Research and Training (NCERT):

(32) National Institute of Educational Planning and Administration (NIEPA):

(33) University Grants Commission (UGC):

(34) Community Polytechnics:

(35) Engineering Colleges:

(36) SCP and TSP:

(37) Literacy Rates:

(38) Quality Improvement In Schools: -

During the Tenth Plan, it has been decided to introduce a composite Centrally Sponsored Scheme “Quality Improvement in Schools” by inter-alia converging the following components:

(i) National Population Education Project,
(ii) Environment Orientation to School Education.
(iii) Improvement Science Education in Schools, and
(iv) Promotion of Yoga in Schools.
(v) The proposal is under consideration at present.

39. National Population Education Project
40. Environmental Orientation To School Education
41. Improvement Of Science Education In Schools:
42. Introduction Of Yoga In Schools
43. Navodaya Vidyalaya Samiti
44. Kendriya Vidyalaya Sangathan
45. Intergrated Education For Disabled Children
   (a) National Curriculum Framework
   (b) Textbook Development
47. Promotion Of Languages
48. Hindi
49. Modern Indian Languages
50. **Present Scenario**

Since independence growth of higher education is very fast, the total number of university at the end of may 2002 were 293 and that of the affiliated colleges over 13,000 with a total enrolment of 7.5 million students and over 3.5 lack teachers. Even though there is very rapid expansion but in real sense only about 6-7% of the eligible age group (18-23) are getting the benefits of higher education. While this figure is more than 30% in most of the developed countries and more than 50% for the countries belonging to the organization of Economic corporation and development (OBCD). Among this figure of 6-7% more than 80% students in general education while this figure remain only around 30% in developed countries. Majority of the students population are in professional/vocational steams. About 18% of the India’s total students population getting the benefit of higher education through the distance mode. There are already 09 state open University with Indira Gandhi National Open University (IGNOU) at the national level at New Delhi established in 1985.

51. **Present Scenario of Higher Education**

Education scenario in India is fast changing its face. Various published documents, official, institutional or otherwise, words and utterances of ministers, bureaucrats, media-print or electronic, even private or public exchange of views, all these seem to vent to an idea, an outlook, a view on education that education is one that helps students earn their livelihood, as well as to secure lucrative jobs of their choice. They also seem to assert that higher education must be meant for those who can afford it and thus can get the highly paid jobs of their choice. The other argument revolves round financing of such kind of higher education. In developing countries like ours government is finding itself in capable to bear the responsibility of higher education as it already facing acute dearth of resources. Universities and colleges are starved of funds as the support of Government is being reduced and grants are not being provided in time causing hardship to them. It was reported in the Tribune (August 8, 1993) that higher education in Gujarat appears to be in the state facing a precarious financial situation, which will force them, to heavily
borrow funds it these are unable to generate their own resources........The same treatment has been given to all the Universities and aided colleges in the country.

52. **Equal Education To All**

The policy of government for reserving 25% seats for poor children in the regular classes of renowned public schools of country is not only favourable for parents with weak economic positions but also a positive step to eliminate social disparity. No doubt that the present age of globalization the competitions has increased in all fields, which well, definitely is more challenging in near future. In this situation the discrimination in the field of education leaves a large percent of society to search for opportunities with unequal qualifications, which give rise to depression among youth. Unfortunately the measurement of rich and poor is attached with the admission in private and government schools.

Therefore these efforts of the government on supreme courts decisions based on reports of kothari commission and efforts to make primary education a business are highly commendable. Again this truth that crores of children of our country are not getting primary education and majority of them are away from schools because of lack of money and government is unable to provide schools and proper resources. In such a condition it is natural for the government and society to ask from private schools for positive involvement.

It is true that government is not funded the Majority of big private schools but they cannot deny the fact that they have been allotted the land which was in crores in very minimal rates first because of their responsible social status. The government provide lands of crores of repels in very low prices to such organization, which are working for the hospitals, schools or social welfare in condition that they will provide free all the facilities free or at very low rates. But this is far away from reality and this can be seen in five star hospitals and private schools. In Delhi 20% seats are already reserved for poor students but this policy was adopted by stating evening or afternoon classes separately, which again breaks the idea of equal education to all. Therefore the
goal cannot be achieved only by making laws but by checking such irregularities strictly and making the management capable.

53. **Primary Education in Work Condition**

An NGO, Prathan has submitted an alarming report after surveying the basic education. This is a first survey of its own kind. Vice President Montek Singh Ahluwalia of Planning Commission has formed a report, which shows that the bitter truth of primary education has been taken desirously. The report says that 1.25 lakh children of the age group 6-14 years have not even seen the schools. The majority of such children around 71.2% are in Bihar, U.P., Rajasthan, Andhra-Pradesh and Orissa. More serious than this is, the degrading mental level of the school going children. The knowledge of language is so weak that 35% of 7-14 years children are unable to read a paragraph of class I standard. 52% children of this age group are unable to read a story of class II. The condition of knowledge of language in the age group 7-10 year is more deplorable. 17.2% of boys in the age group 11-14 years cannot read story. The report says that 50% of the students, studying in class II to class V in the villages cannot read general sentences. This is a bitter truth of not one or two but of 12 states of country. Although some positive things have also came in light in this 130 pages report. For example, the presence of girl child has increased in the primary schools. In 2001, 65% girls. Stayed outside the school, but this number has decreased in 2005 and according to this 52% of girls in the age group of 6-14 years stayed out side to school.

54. **Supreme Court on Education**

Questions are relating to privatization (or commercialization) of education inevitably found their way to the Supreme Court. One reason for this of course, was the several fundamental rights that explicitly and implicitly dealt with activities like education. A part from the ones discussed above, some even pleaded that the right to practice any profession, occupation, trade or business conferred by article 19(1)(g) included education with in its scope. Most
significantly, however, in Unni Krishanana, J.P v. State of Andhra Pradesh, 1 a five-judge constitution bench held that the right to education is implicit in the right to life enshrined in Article 21. 2

In fact, the court in Unit Krishnan had subjected to considerable and critical examination the issue of education, especially with respect to private colleges. It held that the imparting of education could not be considered ‘trade’, ‘business’ or ‘profession’ with in the meaning of article 19 (1)(g). Jeevan Reddy J refrained from commenting on whether education constituted ‘occupation’ within the meaning of the provision. 3 On the year hand Mohan I was prepared to tentatively accord it the status of ‘Occupation’, with the proviso that this recognition from the state or universities. 4 In any case, it was stated. Emphatically that commercialization of education could not be permitted under any circumstances, and that any law to prevent the same will be protected article 19 (6). 5

Further, the court framed a detailed scheme governing the recognition and affiliation of private colleges. 6 Among other things, this scheme specified that t least 50% of the seats in such colleges, referred to as ‘free seats, were to be filled on the basis of merit determined by common entrance examinations. The management would be free to fill the remaining seats with students willing to pay the enhanced fees imposed in respect of them. Most significantly, it specified that not quotas could be reserved by the management for itself any specific family, caste, creed or community,. It also called for the constitution of a committee in every state to determine the ceiling in the fees charged by professional colleges, and other related matters.

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1. (1993) 1SCC 64.
2. Id. At 730
3. Id at 751-52
4. at 687.
5. E.g. id at 751-52 (per Jeevan Reddy J)
6. Id. At 756- 61
With due respect it must be pointed out that the court indulged in overt, even balance, legislation. Whether this was per se a good idea is a debatable question. The fact remains that several further petitions were entertained to clarified and augment the functioning of such committees.

In TMA Pai Foundation v State of Karnataka, an eleven - Judge constitution bench was constituted to examine a wide range of issues pertaining to the privatization of education, particularly with reference to the status and rights of minority educational institutions established under article 30 (1) of the Constitution.

Perhaps the most significant pronouncement made herein relates to the recognition of education as an ‘occupation’ within the meaning of article 19(1) (g) coupled with this was the acknowledgment that private educational institutions were born of governmental inability or unwillingness to satisfy the demand for access to higher education process ought to be resisted. Consequently, any regulation of the right to establish educational institutions must limit itself, inter alia, to academic standards, atmosphere, infrastructure. Fixing fee structures, dictating the formation of governing bodies, nomination of teachers and the like constituted unreasonable restriction on the said right.

Inevitably, the scheme laid down in Unni Krishnan came in for considerable criticism. Kirpal C J. even referred to its as ‘one that cannot be Called a reasonable restriction under Article 19 (6) of the Constitution.’ It was equated to nationalizing education in respect of determining admission procedures and fees to be charged.

