A. Introduction

The life on this earth is a wonderful creation of God; however it is widely acknowledged that the human life is one of the best among all the lives present on the earth. While the biological facet of human being is basically about nutrition and reproduction, the social part of human life is determined by so many other factors and education is one among such important factors. In the beginning of the human civilisation the needs of human being were restricted to basic needs i.e. *roti, kapda aur makan* (food, clothing and shelter), but as the society progressed, these basic needs have increased many fold like food, shelter, clothing education, and health. Human being is different and distinguishable from other creatures mainly on account of his intelligence and learning ability. The history of human civilization is full of accomplishments and education has definitely played a crucial role in these achievements. Nonetheless education props up his intelligence and facilitates him to be meticulous and make sure his development.

The meaning, motive and modes of ‘education’ have always been deep-seated inquest in any civilisation. It has not been an easier task to define and determine the contours of the word ‘education’ as such. People from different walks of life made their efforts to define it from their own perspectives which reflect their worldview. No doubt these definitions are having their inbuilt natural limitations which are mired by their worldview; however they are complimentary to one another.
The word education is derived from the Latin word 'educare' which means 'to bring up'. There is yet another Latin word 'educere', which means to bring forth.

Importance of education has been even highlighted in ancient Indian scriptures for instance it has been observed in 'Neethishatakam' by Bharatruhari:

Education is the special manifestation of man; Education is the treasure which can be preserved without fear of loss; Education secure material pleasure, happiness and fame; Education is teacher of teachers; Education is God incarnate; Education secure honour at the hands of the state, not money. A man without education is equal to an animal.

Even former UN Secretary General Kofi Annan has also highlighted the importance of education in the present scenario. He observed that the education is a human right with immense power to transform. On its foundation rest the cornerstones of freedom, democracy and sustainable human development.

The significance of education was very well explained in the landmark school desegregation case of Brown v. Board, 347 U.S. 483, 493 (1954) of Education.

Chief Justice Earl Warren, writing for a unanimous court, stated:

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1 As quoted by the Supreme Court of India in Unni Krishnan J.P v. State of Andhra Pradesh as available at [http://judis.nic.in/supremecourt/imgs.aspx](http://judis.nic.in/supremecourt/imgs.aspx) at 42 as accessed on 19.09.2010.


3 John C. Eastman, “When Did Education Become a Civil Right? An Assessment of State Constitutional Provisions for Education 1776-1900” at 1(1-34) in *The American*
Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.

(a) Right to Education and Right to Development

The right to development is considered to be an interface between civil and political rights and economic, social and cultural rights. The right to education works like a catalyst which enhances enjoyment of all other human rights. It is widely held to be an empowerment right that enables a person to control the benefits derived from other rights. It has been pointed out that the solution to many human rights problems lies in recognising that right to education is the key for unlocking other human rights.\(^4\) Denial of

education may lead to exclusion from many levels such as labour, markets, political representation and social security schemes.\(^5\)

Right to education is also crucial for identity related rights. This is a more strake reality in multicultural and multi ethnic societies. For instance even special rights have been given to religious and linguistics minorities in India. Minorities have the fundamental right to establish and administer the educational institution of their own choice\(^6\) so that they can protect their cultural identities. Not only for the minorities (any type of minorities) but right to education is also crucial for many socio - economic issues such as right to food, right to health, gender equity and proliferation of democratic institution in any society. An educated person is better equipped not only to demand but also to access various rights.\(^7\)

Special care should be taken regarding women’s right to education. Because with the world wide changing scenario women will only be able to get their due if they are educated. It is pertinent to mention here that despite the constitutional right to equality, they don’t enjoy political participation at the local, regional and national levels of decision making. Any meaningful participation is inhibited by cultural, social, economic, legal and educational constraints. These constraints will affect the ability of women to contribute to development or benefit from it. It is also increasingly recognized that women must be able to make free and informed choices about their reproductive health. This is possible only with the enhanced awareness that comes with education. Further the success of population policies is also contingent on the promotion and protection of other human rights relating to education, information, privacy and equal rights in marriage and divorce. There is also direct

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\(^5\) *Id.* at 103.

\(^6\) Article 29 & 30 of the *Constitution of India* provides special rights to linguistics and religious minorities.

\(^7\) *Supra* note 4 at 103.
co relation between the denial of education and poverty. A policy to realize the right to education as a part of the right to development frame work will have to be designed and implemented with policies to realise all the different rights and as a part of an overall programme for the countries development.\textsuperscript{8}

Education has never been more necessary for development; it is key to communication and learning of all kinds and a fundamental condition of access to today's knowledge based societies. With socio-economic disparities increasing and global crises over food, water and energy, literacy is a survival tool in a fiercely competitive world. Literacy leads to empowerment and the right to education includes the right to literacy - an essential requirement for lifelong learning and a vital means of human development and of achieving the Millennium Development Goals.\textsuperscript{9}

Therefore it can be summed up that there is an organic relationship between right to education and right to development. In fact one can't think of right to development without right to education. Any meaningful effort to achieve development begins and ends with right to education.