In minorities ‘right to establish and administer educational institutions, the court made several rulings of considerable significance .It held that religious and Linguistic minorities must be construed with reference to

8. Id. at 535.
9. Id. at 543
10. Id. at 539
11. Id. at 540
individual States rather than India as a whole. In regard to the apparent conflict between articles 29(2) and 30(1), it upheld the interpretation given in St. Stephen’s College v University of Delhi to the effect that article 29 (2) is violated only if institutions deny admission on the basis of religion, race etc. even if seats are available, and not merely if minority students are given preference.

There can be doubt that Pai Foundation was an extremely significant decision, and that it comprehensively and authoritatively dealt with a wide range of contentious issues relating to private educational Institutions, view of the complex nature of the issues involved, and also the multiplicity of judicial opinions delivered, the judgment spawned in its wake several questions of pressing importance. Ultimately, a five-judge constitution bench was constituted in Pai Foundation.

Unfortunately, Islamic Academy itself had the effect of giving rise to further questions. To take but one example, it called for two permanent comities to be set up, one to determine fees and to give effect to the rulings made in Pai Foundation, and the other to ensure the fairness of admission tests and procedures.

It may be noted that most petitioners in Islamic Academy were unaided minority colleges, which were thus free of the restrictions placed by article 29(2).

Not surprisingly, this was challenged on the ground that such a committee effectively brought about precisely the kind of nationalization Pai Foundation had criticized. Hence, in order to resolve this and other issues, a seven-judge constitution in P.A. Inamdar v. state of Maharstra.

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12. Id. at 552.
14. Supra note 206 at 583.
16. Id. at 721- 722 – 729-30
Lahoi C.J Speaking for the court, held a the outset that the said bench was bound by Pai Foundation, since the latter was an eleven —Judge decision. Hence, the real task before the court was to cull out the ratio decedent of Pai Foundation and decide if Islamic Academy ran counter to it 18.

The court noted that the matters before it related to a specific class, namely, unaided professional colleges, both minority and non-minority in Character.

It proceed to specify three broad issues: 19.

(i) The fixation of “quota” of admissions /students in respect of unaided professional institutions.

(ii) The holding of examinations for admissions to such colleges, that is who will hold the entrance tests: and

(iii) The fee structure.

In the light of the orders placed before it for consideration, the court proposed to confine itself to four specific questions relating to thee issues namely: 20.

(1) To what extent can the state regulate admissions made by unaided (minority or non minority) educational institutions? Can the state enforce its policy of reservations and or appropriate to itself any quota in admissions to such institutions.

(2) Educational institutions are free to devise their own admission procedure or whether the direction made in Islamic Academy for compulsorily holding an entrance test by the state or association of institutions and to choose therefore the students entitled to admission in such institutions, can be sustained in the light of the law laid down in Pai Foundation. ?

18. Id. at 565.
19. Id. at 568.
20. Id at 568-69.
(3) Whether Islamic Academy could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

(4) Can the admission procedure and fee structure be regulated or taken over by committees ordered to be constituted by Islamic Academy.

At the court held that education, whether carried out for charity or profit, constituted an occupation’ under the article 19 (1) (g) 21 At the same time the founding fathers of the Constitution felt the need for providing additional protection to minority institutions, and so incorporated article 30 (1)22 The reason for this was that otherwise such institutions could have been subjected to the restrictions under article 19 (6) 23.

The wordings of article 30(1) give minority institutions a wide amplitude, which includes, the right to admit students of their own choice.24 It also possesses the right to admit students of other communities of its own free will; however, this right is subject to the condition that the minority character of such institutions should not be violated.25

As regards the characterization of the term ‘minority’. the court reiterated its view in Pai Foundation that minorities should be construed in the context whole.26 However, it also noted that this raised further questions. Can such institutions cater to the needs of the minority only? Could enquires be instituted as who actually founded such as to who actually founded such institution?

Most crucially, can minority institutions provide inter-sate educational facilities and yet retain their minority character27.

21. Id. at 588.
22. Ibid.
23. Id. at 588-89.
24. Id. at 589.
25. Ibid.
26. Id. at 590.
27. Id. at 591.
Reference was made to In Kerala Education Bill, which classified minority institutions into three classes, viz;

(1) Those seeking neither aid nor recognition from the state.
(2) Those seeking both aid and recognition from the state, and
(3) Those seeking recognition but no aid.

In that decision it was held that institutions in the first category could exercise their right unhampered by any restrictions. However, the other two categories required further scrutiny, since they envisaged varying degrees of state intervention.

The court in the present case noted with approval the reasoning given by Sinha, j. in Islamic Academy that conditions for recognition in respect of minority institutions would be similar to non minority institutions, subject to two overriding conditions (1) recognition should not be dependent solely on the fact of it belonging to a particular community, and (2) the regulations do not either by aim or effect deprive institutions of their minority character.

It reiterated the view taken in Pai Foundation that even though articles 29 and 30 speak of ‘educational institutions’ generally, the nature of professional education requires it to confirm for higher standards of excellence and transparency, and therefore constitutes a class unto itself. Further, it also noted counsel’s submissions that the majority opinion in Islamic Academy, in seeking to interpret the multiple judgements of Pai Foundation, had in some instances stated propositions not actually laid down in the latter decision.

respect of institutions seeking neither aid nor recognition from the state the court noted that they were free to:

28. 1959 SCR 995.
29. supra note 217 at 594.
30. Id. at 594-95
31. Id. at 598-99.
[E] Xercise their right under the protection and privilege conferred by Article 30(1) “to their hearts’ content” unhampered by any restrictions excepting those which are in national interest based on considerations such as public, national security and national integrity or are aimed at preventing exploitation of students or the teaching community. Such institutions cannot indulge in any activity, which is violative of any law of the land\(^\text{32}\).

The court also reiterated *Pai Foundation* in holding that such institutions were free to restrict admissions to members of their own minority community if they so wished.\(^\text{33}\)

As regards the rights of unaided minority institutions, the court drew a balance between the needs to maintain institutional excellence and preserving the right of minorities. It referred the *Pai Foundation* ruling that the essential ingredients of management, including admission, staff recruitment and fees could not be regulated\(^\text{34}\). At the same time, it emphasized that not only do minority institutions not have the right to mal administration, but also that additional regulation could be brought in through conditions for recognition or affiliation\(^\text{35}\). It then postulated a triple test drawn from *Pai Foundation*, namely\(^\text{36}\):

(i) The test of reasonableness and rationality;

(ii) The test that the regulation would be conducive to making the institution and effective vehicle of education for the minority community or other persons who resort to it; and

(iii) That there is no inroad into the protection conferred by article 30(1) of the Constitution, by framing regulations which do not take away the essential character of the institution, being a minority educational institution.\(^\text{37}\).

\(^{32}\) Id at 599-600

\(^{33}\) Id at 600

\(^{34}\) Supra note 206 at 545

\(^{35}\) Supra note 217 at 600

\(^{36}\) Supra note 206 at 570 We may note that the decision itself borrowed the first two components from *Ahem. St. Xavier’ College. Society v State of Gujarat*, (1974).

\(^{37}\) Supra note 217 at 600
About reservations an quotas, the court pointed out that there was nothing in earlier judgments that compelled unaided minority institutions to hand over a certain number of seats to candidates chosen by the state. Consequently, it struck down as redolent of nationalization the seat sharing scheme evolved in Islamic Academy. It also held that quota not exceeding 15% may be reserved for NRIs. Further more, unaided minority institutions may admit non-minority students as well as minority student from other states in limited numbers, and not in such manner that their minority character is lose.

Regarding admission procedure, the court first spoke at length of the merits of introducing a single window procedure, such as the common entrance test or CET, as fulfilling the twin objectives of transparency and merit. At the same time, it pointed out that according to Pai Foundation, unaided minority institutions have the unfettered right to select their own students through fair, transparent and non-exploitative process; moreover it saw no problem in extending this principle to non-minority institutions also.

Reconciling these two apparently contradictory statements, the court suggested that all institutions imparting the same or similar professional education ‘can’ join together for holding a common entrance test satisfying the triple criteria of fairness, transparency and non-exploitativeness.

It even suggested that the state could provide procedures in this regard, and even impose producers in this regard, and even impose procedures if the ones evolved by the private institutions do not satisfy the triple test.

37 Supra note 217 at 600
38 Id at 601.
39 Id at 602
40 Id at 603
41 Id at 604
42 Ibid
43 Ibid
44 Id. at 604-05
With due respect, this proposition is somewhat difficult to understand and reconcile with earlier rulings. Was it intended to be binding on institutions or merely by way of suggestion? The language used would seem to indicate the latter. In any case, the court was not clear on whether individual unaided institutions do have an 'unfettered' right to organize their own procedures as long as triple test is satisfied. Surely the convenience of students is a laudable policy objective in itself, but can it precedence over the unfettered right to organize admission procedures, which flows directly from articles 19 (1) and 30 (1)?

The court reiterated *Pai Foundation* affirming the right of unaided minority institutions under Article 30 (1) to set up their own reasonable fee structures. In the very next sentence it held that every institution was free to charge its own fees as long as profiteering and capitation fees do not occur. 45 This would see, to imply that the court extended the Pai Foundation ruling to cover non-minority institutions also.

Finally, the court upheld the Islamic Academy ruling concerning the two permanent committees set up to monitor procedures and determine fee structures. 46 It held that legislative provisions or schemes evolved by the court for the purpose of monitoring admission procedures and fee structures do not violate articles 30 (1) or 19 (1) (g). 47 In a subsequent paragraph, it determining fee structure (emphasis added). 48 However, it added a note of caution to the effect that such committees had exceeded the limit of their Functions and determined fees at such low levels that some institutions were forced to run into losses.

With due respect, it is difficult to reconcile the conferment upon committees the power to determine fee structures, with unaided institutions’

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45. Id at 605
46. Id at 606
47. Id at 606-07 para 144.
48. Id at 607 para 146.
right to set up their own reasonable fee structures. Surely the word ‘determine’ implies a greater degree of control than merely monitoring the reasonableness institutions ‘right to set up reasonable fees structures of its own.

In conclusion, the court pointed out that certain recitals, observation and findings in Pai Foundation were contradictory inter se. and recommended that they resolved by a larger bench. 49 It also held that since the admission processes had already commenced, the present decision would not apply to them. 50.

Our constitution represents the aspirations of a society as divers as ours. The fundamental rights in part III together with the directive principles of state policy in par iv constitutes the life blood and the core of the constitution. The most significant of these provisions is article 32, which entrusts the supreme court with the duty of safeguard the fundamental rights assured to citizens or persons, as the case may be can be raised before the Supreme Court under article 32, and all the other legal as well as fundamental rights can be enforced in the high courts under article 226. The constitution is unique is granting even aliens or non-citizens a fundamental right to approach the highest court of the country for seeking relief against any likely infringement of certain vital rights.

The fact that the Supreme Court has played a pivotal role in shaping the destiny of the nation is now perceived even by the ordinary citizen. The emergence of judicial activism is attributed to the post – emergency crisis of conscience faced by the Judiciary. Whether that be true or otherwise, the late 1970s mark the beginning of a spate of judgements that have transformed the judicial process in this country.

Under the traditional theory of separation of powers, the legislature, the executive and the judiciary enjoy separate and distinct domains. Policymaking

49. Id. at 608-09
50. Id et al 609

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and implementation are conventionally regarded as the exclusive domain of the legislature and executive respectively, with the judiciary performing a supervisory function. The constitution does not envisage distinct rules for three organs of the state. It absorbs the philosophy of the theory of separation of powers, but only to an extent. Specific provisions of the Constitution vest in each of these organs powers and functions to be exercised in the manner.

Laid down in it. But this division of powers does not carve out mutually exclusive domains as contemplated in the Montesqueinum doctrine. What the constitution contemplates is a separation of functions rather than a separation of powers. It is well within the scheme of this framework for the legislature and the executive to perform and adjuicatory function as it is for the executive and judiciary to assume policymaking and implementation functions within their allocated spheres.

That the judges do make law is now well accepted. The fact that the judicial mind is equally influenced by the changing socio-economic circumstances is amply demonstrated function as it is for the executive and judiciary to assume policy making and implementation functions with their allocated spheres.

That the judges do make law is now well accepted. The fact that the judicial mind is equally influenced by the changing socio-economic circumstances is amply demonstrated in the decision of the constitution bench in the Zee Telefilms case: 51

It is to note that the socio-economic policy of the Government of India has changed, and the state is today distancing itself from commercial activities and concentrating on governance rather than on business.

The decision in Sarbandanda Sanowal, apart from being a landmark judgment of the Court, lays down several new principles in the relam of constitutional law.

51. Supra note 37 at 683-84
While balancing the competing claims if citizens and aliens in their sun seeking protection of fundamental rights guaranteed under articles 14 and 21, the court has ruled that the citizens undoubtedly have a preferential right. It has reminded the central government of its fundamental duty to protect the states from external aggression which include unauthorized large-scale intrusion of illegal immigrants from bordering countries. It has declare an Act of Parliament to be unconstitutional for failure of the executive government to give effect to legislative mandate, frustrating the very object of the legislature is competent to enact would become invalid by reason of failure of the executive to implement it. Jurisprudentially speaking, would it have been more appropriate for the court to declare the law to be ineffective and inoperative rather than declaring the same to be unconstitutional?

The most significant aspect of the decision is that the legislature is attributed with the motive of enacting an unconstitutional statute with a design since, as mentioned before, the court rules: 52.

A deep analysis of IMDT Act and the Rules made there under would reveal that they have been purposely so enacted or made so as to give shelter or protection to illegal migrants who came to Assam from Bangladesh on or after 25.3.1971 rather than to identify and deport them.

Kalyan Chandra Sarkar v. Rajesh Ranjan 53 noted the utter mockery made of the rule of law by the rich powerful and influential. The court felt compelled to issue unprecedented directions for shifting an under trial prisoner to a jail in another state, though not contemplated in the existing rules, At the same time, it also took into account the interests of the family members of the prisoner, and directed to him to be incarcerated in Delhi, where his wife and children resided.

The court in the Noise Pollution case 54 struck a right balance between right

52. Supra note 52 at 706 (emphasis added
54 In re Noise Pollution (V), supra note 94
to free speech under article 19 (1) (a) and the right to life under article 21 holding that the former does not include within its scope a right to life under article 21 speech” using loudspeakers. The directions issued by the court regarding use of firecrackers even on festive occasions are a clear message to the various sections of the society that in the pursuit of their religious and social activities, they cannot use firecrackers in such a manner as to cause inconvenience and annoyance to other members of society.

The court in State of Gujarat v. Moti Kureshi Kssab Jamat, 55 upheld the ban on slaughter of cow dung and urine, apparently balancing the mandate of article 48 and notion of the public policy with the right to profession occupation, trade and business under article 19 (1) (g).

The decision in Zorastrian Cooperative Housing Society Ltd. V. District Registrar, Cooperative Societies (Urban), 56 should further bolster the cooperative movement as it allows the societies formed with an identified group to retain their identity while striving to achieve their objectives.

The seven judge bench decision in P.A. Inamdar V. State of Maharashtra 57 compels us to ponder whether both the executive and the legislature have rather ensure that the objectives behind the Constitution (42 Amendment) Act 1976 by which the subject of education was shifted from the state list and brought under the concurrent list, were frustrated by sheer non-performance of their duties.

The decision amply demonstrates that those who are responsible decision making the realm of education today could not ensure justice to the students community. It also highlights that policy decisions and their implications are a not appropriate matters in respect of which the courts can provide satisfactory answers.

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55. Supra note 83.
56. (2005) 5 SCC 632
57. (2005) 6 SCC 537.
It is also difficult for the ordinary citizen to appreciate as to why matters of such importance that concerns the future of large sections of the students community and consequently the country, could be left to lie in total uncertainty, particularly as regards as the correct legal position in the matter of higher education including technical and scientific education.

The decision noted the ambiguities in the eleven-judge bench decision in Pai Foundation and found that the interpretation of the said decision by a five judge bench in Islamic Academy but in process throws up newer issues like application of government quotas in non-aided institutions. By continuing two permanent committees envisaged in Islamic Academy, it has allowed the confusions and conflicts to continue before the supreme Court as regards the role of these committees in the matter of admission procedure and also in the determination of fee structures.

The irony is that while the central government concedes that the cost of education in medicine comes to overs Rs. 3.00 Lacs per annum per student most of the committees set up by the various states have prescribed fee levels as low one third of the same, thereby generating more litigation and less education. Would it not be more appropriate that the court rectify the anomalies without any further loss of time by constituting an appropriate bench in the interest of our own future

7.3 Extension Education: A Self-Rewarding Profession

Extension Education is the process of teaching rural people how to live better by learning ways to improve their farm, home and community institutions (J Paul Legans). Extension Education is helping people to help themselves in changing their behaviour (knowledge, attitude and skill) in a desirable direction in order to bring overall development in an individual is not so easy. For this an Extension Educator has to be a teacher, guide, friend and philosopher to the villagers /rural poor. Thus if one aspires to be an Extension Educator he must be possessing an attitude and aptitude essentially demanded by the profession (i.e. interest and ability to work for the villagers) in addition
to having a sound knowledge and understanding of the subject. Thus it can be a challenging profession with a satisfaction for the works done.