B. Right to Education: International Scenario

The importance of education for the human being has already been highlighted in the foregoing paragraphs and it has been observed that how right to education is an indispensable right for the human development. Keeping the above mentioned importance of right to education for human life or human development; it would be appropriate to discuss in brief the legal development related to right

\textsuperscript{8} Ibid.

to education at international level. The International community and various world bodies have also recognised the importance of this right and therefore have taken many steps for its recognition and execution. Following are the major international instruments related to right to education in the chronological order. It can be further categorised as binding and non binding instruments.\textsuperscript{10}

Binding legal instruments

- 1945: Charter of the United Nations
- 1946: Constitution of UNESCO
- 1960: Convention against Discrimination in Education
- 1966: International Covenant on Civil and Political Rights
- 1981: Convention on the Elimination of All Forms of Discrimination against women
- 1989: Convention on the Rights of the Child

Non-binding legal instruments

- 1948: Universal Declaration of Human Rights
- 1959: Declaration on the Rights of the Child

• 1967: Declaration on the Elimination of Discrimination against Women

• 1993: Vienna Declaration and Programme of Action

• 2000: United Nations Millennium Declaration


For understanding the various dimensions of above mentioned instruments it would be appropriate to have an overview of the provisions under the instruments which reflect upon the right to education.

(a) Universal Declaration of Human Rights, 1948

Article 26 of Universal Declaration of Human Rights provides that everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. It further provides that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. This article also suggests that parents have a prior right to choose the kind of education that shall be given to their children.

(b) International Convention on the Rights of the Child, 1989

According to the Article 28 of International Convention on the Rights of the Child, a States Parties recognise the right of the child
to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular.\(^{11}\)

- Make primary education compulsory and available free to all;\(^{12}\)

- Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;\(^{13}\)

- Make higher education accessible to all on the basis of capacity by every appropriate means;\(^{14}\)

- Make educational and vocational information and guidance available and accessible to all children;\(^{15}\)

- Take measures to encourage regular attendance at schools and the reduction of drop-out rates.\(^{16}\)

International Convention on the Rights of the Child further provides that states Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention;\(^{17}\)

The convention also ensures that states parties shall promote and encourage international cooperation in matters relating to


\(^{13}\) Article 28(1) (b) of International Convention on the Rights of the Child, 1989.

\(^{14}\) Article 28(1) (c) of International Convention on the Rights of the Child, 1989.

\(^{15}\) Article 28(1) (d) of International Convention on the Rights of the Child, 1989.


\(^{17}\) Article 28(2) of International Convention on the Rights of the Child, 1989.
education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.\textsuperscript{18}

Again according to Article 29 of International Convention on the Rights of the Child, States Parties agree that the education of the child shall be directed to:\textsuperscript{19}

- The development of the child's personality, talents and mental and physical abilities to their fullest potential;\textsuperscript{20}

- The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;\textsuperscript{21}

- The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;\textsuperscript{22}

- The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;\textsuperscript{23}

\textsuperscript{18} Article 28(3) of International Convention on the Rights of the Child, 1989.  
\textsuperscript{19} Article 29(1) of International Convention on the Rights of the Child, 1989.  
\textsuperscript{20} Article 29(1) (a) of International Convention on the Rights of the Child, 1989.  
\textsuperscript{21} Article 29(1) (b) of International Convention on the Rights of the Child, 1989.  
\textsuperscript{22} Article 29(1) (c) of International Convention on the Rights of the Child, 1989.  
\textsuperscript{23} Article 29(1) (d) of International Convention on the Rights of the Child, 1989.
• The development of respect for the natural environment.\textsuperscript{24}

It also ensures that no part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.\textsuperscript{25}

\textbf{(c) International Covenant on Economic Social and Cultural Rights, 1966}

According to Article 13 of International Covenant on Economic Social and Cultural Rights the State Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.\textsuperscript{26}

It further provides that Parties to the present Covenant recognise, with a view to achieving the full realisation of this right:\textsuperscript{27}

\begin{itemize}
\item Article 29(1) (c) of International Convention on the Rights of the Child, 1989.
\item Article 29(2) of International Convention on the Rights of the Child, 1989.
\item Article 13(1) of International Covenant on Economic Social and Cultural Rights, 1966.
\item Article 13(2) of International Covenant on Economic Social and Cultural Rights, 1966.
\end{itemize}
• Primary education shall be compulsory and available free to all;\textsuperscript{28}

• Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;\textsuperscript{29}

• Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;\textsuperscript{30}

• Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.\textsuperscript{31}

• The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.\textsuperscript{32}

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such

\textsuperscript{28} Article 13(2)(a) of International Covenant on Economic Social and Cultural Rights, 1966.
\textsuperscript{29} Article 13(2)(b) of International Covenant on Economic Social and Cultural Rights, 1966.
\textsuperscript{30} Article 13(2) (c) of International Covenant on Economic Social and Cultural Rights, 1966.
\textsuperscript{31} Article 13(2) (d) of International Covenant on Economic Social and Cultural Rights, 1966.
\textsuperscript{32} Article 13(2) (e) of International Covenant on Economic Social and Cultural Rights, 1966.
minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.33

The same article also ensures that Article 13 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.34

(d) Convention on the Elimination of all forms of Discrimination Against Women, 1981

According to Article 10 of Convention on the Elimination of all forms of Discrimination Against Women States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:35

- The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional

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and higher technical education, as well as in all types of vocational training; 36

- Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality; 37

- The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods; 38

- The same opportunities to benefit from scholarships and other study grants; 39

- The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women; 40

36 Article 10(a) of Convention on the Elimination of all forms of Discrimination Against Women, 1981.
37 Article 10(b) of Convention on the Elimination of all forms of Discrimination Against Women, 1981.
38 Article 10(c) of Convention on the Elimination of all forms of Discrimination Against Women, 1981.
39 Article 10(d) of Convention on the Elimination of all forms of Discrimination Against Women, 1981.
40 Article 10(e) of Convention on the Elimination of all forms of Discrimination Against Women, 1981.
• The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;\textsuperscript{41}