The following branches of Extension Education.............in the branches of Extension Education.

Four ICAR premier Institutes offering master’s and doctoral degree in Extension Education are as follows:

With some few variations in contents and titles the following courses are offered in Extension Education by the SAUs and Nis at the master’s and doctoral level in general.

Fundamentals of Extension Education., Extension / Social Science Research.

There are government, private and few consultancy services one can opt as per his qualification and experience. Among government services there are posts of Lecturer / Assistant Professor and legal Assistant, Law Officer Deputy Secretary Legal, Assistant Prosecution Officer and Civil Judge, Advocate ¹.

Assistant Professor in the SAUs; Scientist in the ICAR/CSIR Institutes, DRDO etc.

7.4 Status Of Education

Education is one of the prime need of individuals and the spine of the country determining its capacity to develop and progress. The education system

¹. Employment Newspaper (Samares Kumar Das)
of India is one of largest in the World with network of large number of institutions. There are 5,90,421 primary schools; 1,71,216 middle schools; 71,055 high schools; 23,588 higher secondary schools; 6,569 colleges of general degrees; 721 professional colleges (medical and engineering) and 215 universities.\textsuperscript{19} This education network has depended and winded over the period of past five decades of post-independence. The literacy rate was 52.2 percent for the age group above seven years (Census 1991), and that of population is indicated in the table give below (Table 1).

**Table-1**

**Indicator of Development of Education from 1970-71 to 1996-97**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Male</td>
<td>45.95</td>
<td>56.37</td>
<td>-</td>
<td>64.1</td>
<td>-</td>
<td>73.0</td>
</tr>
<tr>
<td>(b) Female</td>
<td>21.97</td>
<td>29.75</td>
<td>-</td>
<td>39.3</td>
<td>-</td>
<td>50.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>34.45</td>
<td>43.56</td>
<td>-</td>
<td>52.2</td>
<td>-</td>
<td>62.0</td>
</tr>
</tbody>
</table>

**Source:**

(i) Economic Survey, 1997-98, Government of India


**7.5 Higher Education**

Higher Educational (after twelve years of schooling) are available in different categories of institutions. In India the higher education is offered in various kinds of institutions, viz. Universities, institutions deemed to be universities, institutions of national importance research institutions colleges for general education, colleges for professional education (Table 2). The total number of universities includes are states universities. The universities are generally co-educational; there are several colleges only for women candidates but universities only for women. The colleges provide wide range of subjects at

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graduation and post-graduation level divided into streams viz. Arts (humanities), Science (natural sciences, mechanical and mathematical science) and Commerce (commerce education). While majority of universities in India provide general as well as professional education; some show total segregation into professional education and other exclusively into general education only.

### Table 2

**Type and Number of Higher Education Institutions in India, 1996-97 and 2000.**

<table>
<thead>
<tr>
<th>Institutions</th>
<th>Number</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Universities</td>
<td>178</td>
<td>189</td>
</tr>
<tr>
<td>Institutions Deemed to be Universities</td>
<td>39</td>
<td>42</td>
</tr>
<tr>
<td>Institutions of National Importance</td>
<td>11</td>
<td>-</td>
</tr>
<tr>
<td>Research Institutions</td>
<td>65</td>
<td>-</td>
</tr>
<tr>
<td>Colleges for General Education</td>
<td>6759</td>
<td>11,381</td>
</tr>
<tr>
<td>Colleges of Professional Education</td>
<td>1770</td>
<td>Total Colleges</td>
</tr>
</tbody>
</table>


### 7.6 Future Respective Of Education

The emerging trends are discussed in this Chapter. The need to go into a learning mode as also conditions for creating, capabilities in the education system to meet the needs of knowledge growth, communication expansion, reinforcement of cultural roots is indicated. Changing needs of Educational Technology and entry of computers and Integration of Information and Communication Technology demand new structures, which the system should
be able to assimilate. Renewal of education also calls for provision for regular reviews, which reckons also changing scenarios and developments in emerging technologies.

7.7 **Change From Teaching To Learning Process**

The books *Learning to Be* (UNESCO 1972) and *The Learning Society* (Hutchins. 1962) are pointers to the future directions that educational process will have to take. Now learning process is replacing the teaching process. 

The shift in emphasis can be seen from coping behavior to expressive behavior or from prescriptive behavior to liberating behavior or from direct influence to indirect influence.

**Three distinct global developments that may affect future of education are:**

1. **Knowledge Growth.**
2. **Education and Communication.**
3. **Education and culture.**

7.8 **Distance learning**

Distance learning, an aspect of use of Educational Technology, can thus transform traditional learning. Learning at one’s own pace and at his convenience will get stressed. Attending formal classroom instruction puts severe stress both on the learner and the Society. 

Use satellites is rapidly changing the concept of conventional education. Students need no longer be limited by lack of access, shortage of teachers or interference from work.

7.9 **Computers**

Entry of computers in the Educational Field can be stated to have caused a paradigm shift in the field of technology so much so that we cannot afford to be left out of computer literacy in any future plans for education. 

Concerned with maintaining its economic and social initiatives without losing sight of the various cultural accumulations and traditions, the Japanese Government decided to adopt the following six concrete measures for
educational reform:

(1) The development of life-long structures;

(2) The diversification and reform of institutions of higher education;

(3) The enrichment and reform of elementary and Secondary education;

(3) Reforms for coping with internationalization,

(5) Reforms for coping with the information age and

(4) The reform of educational administration and Finance. The similar studies for reforms have been undertaken in other countries too. And if Japan has been cited as an example, it is to point out the need for the reforms even in the best of circumstances.

J.P. Naik identified the causes for our failure in the field of primary education:

(a) We have made no attempt to introduce those radical structural changes in the formal system of elementary education.

(b) Exclusive reliance on full-time formal education has an inherent bias in favour of classes and a built-in unsuitability for the education of the masses.

(c) There is a general view that standards in education have continually and alarmingly deteriorated in the last few years, which may be only partially true.

(d) There should be early end to the quality elite institutions while the masses are compelled to study in public institutions of poor quality.

7.10 Education And The Constitution

From one viewpoint, it is appropriate to treat the declarations of the Constitution as the starting point of education in free India. The Constitution states explicitly that education is a State subject. This has been made clear in entries 63, 64, 65 and 66 of Schedule I, and the 25th entry of the Third Schedule.

The ideas expressed in the Constitution concerning education in free India are the following:
1. Free and Compulsory Education-

Article 45 of the Constitution states, "The state shall endeavour to provide within a period of ten years from the commencement of this Constitution for the free and compulsory education of all the children until they complete the age 14 years."

In this statement, the term 'State' refers to the States subordinate to the Union government.

2. Education of Women-

According to Articles 15(3) of the Constitution the State cannot be absolved of the responsibility of framing special schemes for the education of women and children. This section does not restrain the State on any way in making special provisions for women and children.

3. Religious Education-

Article 28(1) of the Constitution lays down that religious education of any kind will not be imparted in any educational institution financed from the national treasury. However, according to Article 28(2), any institution established by a trust or a religious body can impart religious education, even though the government may aid such an institution. It has also been made clear that, in such educational institutions, children cannot be forced to imbibe a religious education which runs counter to their own religion. without the permission of the parents. In this context, the Kothari Commission has also pointed out that in the new generation, social and moral conflicts are coming to the fore. Western thinkers have come round to the view that there should be a balance between knowledge and skill, science and technology should be linked with morality and religion, research into knowledge of oneself should be encouraged, the meaning of life should be understood, the real truth should stand revealed and there should be an understanding of human relations.

(Education Commission, p.19 para 14.7)
4. Union and State Lists –

In the Constitution, educational activities have been divided in the following manner- (1) According to the 62nd entry of the Schedule-national libraries, national museums, the Imperial War Museum, Victoria Memorial and historical places of national importance will be under the charge of the Union. (2) According to entry 63, Benaras, Aligarh and Delhi universities will be under the control of the Union government. (3) The 64th entry of the Schedule points out that scientific and technical institutions of national importance, so declared by Parliament, will remain under the control of the Union government. Technical institutions of national importance, so declared by Parliament, will remain under the charge of the Union. (4) According to entries 65 and 66, the union government will have the responsibility for professional and technological institutions, research institutions, institutions for research into crime eradication, etc., as well as determining the standards of higher education and research. In the same way, Article 239 gives the Union the responsibility for education in all Union Territories.

66 subjects relating to education have been placed within the jurisdiction of the States. The 12th entry in this regard classifies that the States will be responsible for libraries, museums, archeological institutions and memorials of national importance.

In addition to the above, the Constitutions also contains a Concurrent list, which lists the following subjects- 1) economic and social planning, (2) professional and technological training, (3) scientific research, 4) technological education, (5) the development and propagation of Hindi, (6) preservation of national art and culture, (7) preservation of Sanskrit literature, (8) education of disabled persons, (9) development of educational research, (10) protection of the cultural interests of minorities, (11) educational development of the scheduled castes, regions and classes, (12) national and emotional integration, (13) provision of scholarship to brilliant students, (14) continuous professional
training, (15) establishment of central institutions and agencies, 16) free and compulsory education for children put the age of 14 years.

7.11 importance of teaching in NAAC'S scheme of assessment:

The National Assessment and Accreditation Council (NAAC) has identified seven Criteria / Parameters for assessment of higher education institutes and assigned weight age as shown in Table 1.

Amongst the seven criteria of accreditation, Criterion No. 2 i.e. Teaching, Learning and Evaluation carries the highest weight age of 40 marks out of 100 in case of colleges.

It must be remembered that teaching –learning methodology is a multi-faceted concept, embedded with many conceptual, developmental, psychological and instrumental issues. Continuous changes must be adopted in teaching learning methodologies as a culture and appropriate institutional arrangements must be to facilitate them in colleges and universities.

Table 1: NAAC’s Scheme of Assessment

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Criteria</th>
<th>Units of Assessment and Weightages.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>University</td>
</tr>
<tr>
<td>1.</td>
<td>Curricular Aspects</td>
<td>15</td>
</tr>
<tr>
<td>2.</td>
<td>Teaching, Learning and Evaluation</td>
<td>25</td>
</tr>
<tr>
<td>3.</td>
<td>Research and Consultancy</td>
<td>15</td>
</tr>
<tr>
<td>4.</td>
<td>Infrastructure and Learning Resources</td>
<td>15</td>
</tr>
<tr>
<td>5.</td>
<td>Student Support and Progression</td>
<td>10</td>
</tr>
<tr>
<td>6.</td>
<td>Organization and Management</td>
<td>10</td>
</tr>
<tr>
<td>7.</td>
<td>Healthy Practices</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>100</td>
</tr>
</tbody>
</table>

Sources of the above said Table University News, 44 (28) July 10-16-2006.P.No. 6
Table: 2
Grass Enrollment Ratio (Ger)

<table>
<thead>
<tr>
<th></th>
<th>Primary I-IV</th>
<th>Upper Primary (V-VIII)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gujrat</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boys</td>
<td>136.4</td>
<td>75.5</td>
</tr>
<tr>
<td>Girls</td>
<td>109.6</td>
<td>51.4</td>
</tr>
<tr>
<td>Total</td>
<td>123.4</td>
<td>63.9</td>
</tr>
<tr>
<td>All India</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boys</td>
<td>113.8</td>
<td>77.1</td>
</tr>
<tr>
<td>Girls</td>
<td>91.5</td>
<td>52.9</td>
</tr>
<tr>
<td>Total</td>
<td>103.0</td>
<td>65.5</td>
</tr>
</tbody>
</table>


As per table GER for Gujarat is higher than all India GER in the primary education. Mid-day Meal Scheme introduced and successfully implemented by the Government of Gujarat can be one of the reasons for this. But, in the upper primary education, the GER for Gujarat is lower than the national average for both, boys and girls. This reveals that, Vstd. Onwards the drop out rate of girls is higher in Gujarat. Use of literate children with basic understanding of computing for family business and use of child labor for home-based work or in the petty business are the crucial factors determining withdrawal of children from schools.

In Gujarat, girls who discontinue studies are roped in for various income generation activities at a very young age, e.g., food processing and good-production, embroidery, tailoring, managing shops, account keeping. They are doing this along with routine housework. Centre for social Studies (Surat) researches also prove the same.
National Family Health Survey (NFHS) based on a representative sample of 3832 ever-married women, in the age group of 13-49 from 3875 households was conducted between February 9. and June 11. 1993. by Population Research Centre, Faculty of Science, M.S. University of Baroda and India Institute of Population Sciences, Bombay. Its findings on women’s education are important for policy-makers and educationists.

**Table: - 3**

**PERCENTAGE DISTRIBUTION OF EVER-MARRIED WOMEN**  
* (In the Age Group of 13-49 Years by Education 1992-93)*

<table>
<thead>
<tr>
<th>Educational Level</th>
<th>Gujarat</th>
<th>India</th>
</tr>
</thead>
<tbody>
<tr>
<td>Illiterate</td>
<td>55</td>
<td>63</td>
</tr>
<tr>
<td>Literate &lt; Primary complete</td>
<td>09</td>
<td>07</td>
</tr>
<tr>
<td>Primary School Complete</td>
<td>13</td>
<td>12</td>
</tr>
<tr>
<td>Middle School Complete</td>
<td>07</td>
<td>07</td>
</tr>
<tr>
<td>High School Complete</td>
<td>12</td>
<td>08</td>
</tr>
<tr>
<td>Above High School</td>
<td>04</td>
<td>03</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

**Source:** NFNS, 1993.

Among ever-married women, at every level of education, Gujarat scores higher than the national average. At the same time, 55 percent illiteracy among ever married women is quite alarming.

Successful NGO Models in Non-formal Methods of Importing Education:-
1. Youth for Unity and Action- YUVA, Bombay.
2. Stree Mukti Sangathana (SMS) and Granthali, Maharashtra.
3. All India People’s Science Movement, Women’s Desk.

**7.12 Inspiring Projects for Girl Students:**

Young, underprivileged girls in the age-group of 9 years to 14 years are getting education about real life issues, postal address, a place of their home in
the map and an identity of their own due to Vacha. Bombay organizes education melas for adolescent girls in which knowledge about their health, difficult subjects like mathematics, accounts and English language is given.

Prerana, NGO based in the red light area, is trying to rescue the innocent children of commercial sex-workers from being sucked in to the cesspool their mothers were dragged in to, by educating the children and by providing shelter. CEHAT. Bombay initiated an informal school. Sahayog for adolescent girls who had dropped out of middle and senior school in June 2000. These girls are preparing for an open school exams. In two years time, it has focused its attention to create space and opportunity for adolescent girls to revitalize community structures to give direction for building an institution.

7.13 **Higher Education needs State support in India:**

The Ambani and Birla committee spoke about ‘weightless goods’ that are created by knowledge workers. Perhaps, they are interested to export these goods and get a comparative advantage in the international market. The present euphoria of

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**Table:- 4**

<table>
<thead>
<tr>
<th>Country</th>
<th>Net entry rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>71 %</td>
</tr>
<tr>
<td>New Zealand</td>
<td>70 %</td>
</tr>
<tr>
<td>Poland</td>
<td>62 %</td>
</tr>
<tr>
<td>Australia</td>
<td>59 %</td>
</tr>
<tr>
<td>Netherlands</td>
<td>51 %</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>46 %</td>
</tr>
<tr>
<td>Korea</td>
<td>45 %</td>
</tr>
<tr>
<td>United States</td>
<td>43 %</td>
</tr>
<tr>
<td>Japan</td>
<td>39 %</td>
</tr>
<tr>
<td>France</td>
<td>37 %</td>
</tr>
<tr>
<td>Germany</td>
<td>30 %</td>
</tr>
<tr>
<td>India</td>
<td>07 %</td>
</tr>
</tbody>
</table>
Sources: OECD, Education at a Glance 2002

Information Technology professionals going abroad and the value of their remittances need to be kept in proper perspective and context. In fact, India was never a closed economy. It has manpowered several third world countries which were colonies of British. The British sent indentured laborers as plantation workers to Africa, Latin America, Europe and elsewhere. There was no 'body shopping' at that time. Is there any difference between the status of the indentured labourer of 18th and 19th Century and the educated labour force today. What kind of occupations do they occupy? Do they bring any 'education value added' that enriches our country and economy when they return? Are the Indian educated providing 'reverse bumping' in easing out the whites who are displaced to occupy higher jobs? Are we not crippling the best brains in choking the young minds in Information Technology and Management related courses? In what way these courses will enable their country to exploit its natural resources to develop as a super power in future?