• The same Opportunities to participate actively in sports and physical education;\textsuperscript{42}

• Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.\textsuperscript{43}

(e) \textbf{International Convention on the Elimination of All Forms of Racial Discrimination, 1966.}

According to Article 1 of the Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.\textsuperscript{44}

According to Article 2 of the convention States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:\textsuperscript{45}

\begin{itemize}
\item Article 10(f) of Convention on the Elimination of all forms of Discrimination Against Women, 1981.
\item Article 10(g) of Convention on the Elimination of all forms of Discrimination Against Women, 1981.
\item Article 10(h) of Convention on the Elimination of all forms of Discrimination Against Women, 1981.
\item Article (1)(f) of International Convention on the Elimination of All Forms of Racial Discrimination, 1966.
\item Article (2)(1) of International Convention on the Elimination of All Forms of Racial Discrimination, 1966.
\end{itemize}
Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;\(^{46}\)

Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;\(^{47}\)

Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;\(^{48}\)

Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;\(^{49}\)

Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.\(^{50}\)

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\(^{50}\) Article (2)(1)(e) of International Convention on the Elimination of All Forms of Racial Discrimination, 1966.
The Article further provides that States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken, have been achieved.\footnote{51}

According to the Article 5 of the convention in compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to education and training.\footnote{52}

(f) UNESCO Convention against Discrimination in Education, 1960

Article 1 of the convention defines the term “discrimination” which includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:\footnote{53}
• Of depriving any person or group of persons of access to education of any type or at any level; 54
• Of limiting any person or group of persons to education of an inferior standard; 55
• Subject to the provisions of article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; 56 or
• Of inflicting on any person or group of persons conditions which are incompatible with the dignity of man. 57

The same Article also defines the term “education” which means to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given. 58

Article 3 suggests the steps to be taken in order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake: 59

• To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education; 60

59 Article (3) of UNESCO Convention against Discrimination in Education, 1960.
60 Article (3)(a) of UNESCO Convention against Discrimination in Education, 1960.
• To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;\textsuperscript{61}

• Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;\textsuperscript{62}

• Not to allow, in any form of assistance granted by the public authorities to educational institutions, any restrictions or preference based solely on the ground that pupils belong to a particular group;\textsuperscript{63}

• To give foreign nationals resident within their territory the same access to education as that given to their own nationals.\textsuperscript{64}

According to Article 4 of the convention the States Parties to this Convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular:\textsuperscript{65}

• To make primary education free and compulsory; make secondary education in its different forms generally available and accessible to all; make higher education

\textsuperscript{61} Article (3)(b) of UNESCO Convention against Discrimination in Education, 1960.
\textsuperscript{62} Article (3)(c) of UNESCO Convention against Discrimination in Education, 1960.
\textsuperscript{63} Article (3)(d) of UNESCO Convention against Discrimination in Education, 1960.
\textsuperscript{64} Article (3)(e) of UNESCO Convention against Discrimination in Education, 1960.
\textsuperscript{65} Article (4) of UNESCO Convention against Discrimination in Education, 1960.
equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;\textsuperscript{66}

- To ensure that the standards of education are equivalent in all public education institutions of the same level, and that the conditions relating to the quality of education provided are also equivalent;\textsuperscript{67}

- To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;\textsuperscript{68}

- To provide training for the teaching profession without discrimination.\textsuperscript{69}

After having a glance over the provisions under the legal instruments mentioned in the foregoing paras it appears that the world community is very sensitive and much aware about the importance of right to education and accepted it as an integral part of the human rights disclosure and also indispensable component of right to development. At the same time member states have taken number of steps to implement and execute these rights. These steps reflect the progressive development of this right. However, a brief analysis of above mentioned provisions may help to understand the progressive development made in the realization of right to education.

\textsuperscript{66} Article (4)(a) of UNESCO Convention against Discrimination in Education, 1960. 
\textsuperscript{67} Article (4)(b) of UNESCO Convention against Discrimination in Education, 1960. 
\textsuperscript{68} Article (4)(c) of UNESCO Convention against Discrimination in Education, 1960. 
\textsuperscript{69} Article (4)(d) of UNESCO Convention against Discrimination in Education, 1960.
The right to education was included from the outset among the human rights listed in the major texts adopted by the United Nations: the Universal Declaration of Human Rights of 10 December 1948, the International Covenant on Economic, Social and Cultural Rights and even the International Covenant on Civil and Political Rights of 16 December 1966. In this “Charter of Human Rights”, the right to education holds a key position and is the subject of more precise and detailed provisions than the other rights.

Moreover, the longest article of the International Covenant on Economic, Social and Cultural Rights is Article 13 which deals with education, setting out its aims and purposes, system and content, while Article 14 deals more specifically with the provision of free primary education. It may be recalled that, as indicated in analysis at the time, as the 1948 Universal Declaration was merely a United Nations General Assembly resolution, it was not recognised as legally binding, however great its political and moral scope, might be, it was therefore necessary, in order to make it binding in character that its major principles be taken up in an instrument of conventional nature, which was the purpose of the “Covenants”. No doubt, as will be seen later, conceptions have changed today regarding the legal nature of General Assembly resolutions, and the analysis of the scope of the Universal Declaration has also changed, so “legal construction” may be somewhat different. Moving from the general to the particular and from the affirmation of great principles to practical procedures designed to permit their implementation, conventions have therefore succeeded the Universal Declaration and,

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70 Article 26 of the Universal Declaration of Human Rights.
subsequently, the conventions themselves have been joined by other, more specific\textsuperscript{73} conventions, proclamations, programmes of action, etc. The basic texts have aged in respect of one particular aspect or another. This observation does not in any way call into question the basic principles which they express and on which the right to education rests; it is merely intended to underline the need to devise new instruments on specific aspects derived from those principles so that the requisite adjustments can thus be made.