7.14 Education in India- the situation

Literacy: Literacy figures very widely depending on the method of calculation; it seems the figure for overall literacy in India is somewhere between 54% and 65% 2. Table 1 uses figures from the 2001 Census, to show the literacy rates for different groups. Table 1. Literacy (calculated from figures from 2001 Census website)

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>55%</td>
<td>64%</td>
<td>46%</td>
</tr>
<tr>
<td>Rural</td>
<td>49%</td>
<td>59%</td>
<td>39%</td>
</tr>
<tr>
<td>Urban</td>
<td>70%</td>
<td>76%</td>
<td>64%</td>
</tr>
<tr>
<td>Slums</td>
<td>64%</td>
<td>70%</td>
<td>56%</td>
</tr>
</tbody>
</table>
One striking feature of the table is the disparity between male and female literacy: 64% versus 46%. The disparity is larger in rural areas than urban areas, presumably reflecting various factors such as the greater degree of poverty in rural areas and the greater adherence to traditional sex stereotypes. Chart 1 shows how, while adult literacy has risen steadily since Independence, the gap between male and female literacy has not closed. Consequently the right to education of the girls child has become a key focus point for international institutions, the Indian government, and NGOs alike.

The disparity between literacy in rural and urban areas is also stark, with slum areas falling in between. Apart from the greater degree of poverty in rural areas, issues of the rural-urban divide include the lack of schools in remote areas—according to the Ministry of Education about 17% of habitations lack access to a school within one kilometer; the apparent tendency of teachers to opt for cushy urban posts instead of rural ones, leading to understaffing; parent’s perceptions of the poor quality of teaching and poor condition of rural schools; and lack of awareness of the importance of education.

While literacy overall has risen steadily, it should be noted that it is substantially below that of other comparable countries, such as China, whose literacy rate is 88%. Furthermore some areas within India have achieved far higher literacy rates than the national average, most noticeably the state of Kerala (93%), and these achievements cannot be attributed solely to economic disparities between regions. Both China and the state of Kerala have also succeeded in narrowing the gender gap.

### 7.15 School attendance, enrolment and dropout:

Again, figures vary widely. It seems between one-third and one-half of 6-14 year-olds in India are not going to school: between 56 and 70 million children from a total of around 170 million. This astonishing statistic reflects both large numbers of children not being enrolled in school in the first place, and larger numbers who start school but drop out before the age of 14. The
problem of drop-out can be illustrated by looking at the about population. In 1991 the majority of adults (56.7) have less than three years than three years of education, and less that 20% had seven more year. As with the literacy data, there is a large gender difference in amount of education: 68.4% of women had less than three years, and only 12.3% had seven or more years. The figures for current dropouts are equally shocking; in the school year 1997-1998, 45% of children in the first five classes dropped out, rising to 60% in the first eight classes. Chart 2 shows how enrolment in primary school has grown relatively rapidly since 1950 whilst enrolment numbers in middle and secondary school have lagged behind. Factors in school non-attendance include: children working to supplement family income; taking on housework and childcare responsibilities so that both parents can go out to work, especially female children; perceptions of the poor quality of government schools; costs of schooling, such as books and uniforms; and lacking the required certificates to enroll in school. Migrant families face particular problems, for instance children whose previous education was in one language, can find themselves unable to re enter school at the same level when their families move to a state with a different language.

In preparing this article I was struck by the abundance of data available on literacy and the scarcity of detailed information on what education people have had. No doubt this is partly because literacy is easier to quantify. The tendency to concentrate on literacy statistics obscures the fact that worryingly few children are acquiring much education beyond basic literacy, and has also been implicated in what is seen by critics as the Indian government’s gradual abandonment of its commitment to a full education for all children.

7.16 Education System In Uttar Pradesh

The modern education system in U.P. was born during British period. In 1858 the British rulers started the modern education system at Mayo Central College, Allahabad.
In 1921 for secondary standard education system. An act 1921 was implemented in 1972 the education directorate was divided into primary, middle and higher level in 1981 a state Board of Educational Research and training was formed and in 1985 State Basic Board was formed U.P. is divided into 17 educational divisions.

7.17 *Mid day meal for primary education* –

The mid day meal policy was implemented for class 1 to 5 children to provide food nutrition in its first phase in 995-96 in 248 Blocks of 38 divisions of the state. At present this policy is implemented in the entire state. Under this policy the food should contain 8-12gm. Protein and 300 calories compulsorily. This policy has been sun 97000 By this policy 1.75 crore students are getting benefit. The menu is as follows.

Monday – Roti, vegetable including soyabean or Dal.

Tuesday – Rice, Dal mixed with vegetables or Rice Sambhar

Wednesday – Kari – Rice or Sweat Rice.

Thursday- Roti, Sabji with Dal or Puri and vegetable Friday- Tahri.

Friday – Tahri

Saturday – Sabji, Rice or sweet rice.

7.18 *Secondary Education*:

The total number of secondary schools in the state are 12766.

The total strength of the students in these schools are 67.64 lakh. The teachers employed in these schools are 1,2,3156.

Total literacy mission-since 1991 District literacy Society is working for total literacy of the state illiterates in the age group of 15-35.

7.19 *Continuing education for newly literates* –

After one year of literacy programme the continuing education system is made. This programme has been running at Agra.

25 districts have been nominated for this programme.
Education Project for AU- for U.P. State Board for educational Project state 
Board for Educational Project I 1993 and Basic project II since 1997 in 14 
districts. The aim of universling Primary education has been speeded from 
1997 in 18 districts in which 85% part will be looked after by central 
government and 15% part will organized by state Govt.

7.20 Technical Education: -

Before the establishment of Uttranchal state, Roorkee University 
Roorkee, 22 Government aided Graduate / post graduate levels institutions 
were there. But now only 8 graduate /PG level institutions and 70 diploma 
level institutions are left in the state besides this 9 diploma level institutions are 
under consideration. A technical university has been set up at Lucknow; state 
will be affiliated to this university,

7.21 Graduate level institutions in the private: -

A no objection certificate has been given by state govt in 1995 for 
establishing 85 institutions out of which 50 institutions have stored working in 
2000-200%

7.22 Kanya Vidyadhan Yojna: -

For educating females is more quantity, the govt, has started a 
programme in 2004-2005 in which one lakh girls who have passed senior 
secondary school and living below the poverty line have been given 20 thousand each. In 2005-2006, 1.5 lakh girls will be provided 300 crore rupees and in 2006-2007 3 lakh girls will be provided 600 crore rupee.

Kasturba Gandhi Balika Vidayalaya Yojna for Backward areas of U.P. 
Started residential schools for SC, ST and OBC children (female) they have 
2000 female child registered under them. The education, food and residence is 
free of cost here.

In 2006-07 free textbooks were provided in the state Uniforms were also 
provided to govt. school children.
7.23 Education For All Global Monitoring Report 2007 Unesco

In a report published by UNESCO on ‘Education for all global monitoring on 8 Nov. 2006 in Indian Education for all programme, around 1.35 crore children of the age group 6-13 have been shown as not getting education. These schools not going children include a majority of Muslim Children (20%) the central govt asked ‘Social and Urban Research Institute’ to study the school not going children last year. According to this report in the cities of Bihar around 30% Muslim children last are not going to school. In Jharkhand this percentage is 17% and UP has 13% where as W. Bengal was 11% Illiterate Place has 11%

All children are in the age group of 6 – 15 years.

Table No.: 6

<table>
<thead>
<tr>
<th>Community</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bihar</td>
<td>17%</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>10.9%</td>
</tr>
<tr>
<td>Assam</td>
<td>8.9%</td>
</tr>
<tr>
<td>W. Bengal</td>
<td>8.7%</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>8.6%</td>
</tr>
<tr>
<td>U.P.</td>
<td>8.2%</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>6.9%</td>
</tr>
</tbody>
</table>

School not going children in different Communities

Table No.: 7

<table>
<thead>
<tr>
<th>Community</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Muslim</td>
<td>10 %</td>
</tr>
<tr>
<td>ST</td>
<td>9.5</td>
</tr>
<tr>
<td>SC</td>
<td>8.2</td>
</tr>
<tr>
<td>6.9</td>
<td>6.9</td>
</tr>
</tbody>
</table>
UNESCO – An Introduction

UNSECO United Nation Educational and Cultural Organisa

7.24 INTERNATIONAL COMMITMENTS REGARDING RIGHT TO EDUCATION

Several International Instruments have compelled governments to take action regarding recognition of the right to education. The right to education is a human right and the purpose of human rights law is to transform allocations for education from discretionary to obligatory. This process entails acceptance of human rights correctives in decision-making, which is a political process at all levels, from local to global. Securing a match between governmental human rights obligation in education and fiscal allocations requires another step viz. Priority to primary education. Promoting human rights requires knowledge about international obligations of the States.

Article 26 of the Universal Declaration of Human Rights, 1948 clearly proclaims right to education 14. Protocol1 of the European Convention on Human Rights,1952 states that no person shall be denied the right to education. According to UNESCO Convention against Discrimination in Education, 1960, the States Parties to this convention undertake to formulate, develop and apply a national policy which will tend to promote equality of opportunity and of treatment and in particular to make primary education free and compulsory.

However, till mid-1960s, the UN recognized the importance of education but did not make any strong policy recommendation in terms of making it a fundamental right. It was only after the International Convenient on Economic, Social and Cultural Rights 196615 that the United Nations started viewing education as right16. Protocol of San Salvador to the American Convention on Human rights, 1988, states that the States parties to this Protocol recognize that in order to achieve the full exercise of the Right to education primary education should be compulsory and accessible to all without cost.
However, it was only in 1989 that through the Convention on the Rights of the Child, the standards concerning children were brought together in a single legal instrument, approved by the International community. The right to education, which every child is entitled to was recognized in an unequivocal manner regardless of sex, religion, or social origin. The rights enumerated in the Convention are the rights of all children everywhere.\(^\text{17}\)

Charter on the Rights and Welfare of African Child (1990) provides that States parties to the present Charter shall take all appropriate measures with a view to achieving full realization of the right to education and shall in particular provide free and compulsory basic education. The European Social Charter, 1996 (Revised), with a view to ensuring the effective exercise of the right to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities.

The Universal Declaration has used the term ‘elementary’, which later became ‘primary’ and in the African Charter ‘basic’ although the wording of international treaties demands only primary education to be free, compulsory education has been prolonged in practice thus lengthening free – of - charge education. Terms might be different in different Charters and Convenants but one thing is common that every country is now committed to remove illiteracy. Let us see the position of India regarding the right to education.

### 7.25 Right To Education In India

In Indian context right to education may be discussed in three phases: first, position before 86\(^{th}\) Amendment Act, which is the position of the original Constitution and gives the idea of what constitution makers intended to do; second aspect is the contribution of the Judiciary in realization of the fundamental right to education and third, what is done by policy makers to
realize this constitutional mandate i.e. the position after the passage of the 86th Amendment Act.

7.26 *Position before 86th Amendment Act.*

Constitution of India devoted many articles to the right to education but it was not in the form of a fundamental right. Constitution makers place right to education\(^{19}\) in Part IV of the Constitution in the form of the Directive Principles of State Policy. Article 41 provides rights to work, to education,\(^{20}\) and Article 46 provides the promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections.\(^{21}\) Through Part IV of the Constitution directs the State to act within a timeframe but does not give any enforceable right to citizens.

Collectively, these Articles command the State to provide an educational atmosphere within the limits of its economic capacity and development within ten years from the commencement of the Constitution. Also the right to free

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19. Right to work, to education and to public assistance in certain cases. The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

20. Original Article 45 was made the provision for free and compulsory education for children. This Article said that the state shall endeavour to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. After Constitution (86th Amendment) At the amended Article 45 provide that the shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.

21. According to Art 46 State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and forms of exploitation.
and compulsory education to all children until they complete the age of 14 years and promotion of educational interests of Scheduled Castes. Scheduled Tribes and other weaker sections were assured as Directive Principles of State Policy. Article 15 (3) may be interpreted as quenching some thirst for the right to education to children who face economic constraints and lack proper cultural development.  

Thus, it may be concluded that our constitution-makers intended that every child should have an opportunity for education until the child completes a particular age and thereafter his education would be circumscribed by the limits of the economic capacity of the states.

Though it cannot be said that during more than half a century nothing was done by the State for education, yet it may be said with all firmness that whatever has been done in regard to the right to education is not sufficient. The dictate of Article 45 of the Constitution has gone unheard on the pretext that if the right to education is made a fundamental right, the State will have to provide necessary funds and other resources for it. Austin, commenting on this major national tragedy, says;

\[\ldots\ldots a \text{ specific example of the indifference toward lower orders mentioned earlier has been government's avoidance of both the letter and the spirit of the Directive Principles of State Policy, admirable goals admittedly difficult to reach in any society. For example, Article 45 charged Government to endeavour to provide, within a ten years, free and compulsory education for children through age of fourteen.} \]  

22. Art 15 is a fundamental right. However, Article 15 (3) is an enabling clause and it does not confer any fundamental right to the weaker sections of the society, it is a different matter if state discriminates in their favour, the same would be protected by the constitution.


24. Ibid.

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It is humbly submitted that Austin deserves to be congratulated for his comment on non-compliance of Constitutional mandates particularly in the area of education.

### 7.27 Contribution of The Judiciary

Upon Executive’s failure to implement the constitutional mandate of Article 45, the Judiciary stepped into the shoes. Judiciary did so indirectly, by arguing that civil and political rights, which are fully protected by the Constitution, are worthless without the resources necessary to exercise them. Right to education was held for the first time a fundamental right by Delhi High 1978 in Anand Vardhan Chandel V. University of Delhi.25 in this case, The Delhi High Court observed that the law now settled that the expression “life and personal Liberty” in Article 21 26 of the Constitution includes a variety of rights, though they are not enumerated in Part III of the constitution provided that they are necessary for the full development of the personality of the individual and can be included in the various aspects of the liberty of the individual. The right to education is therefore, also included in Article 21 of the Constitution.27

It was a very remarkable approach of the court in realization of socio economic rights. It was first judgment, which opened the way for interpretation of Article 21 in terms of education. The next judicial pronouncement in this direction was that of Karnataka High Court in The case of Bapuji Education Association v State.28

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25. AIR 1978 Delhi 306. at 314. The basis for giving education the status of fundamental right was put by the court as under. Education is a natural right; because the declaration of Human Rights looks upon education as a fundamental right; Article 41 that is Directives of State policy talks of “right to education”; originally right to education was put in Draft Constitution in the chapter on Fundamental Rights, but later transferred to the chapter on Directives, because the former were more easily enforceable than the later.

26. Article 21 provides protection of life and personal liberty. According to this Article no person shall be deprived of his life or personal liberty except according to procedure established by law.


28. AIR 1986 Karnataka, 129. This case is basically on minorities rights by this important statement is delivered by court.
In this, the court expanded the contours of personal liberty guaranteed by Article 21 of the Constitution to the extent that it includes in its ambit the right of the minorities to education.

The right to education for the first time got attention of the Supreme Court in *Mohini Jain v State of Karnataka case.* While deciding issue of capitation for in educational Institutions in Karnataka, the court held that the right to life under Article 21 and the dignity of an individual couldn’t be assured unless accompanied by the right to education Mohini Jain’s verdict gave an impetus to the right to the education.

In the next year in *Unnikrishan J.P. V. State of Andhra Pradesh,* the Supreme Court emphatically held that the citizens of this country have a fundamental right to education but this right is limited upto 14 years of age. The said right flows from Article

It is humbly submitted that this verdict of the Court narrowed down the scope of right to education as enunciated in the *Mohini Jain case* as it makes ‘age’ as a limitation for the enjoyment that the Court enunciated the doctrine of implied fundamental rights. The Court asserted that in order to treat a right as a fundamental right it is not necessary that it should be expressly stated in the Constitution as a in the country may entail the recognition of new right and the law may entail the recognition of new rights and the law in its external youth grows to meet social demands.

29. AIR 1992 SC 1858
30. AIR 1993 SC 2178.
31. Court explained that the right is however not an absolute right. Its content and parameters have to determined in the light of Article 45 and 41 in other words, every child of this country has a right to free education until he completes the age of fourteen years. There after his education is subject to the limits of economic capacity and development of the state.
7.28 Coming Of 86th Amendment Act *

After Mohini Jain and Unnikrishnan, the process of realizing right to education got accelerated. In this regard, mention may be made of the two important committees on education. The first was of Education Commission, which submitted their report in 1966 and the second was Saikia Committee, which submitted their report in 1997. Both the Committees recommended that schooling should be made compulsory for all children. In furtherance of the recommendations of these Committees, a constitutional amendment bill was introduced in the Parliament in 1997. From 1997 to 2001 the Bill remained dormant. The bill acquired the status of an Act (as Constitution (86th Amendment) Act) only 2002 subsequent to considerable internal and external pressure. The Act makes education as a fundamental right for those between the ages of 6-14 years. The Act provided for the following three insertions /changes in the Constitution.

(i) The insertion of Article 21-A, which provides that the State shall provide free and compulsory education to all children of the age of 6-14 years in such a manner as the State may by law determine.

(ii) An amendment to Article 45, that is provision for early childhood care and education to children below the age of 6 years; the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years.