The major texts (conventions, declarations and programmes of action) adopted by UNESCO on the right to education are therefore of great importance in several respects. First, they reaffirm certain principles enshrined in the basic texts and give them concrete substance; otherwise, they would remain mere "principles" whose application would not be clear. Next, they make it possible for Member States' commitment to the right to education to be enlisted by updating the principles and procedures for exercising that right so as to constantly adapt to individual and collective needs.

Among the regulatory texts established by UNESCO, a key place is given to the Convention against Discrimination in Education that was adopted in Paris by the General Conference of UNESCO at its 11\textsuperscript{th} session on 14 December 1960, and which came into force on 22 May 1962. Referring to the Universal Declaration of Human Rights, which asserts in Article 7 the general principle of non-discrimination and proclaims in Article 26 that every person has the right to education, and to the Constitution of UNESCO, the Convention, while respecting the diversity of national education systems, pursues the twin objectives of not only forbidding any form of discrimination in education but also of promoting equality of

\textsuperscript{73} The Convention on the Rights of the Child adopted by the United Nations in 1989; Articles 28, 29 and 30 of this Convention deal in particular with the right to education.
opportunity and treatment for all in that field. It is clear that if the two objectives are attained, enjoyment of the right to education is assured.

The question of technical and vocational education is also covered by a text that is a convention, namely, the Convention on Technical and Vocational Education adopted by the General Conference of UNESCO at its 25th session, in Paris on 10 November 1989. Referring to the Universal Declaration of Human Rights, in particular Article 23 and 26 relating to the right to work and to education, and to the 1966 Covenants, the 1989 Convention also draws on the 1960 Convention against Discrimination in Education in considering that everyone should be able to enjoy this type of education on the grounds that it gives individuals access to employment and professional activity while contributing to the development of the State and to its collaboration with other States. The Convention lays emphasis on cooperation between UNESCO and the International Labour Organization since the right to education and the right to work is very closely linked in this particular type of education known as vocational education. In this connection, the Convention is one of the international treaties adopted to complement and clarify the Universal Declaration of Human Rights and the Covenants of 1966. Like the 1960 Convention against Discrimination and by its legal nature as such, it therefore holds a central place in the standard-setting machinery of the right to education. These conventions are necessary as sources of rights and obligations. Such obligations may lead to strengthening international cooperation and exchanges, as in the present case, since the Convention contains several provisions on this point. As this concerns the specific field of human rights, there is a greater scope of action, which will be considered later. It includes enabling the judge, before whom such
matters can easily be brought by a private individual, to impose sanctions on a State Party for not fulfilling its obligations.

As far as the beneficiaries of right to education is concerned one can refer to the very philosophy contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights is to establish a right to education so that everyone accordingly receives a suitable education consistent with the needs of the society in which it is provided. What is significant is that the authors of the Covenant consider the right to education from two standpoints: the individual (conducive to the full development of the human personality) and the collective enabling all persons to participate effectively in a free society. Furthermore, it fulfils an international cooperation function by promoting “understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups” and encouraging “the development of the activities of the United Nations for the maintenance of peace”. The right to education is clearly perceived as the fundamental, central right that conditions many other rights and without the full exercise of which individuals and the society to which they belong and the world into which they are born cannot develop.

More recently such as according to Dakar Framework of Action, it is being debated that the object is to ensure universal access to that right for all children – regardless of their sex, their ethnic or cultural group, or any disability or particular situation – and for youth and adults, all of whom should have equitable access to appropriate programmes so designed as to enable them to acquire knowledge and the skills necessary for day-to-day life. To begin

74 Supra note 72.
with, stating the obvious, the simplest way to achieve accessibility for all is by providing free education. But is it realistic to say that this can be done everywhere, if we consider the costs of universal provision, especially in certain States? This is a delicate issue and one that has not been addressed sufficiently, consistently or in depth by the international community; instead there has been what has been called a “shift of emphasis”, in other words emphasis has not always been laid upon the same aspects of the right to education since the Universal Declaration of Human Rights was adopted and, consequently, the commitment to one or other of the principles originally proclaimed.76

Including free fundamental education, Article 26 – may not have been total. In Article 4 of the 1960 Convention against Discrimination in Education the General Conference of UNESCO recognized that primary education should be compulsory and (by correlation) free, but did not apply the same principle to other levels of education. The International Covenant on Economic, Social and Cultural Rights provides for “the progressive introduction of free education” at the secondary and higher levels, while the 1989 Convention on the Rights of the Child calls for primary and secondary education to be made free, but not higher education. In paragraph 7(ii), the Dakar Framework for Action 37 requires only compulsory primary education to be free. But how meaningful is equitable and unrestricted access to education programmes unless there is a correlative recognition of free provision or assistance for the needy, which is the price to be paid for making these principles a reality.

Making education free is not, however, the only way of making it accessible: nondiscrimination is no less essential since it enables those from disadvantaged or vulnerable categories to benefit equally from the right to education. There is an even greater obstacle to overcome here, as there are not only economic factors at play but also cultural and sociological constraints which cannot be overlooked and are difficult to circumvent.

It was in fact from this standpoint that UNESCO addressed the right to education when it asserted its desire, in the Convention against Discrimination in Education of 14 December 1960, to implement the principles of the Universal Declaration. For the purposes of the 1960 Convention (Art. 1) the term “discrimination” includes any distinction, exclusion, limitation or preference which, being founded on race, colour, sex, language, religion, opinion, economic condition or birth, might impair equality of treatment in education of any kind. The Convention specifies, however, that organizing separate education for the two sexes should not be deemed to constitute discrimination if the study courses are the same or equivalent and the teaching staff and the premises are of comparable quality. Similarly, separate education systems may be established for religious or linguistic reasons if they apply the same principle of equivalence, and participation in them remains optional and is left to the free choice of the interested parties. Private education may coexist with education provided by the public authorities if the object is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities. These principles having been established, the States that have ratified the Convention (and, it should be recalled, no reservations are permitted) must, under their obligation to execute its provisions, take all necessary domestic legislative and regulatory measures to abrogate any texts that are contrary to the Convention
and adopt those that bring their legislation into line with the Convention. Article 3 and 4 of UNESCO convention offer the necessary guidelines for this purpose by indicating the measures to be taken in the matters of school fees, the granting of scholarships and other forms of assistance, standards of education, etc. Non-discrimination also has to do with a very important principle of freedom, that of the right of parents to choose for their children the educational establishment of their choice when there exist institutions other than those maintained by the public authorities and the right to ensure, in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of their children. And lastly, it has to do with the educational rights of minorities. The periodic reports that States are required to submit on the measures adopted are designed to ensure that the Convention is being effectively applied and that the obligations contained in it are being fulfilled.

Later texts support these principles and rules by complementing, specifying or illustrating them in such a way that, from both the economic and political standpoints, and even in terms of administrative practice, which is equally essential here, the principle of non-discrimination is respected. The Jomtien World Declaration – significantly entitled “Education for All” – and the Framework for Action called for “universalizing access and promoting equity” (Declaration, Art. 3). For that purpose “basic education” must be provided to all children, young people and adults. For it to be equitable, everyone must be given the opportunity to achieve and maintain an acceptable level of learning. That also requires the removal of all “educational disparities” and attention as an “urgent priority” to categories suffering from exclusion or discrimination, such as girls and women and undeserved groups (street children, working children, rural and remote populations,
nomads and migrant workers, indigenous peoples, ethnic, racial and linguistic minorities, refugees, displaced persons and people under occupation, and the disabled requiring special attention), even if the achievement of equity entails positive discrimination or granting priorities to certain groups.

The international scenario regarding the right to education can be summed up with the remarks that not only the world bodies have taken it seriously but also almost the majority of the nations have also taken some positive steps in the progressive realisation of right to education.

The following table[^77] is an indicator of the global acceptability of right to education as a vital right for human being.

<table>
<thead>
<tr>
<th>Countries where free and compulsory education for all is constitutionally guaranteed:</th>
<th>Countries with progressive realization or partial guarantees:</th>
<th>Countries where guarantees are restricted to citizens or residents:</th>
<th>Countries with no constitutional guarantee:</th>
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<tbody>
<tr>
<td>Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Barbados, Belgium, Belize, Bolivia, Bosnia</td>
<td>Bangladesh, Belarus, Benin, Bhutan, Cameroon, Comoros, Guinea, Guinea-Bissau,</td>
<td>Armenia, Bahrain, Cambodia, Chad, Cyprus, Czech Republic, Democratic People’s Republic of Korea, Dominican Republic, El</td>
<td>Angola, Antigua and Barbuda, Bahamas, Botswana, Brunei, Darussalam, Burkina Faso,</td>
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<tr>
<th>Countries where free and compulsory education for all is constitutionally guaranteed:</th>
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<tr>
<td>and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Denmark, Ecuador, Egypt, Estonia, Finland, France, Gambia, Georgia, Germany, Ghana, Haiti, Honduras, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Madagascar, Malta, Mauritius, Mexico, Netherlands, Norway, Palau, Panama, Paraguay,</td>
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<td>Countries where free and compulsory education for all is constitutionally guaranteed:</td>
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<td>Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saudi Arabia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Ukraine, United Arab Emirates, United Kingdom of</td>
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<tr>
<td>Countries with progressive realization or partial guarantees:</td>
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<td>Zimbabwe.</td>
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<td>Countries where guarantees are restricted to citizens or residents:</td>
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<tr>
<td>Countries with no constitutional guarantee:</td>
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</tbody>
</table>
Countries where free and compulsory education for all is constitutionally guaranteed:

Great Britain and Northern Ireland, Uruguay, Venezuela, Yugoslavia.

Countries with progressive realization or partial guarantees:

Countries where guarantees are restricted to citizens or residents:

Countries with no constitutional guarantee:

C. Right To Education: Indian Scenario

(a) Education in Ancient and Pre British era

History of education in India is very rich and interesting. One can trace the ancient Indian education to the 3rd century BC. India takes pride in claiming to be the abode of oldest civilization and seat of learning. It was this soil which has given birth to the oldest scriptures in the world. Sages and scholars used to disseminate education orally, but after the development of letters, it took the form of writing. Temples performed the role of schools. However, there is disagreement amongst scholars regarding the origin and nature of the education System in ancient India. Different kinds of claims have been made regarding the segments of the societies who were included and excluded from accessing education. It is alleged to be notorious for not being socially inclusive. History is full of instances of discrimination based on caste, class and gender in education.
Education was the sole privilege of the priestly castes. *Gurukulas* and *Ashramas* were not accessible to everybody. People from lower castes, and so-called ‘shudras’ (untouchables), in particular, were barred from receiving education.\(^7\)