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* Vol., Wadhwa Publications, Nagpur, 2003, p. 971

33. Education Commission, which is commonly know as Kothari Commission, submitted their report in 1966.

34. The Saikia Committee Report, New Delhi, Ministry of Human Resource should be amendment to make the right to free elementary education up to 14 years of age, a fundamental right. Simultaneously, an explicit provision should be made to make it a fundamental duty of every citizen who it a parent to provide opportunities for elementary education to all children up to 14 years of age.
(iii) In Article 51-A, after clause (j) the following clause (k) has been inserted: “a parent or guardian shall provide opportunities for education to his children or ward between the ages of 6-14 years.

Thus, finally Article 45 of the Constitution has been given a new life. However, Article 21-A is without the spirit of Article 45 of the Constitution because the earlier it (Article 45) envisaged the right to education “for all children until they complete the age of fourteen years” whereas Article 21-A has provided the right to education only “to all children of the age group 3-6 years is very crucial from the point of view of mental and physical growth of the child.

The Act failed to recognize that the period from 3-6 years of children is very crucial. It is the important age of mental as well as physical growth.

The provision of Article 21-A is directory in nature in nature. It is difficult to understand that up six years of age right to education has not been given the status of fundamental right rather it is in shape of Directive Principles of State Policy and would acquire the status of a fundamental right only after the child attains the age of six years; whereas the fact is that the fundamental rights, if they are really fundamental, are acquired by birth, and not subsequently.

In fact 86th Amendment was unnecessary in as much as the Supreme Court held in Unnikrishnan 35 and in several other decisions that the fundamental right to education up to the age 14 years is implied in Article 21 of the Constitution. The Parliament should not have limited thus judicial verdict; it should rather have give teeth to it by enacting adequate measures to implement the same. Instead of amending the Constitution, a bill should have been brought to provide the guidelines to enforce fundamental right to education. Now, “Free and Compulsory Education Bill, 2005” came but it is still pending in the parliament.

Further, assuming that these new Articles provide some protection to the right to education, the basic question is how Article 21-A will be implemented. Though the Article provides for right to education but in such manner as the State may by law determine. It means that to implement this right the State has to enact a law laying down the modalities. In the national interest as well as in the interest of democracy in India, it is desirable that the Government of India should come out with the required modalities very soon.

After analysis of constitutional provisions pertaining to right to education it is necessary to analyze who is liable to provide (right to) education to children. This is because there exists the famous jural postulate. ‘rights and duties are correlative. ‘The issue is dealt with in the next section.

7.29 Who should be Held Responsible?

International human rights law defines free and compulsory education as a government obligation, thus implying that it should be a free public service. In India, the constitution-makers realized the importance of universal elementary education and directed the government to ensure free and compulsory education within ten years from the commencement of the Constitution. Initially, ‘education’ was put in the State List of the Eighth Schedule at Entry 11 which implied that it as primarily a concern of the states and, in turn, it were the state governments, which were under an obligation to impart education. But in 1976, through 42nd constitution Concurrent List and presently it finds its place at Entry 25 of the Concurrent List presently it finds its place at Entry 25 of the Concurrent list. This makes the Union Government equally responsible for providing education, farming educational policies and enacting laws for implementing the same.

36. The Convention on the Rights of the child, which entered into force on September 2, 1990, stipulates in Article 28 that the States Parties recognize the specific right of children to education.
Child’s right to education is not the responsibility of one particular person or institution; it is shared responsibility. First, it is the responsibility of the State to protect the best interests of the child and hence to ensure that education is universally available and accessible.\(^{38}\) State has to provide necessary facilities, outline and accountable.\(^{39}\) Simultaneously, parents also have a responsibility to send their children to school.\(^{40}\) Teachers are responsible not to employ children in ways that conflict with their education. Thus, the overall responsibility of guaranteeing the right to education is shared between the society and the government.

It is common for developing countries to plead their own poverty as an excuse for not providing enough resources into the pursuit of ‘Education for All’ yet all evidence for the last four decades of development suggests that even poor countries can work wonders provided they are committed. But if one goes through the report presented by UNICEF, \(^{41}\) it is obvious that States forward lame excuses. UNICEF conducted a detailed study of nine countries and the Indian state of Kerala, which has achieved much better results in health and education that neighbouring states with similar incomes. From the report it is obvious that main reason for the non-achievement of the dream ‘Education for All’ is non – action of the governments. There remains a big gap between policy and its implementation.

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39. In Mohini Jain V. State of Karnataka AIR 1992 SC 1858, Justice Kuldeep Singh observed that the dignity of man is inviolable. It is the duty of the state to respect and protect the same.

40. Besides states’ and Centre’s responsibility to concretize right to education, Constitution Eighty-Sixth Amendment) Act 2002 casts a duty upon every citizen of India who is parent or guardian to provide opportunities for education to his child or ward as the case may be between the age of 6-14 years. The Constitution (86th Amendment) Act 2002 also casts a fundamental duty under Article-51-A (K) upon a parent or guardian to provide opportunities for education to his child or as the case may be between the age of 6-14 years. But unfortunately the amendment does not tell any means to enforce this duty against a parent or guardian who fails to provide this opportunity. The amendment in a way shifts the burden of responsibility to the parent or guardian.

The urgency to reaffirm the right to education has been heightened by resumed negotiations on liberalizing trade in education services. Globalization has posed many challenges before the right to education. One of the important challenges is the commercialization of education, and subsequent risks of inequality and discrimination. Here, one question should be examined: are we heading towards realization of “education as right” or towards a view of “education as commodity?”

7.30 Impact of Globalization on Right to Education

The process of privatization is the result of globalization, which is increasingly creating two parallel education systems, which two corresponding tiers of quality; one is for the ‘rich’ and the other is poor education for poor’. Privatisation agenda hurt average citizen more than it helped them. The option of free education for many is not free in real sense as huge amount is being charged as fees by private educational institutions with the result that the children’s education becomes dependent on the purchasing power of their family.42 This trend must be regulated by government. It is possible only by regulating fee structure of private educational institutes.43 In the present scenario right are not violated by states rather they are violated by non-action of states this is equally true in the case of right to education.

42. It is in direct conflict with the international Human Rights Law which direct government to ensure equal access to education for each child and Indian Constitutional Law which ensures right to education as fundamental right of the children between 6-14 years of age.

43. ‘Education in India: Past Present and Future’ available at http://www. Prayatan . typepad. com / education (last visited 03 March, 2006). Despite the legal position, this Court cannot shut its eyes to the hard realities of Commercialization of education and evil practices being adopted by many institutions to earn large amounts for their private or adopted by many institutions to earn large amounts for their private or selfish ends. If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.
This was shocking departure from the earlier decision by the Supreme Court in T.M.A Pai Foundation v State of Karnataka,\textsuperscript{44} Which overruled the decision in Uninkrishnan case.\textsuperscript{45} In this decision, perhaps the problem of those people of India who live below poverty line was not raised before the Court.\textsuperscript{46} Considerable part of Indian population is far away from life with human dignity and struggles for the fulfillment of basic needs. Any law or policy, which ignores them cannot be justified.

T.M.A. Pai Foundation case\textsuperscript{47} came up for interpretation in two subsequent judgments of the Supreme Court. In Islamic Academy of Education,\textsuperscript{48} the issue was whether educational institutions were free to decide their own fee structure? The Court directed every state government to appoint a committee to fix fee structures especially for professional colleges. It is submitted that this kind of committee should be appoint to fix fee structure in unaided private schools also because in a country where right to free and compulsory education is a fundamental right, no one should be permitted to infringe this right in any manner.\textsuperscript{49} T.M.A Foundation\textsuperscript{50} came up for further.

Private unaided educational institutes used to get many benefits from Government from land allotment to other facilities. They can earn more interpretation in P.A. Inamdar v State of Mahastra Case.\textsuperscript{51} The court held that decision in Islamic Academy case\textsuperscript{52} in so far as it sets up two committees, one for fee structure and the other for admission, is valid.

\textsuperscript{44} AIR. 2003. SC 355.
\textsuperscript{45} Above note,13 which said education as Sovereign function and looked at private intervention only as a supplement efforts.
\textsuperscript{46} AIR 2003 SC 355. In this case Court observed that private educational institutions should be only have freedom to charge fees, which enable them to recover the cost of education but fix fees in a manner that sufficient surplus is generated for future expansion of educational activities. So the student will not only pay for their own expenses but also for the future generation. The Court also observed that governmental domination in the educational field must be resisted.
\textsuperscript{47} T.M.A. Pai Foundation v State of Karnataka, AIR 2003 SC 355.
\textsuperscript{48} Islamic Academy of Education v State of Karnataka 2003 6 SCC 697.
There is no difference of opinion that commercialization of education will infringe the right to education of vulnerable sections of the society. In bird’s eye view it seems that autonomy of private educational institutions is helpful in human resource development but if one looks in depth it is not good in developing country like India. It is against basic constitutional mandate.