The advent of Buddhism and Jainism cause the downfall of the supremacy of the orthodox Vedic education by the end of the eighth century A.D. Buddhism helped in growth of education and making it universal. It was during the hey days of Buddhism that the world famous educational institutions like Nalanda, Vikramshila and Takshashila were established. However it is pertinent to mention here that these institutions were having very deep organic relation with the monasteries. In fact Nalanda University was one of the most prominent seats of learning; the university had around 10,000 resident students and teachers on its roll at one time. These students used to pour in Nalanda from countries like China, Sri Lanka, Korea and other parts of the world.\(^9\)

The Muslim rulers of the Indian sub-continent also did not consider education as a function of the State. It was perceived as a branch of religion and therefore entrusted to learn theologians called ‘Ulemas’. Therefore, in ancient and medieval India, education was intertwined with religion. From the location of *Gurukulas* to excluding sections of the society from accessing education, the system of education was clearly not accessible to all persons. It was only with the advent of democratic values in this country, social inclusion in education as a policy matter could see the light of the day.\(^8\)

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\(^8\) Ibid.

\(^9\) Ibid.
(b) Education during British Raj

The decline of Muslim rulers and rise of the British colonial power is a simultaneous phenomenon in history. When the British arrived in India; they also brought with them European missionaries and hence the English education came to India. Although it is alleged that British promoted education in India to promote their own interest; nevertheless while talking about development of education in this country those roughly 200 years of British rule can not be ignored. Developments during British rule are very important which are crucial to understand the developments in post independent India. But looking in to limited scope of this chapter it would be appropriate to have a short and snappy outline of the major historical events in the chronological order during this period.

- 1870-80 Compulsory Education Acts passed in Britain demand for similar treatment for Indians.
- 1882 Indian education commission – Indian leader demanded provision for mass education and Compulsory Education Acts. Dadabhai Naoroji and Jyothiba Phule from Bombay demanded State-sponsored free education for at least four years. This demand was indirectly acknowledged in the Commission’s recommendations on primary education.
- 1893 Maharaja of Baroda introduces compulsory education for boys in Amreli taluk.
- 1906 Maharaja of Baroda extends compulsory education to the rest of the state. The first law on compulsory

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Supra note 78 at 13.
education was introduced by the State of Baroda in 1906. This law provided for compulsory education for boys and girls in the age groups of 7–12 years and 7–10 years respectively.

- 1906 Gopal Krishan Gokhale makes a plea to imperial legislative council for introduction of free and compulsory education.

- 1908 The first documented use of the word right in the context of elementary education appears in a letter written by Rabindranath Tagore to the International League for the Rational Education of Children.\(^83\)

- 1911 Gokhale proposes Private members Bill (Rejected).

- 1917 Sh. Vithalbhai Patel succeeds in getting Bill passed.

- 1917 First Law on Compulsory Education passed (Popularly Known as Patel Act).

- 1918-30 Every province in British India gets Compulsory Education Act on its Statute Book.

- 1930 Hartog Committee Recommendation for better quality (not quantity) hinders spread and development of primary education.

- 1937 At the All India National Conference on Education held at Wardha, Gandhi mooted the idea of self-supporting ‘basic education’ for a period of seven years through vocational and manual training. This concept of self-support was floated in order to counter the

\(^83\) Supra note 78 at 4.
Government’s constant excuse of lack of resources. The plan was to not only educate children through vocational training/manual training by choosing a particular handicraft, but also to simultaneously use the income generated from the sale of such handicrafts to partly finance basic education. Furthermore, education was supposed to be in the mother tongue of the pupils with Hindustani as a compulsory subject.

- **1944** Post War Plan for Educational Development in India (Sargent Plan) proposes scheme for India to achieve universal elementary education in by 1984 (40 years).

- **1947** Ways and Means (Kher) Committee set up to explore ways and means of achieving Universal Elementary Education within ten years at lesser cost.

- **1947** Constituent Assembly Sub committee on Fundamental Rights places free and compulsory education on list of Fundamental rights:

  “Clauses 23- Every citizen is entitled as of right to free primary education and it shall be the duty of the State 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”.

- **1947 (April.)** Advisory Committee of the Constituent Assembly rejects free and compulsory education as a fundamental right. Sends clause to list of “non-justiciable fundamental rights” (later termed as ‘Directive Principles of State Policy).
• 1949 (November) Debate in Constituent Assembly removes the first line of this clause (now Article 36) i.e “Every citizen is entitled as of right to free primary education and it shall be the duty of the State to.” and replaces it with “The State shall endeavour to.”. and Dr. B. R. Ambedkar, clarifies that the objective of article 36 is not restricted to free primary education.. “The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years”…. “a provision is made in article 18 to forbid any child being employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word “primary” is quite inappropriate.

(c) Right to Education in Post Independent India

The post independent India is an era of hopes, aspirations and total transformation in every walk of life. But the same period was also testing time for the newly independent and nascent democracy which was passing through social and economic churning. India’s post independence history of educational developments is the saga of achievements and missed opportunities. At dawn of the 20th century India had a literacy rate of about 5.4 % of the 230 million people, however it move slowly to reach less than 16.7 % literacy by the middle of 20th century; credit for the 11.3% growth can be given to British rule in the first fifty years of 20th century. But it is pertinent to mention here that by the end of the 20th and in the beginning of 21st century (i.e. 2001) Indian literacy rose more than 55.3 %; here it is important to mention that in quantitative terms, the performance of
governments in independent India is better than the colonial British government.\textsuperscript{84}

It is a bitter truth that India is defamed to be the world’s largest pool of illiterates, but it is also an astonishing truth that she has more than 562,010,743 500 literates, only second largest in the world, and larger than possibly the total population of the entire European Union. Therefore there are two sides of the truth-India has the largest pool of both; literates as well as illiterates.\textsuperscript{85}

There is no doubt that after independence there is expansion of education in a dynamic manner nevertheless, the dreams of many eyes are yet to come true because of massive deprivation of education to those who belongs to and forms part of ‘deprived India’ in many senses within India.\textsuperscript{86} It is in this back drop the development regarding the right to education from various perspectives has to be examined.

\textbf{(c.1) Constitutional Provision regarding the Right to Education and efforts for its implementation (1950-2010):} As it has been observed earlier also that independent India was an era of hopes and aspirations and the Constitution was reservoir of all those hopes and aspirations of Indian citizens. Right to education was one of such aspirations of Indian citizens; putting the hands on the pulse of millions of Indians the framer of the Constitution responded in positive manner and the right to education was recognised and included as policy

\textsuperscript{84} State of Literacy, Chapter 7 at 11, Census of India, 2001 as available at \texttt{http://censusindia.gov.in/DataProducts/library/provisional_provisional_total_Link.pdf} as accessed on 28.06.2010. See also: K. Mahendra, Premi, India’s Literacy Panorama at 1, as available on \texttt{http://www.cbgiindia.org/files/featured_articles/Right%20to%20Education%20Act%202009%20-%20critical%20gaps%20and%20challenges.pdf} as accessed on 28.06.2010.

\textsuperscript{85} Ibid.

\textsuperscript{86} Marnar Mukhopadhyay; \textit{Indian Education since Independence}, 1(2007).
matter in the supreme law of the land. Article 45 of the constitution of India stipulated that the state would endeavour to provide, within 10 years, free and compulsory education for all children below 14 years of age.

However keeping the economic realities in mind the framer of the constitution did a balancing act and this provision become a part of the Directive Principles of states Policy. However, provisions under ‘Directive Policies’ in the Constitution of India proved to be a ‘decorative piece of suggestions’ for almost all the governments till beginning of the early 1980s, when the Supreme Court of India diluted the traditional doctrines of locus standi to permit concerned citizens, public interest advocates and non governmental organizations to petition it on behalf of individuals or communities suffering violations of constitutionally protected rights. As a consequence, the apex court in its quest to be socially relevant started entertaining applications for constitutional protection for hitherto powerless and voiceless persons of India also referred as ‘Daridranarayans’, which included Dalits, rickshaw pullers, bonded laboures, pavement dwellers, and victims of environmental damage.87

In conducting these cases, the Court created its own fact-finding commissions to investigate alleged violations, and dramatically expanded its remedial powers to include detailed supervision of government

institutions and the ordering of programs to mitigate the effects of systematic injustice. Through the development of its ‘Public Interest Litigation’ jurisdiction, the Supreme Court of India came to act as a ‘combination of constitutional ombudsman and inquisitorial examining magistrate, vested with responsibility to do justice to the poor litigant before it by aggressively searching out the facts and the law, and by taking responsibility for fully implement its decisions.88

One can refer the first four decades after Independence as the period of drought (1950-1990) from the perspective of right to education since there were no major paradigm shifts in this regard. It is because of the above mentioned activism on the part of Judiciary, finally the drought ended when the political leadership was shaken from their deep slumber by revolutionary judgments in 1992 and 1993, by the Supreme Court of India while deciding the two Public Interest Litigations89 in which the plaintiffs claimed a judicially enforceable right to education. Interestingly both the cases were related to private higher educational institution and capitation fee in those institutions for the admission. The apex court used this opportunity to interpret the article 45 of the constitution which talks about elementary education and gave it a wide meaning. Court also did not hesitate to highlight the failure of the state

88 Id. at 17.
for the last four decade. In Unni Krishanan case the Supreme Court observed:90

It is noteworthy that among the several articles in part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the article merely calls upon it to “endeavour to provide” the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. Does not the passage of 44 years more than four times the period stipulated in Article 45 convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to notice that Article 45 does not speak of the limits of its economic capacity and development’.

It appears that governmental attitude in the initial four decades have a policy of flip flop and to remain in mode of denial. Court further developed a connection between Article 21 i.e. right to life and right to education and held that there can not be comprehensive development of human being without education.91

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90 Supra note 1 at 44-45.
91 Supra note 87 at 18.
The court’s judgment was applauded from various quarters and adjudged to be historic in nature. The judgment provided a platform for the civil rights groups and other human rights activist to use at the optimum the positive environment created by the judgment in Unnikrishnan case. Their clear goal was to transform this in an effective re-incarnation of this right as a fundamental right. The movements gather the momentum as it got support from various organisations fighting for the right which created a pressures on the government to formally amend the Constitution so as to bring it in line with the Court’s approach.92

Any sensitive government especially in democratic country can not be insensitive to the public movements for a long time; finally the Central government budged and responded by establishing two committees namely Saikia Committee and Majumdar Committee to investigate both the desirability and financial implications of amending the Constitution to establish primary education as a fundamental right. The Saikia Committee which was a joint committee of state government Ministers of Education came to the conclusion in 1997 that the Constitution should be amended to create as a ‘fundamental right’ the right to free and compulsory education from six to fourteen years of age, and to impose a ‘fundamental duty’ on parents to provide opportunities for education to their children in this age group. The Majumdar Committee concluded in 1999 that the universalisation of elementary education for children aged six to fourteen

92 Id. at 19.
years would require an additional expenditure of Rs 140,000,000,000 per year for ten years; on the assumption of annual Gross Domestic Product growth of 5 percent, this amounts to an additional 0.7 percent of Gross Domestic Product dedicated to education per year, raising education expenditure to approximately 5 percent of Gross Domestic Product.  

As a consequence of the above pressures from the civil society and the positive response from the central government and the deliberations made by the committees appointed by the government the right to education movement finally saw a silver linings when The Saikia Committee report resulted in a bill to amend the Constitution. The Bill was tabled in 1997, but could not be converted into law until December 2002. In the meantime, a number of important criticisms were made of the proposed new right during the hearings of Parliamentary Standing Committee on Human Resource Development. The Bill intended to introduce a new article 21A, which provided: ‘the State shall provide free and compulsory education to all citizens of age six to fourteen years in such manner as the State may, by law, determine’. It also introduced a new article 51A (k) which imposed a duty on parents and guardians to provide their children with educational opportunities, in the terms recommended by the Saikia Committee.

As previously mentioned the role of the civil society has been very crucial and decisive in determining the fate of right to education in India.

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93 Ibid.
94 Id. at 20.
Groundwork for this support had also been laid by a major public initiative which produced the path-breaking Public Report on Basic Education in India also known as PROBE.95

The importance of the report can be judged from the fact that it is based upon a detailed empirical study of five northern Indian states which covers a major chunk of Indian population. The Report identifies eight arguments which can be used to justify the case for universal elementary education. Arguments are as follows:96

- elementary education is a fundamental right, as stated in the Constitution and determined by the Supreme Court;
- there is massive popular demand for universal schooling;
- it represents an important investment in human capital;
- it should contribute to the joy of learning
- education helps individual well-being in diverse ways
- education assists the social progress of the whole community;

95 Id. at 21.
education facilitates effective political participation; and

Universal elementary education is a requirement of social justice.

The above mentioned report is one of the examples that how various types of contribution decided the shape of right to education. The civil societies were able to garner the support and mobilise the opinion of the people for fundamental right to education. Even there was reaction regarding the amendment of the Constitution the National Alliance for the Fundamental Right to Education (NAFRE), organized the protest in which around 40,000 citizens from various nook and corner of the country assembled in New Delhi when the Constitution was amended. The organization demanded a common school system providing free education of equitable quality. The role played by civil society in bringing about the constitutional amendment is instructive.\(^{97}\)

Human rights demands are all too often promoted in a top-down fashion, whether pushed by the international community, or by domestic elites. Although this process is not necessarily doomed to failure, it is less likely to succeed and, more importantly, it is less likely to generate the level of societal support which will, over time, ensure that the relevant value is internalized within the community so that, at least at the level of ideas, it is no longer a matter of contention. While India's vibrant civil society, its

\(^{97}\) Supra note 87 at 22.
relatively longstanding democratic traditions, and its legal heritage might all have combined to provide particularly fertile ground for such an initiative, this does not necessarily mean that a campaign based on the assertion of education as a matter of human rights will not work in other countries.\textsuperscript{98}

After the Unnikrishnan judgment by the Supreme Court, it took almost a decade for getting the constitution amended. A combine reading of article 21 ‘A’ 51 A(K) and 45 suggest that the next logical step for all the interested parties to the right to education was to have an effective legislation in place to fulfill the dreams of free and compulsory education.

Following the above mentioned developments after the amendment of the constitution the central government took the initiative to get the legislation in place. Various developments in order to enact the Act can be summed up chronologically as follows:\textsuperscript{99}

- In 2002, the 86th Constitutional Amendment was passed.
- In 2003, the first draft of the Right to Education bill was circulated for public review.
- In 2004, the second draft of the bill, drafted after consideration of the feedback to the first draft, was posted on the Department of Education Government of India website.

\textsuperscript{98} Id at 23.

In June 2005, the Central Advisory Board of Education (CABE) committee drafted the 'Right to Education Bill' and submitted to the Ministry of Human Resource Development (MHRD). MHRD sent it to the National Advisory Council (NAC) where Mrs. Sonia Gandhi was the Chairperson. The NAC sent the Bill to the Prime Minister for his observation.

In July 2006, the finance committee and planning commission rejected the Bill citing the lack of funds and a Model bill was sent to states for the making necessary arrangements. (Post-86th amendment, States had already cited lack of funds at State level)

The States promptly sent the model bill back to the Centre citing lack of funds. The bill was virtually buried for two years.

In February 2008, the Ministry of Human Resource Development circulated another draft of the bill.

In August 2008, the Union Cabinet referred the Right to Education Bill to the Group of Ministers, a high-powered group of ministers formed to look into operationalising the Fundamental Right to Education.

On 30 October 2008, the Union Cabinet cleared a revised draft of the bill, as yet unreleased to the public. The Group of Ministers had passed on the draft to the Cabinet earlier that month.
• On 15 December 2008, the Right of Children to Free and Compulsory Education Bill was introduced in the Rajya Sabha and released to the public on the Rajya Sabha website. The Rajya Sabha referred the bill to the Department-related Parliamentary Standing Committee on Human Resource Development.

• On 18 February 2009, the Standing Committee released its report of recommendations and placed it before both the houses of Parliament, which were in session at the time.

• On 26 February 2009, the Parliament ended its budget session without passing the bill.

• On 20 July 2009, the Rajya Sabha passed the bill with minor changes to the 2008 draft bill.

• On 4 August 2009, the Lok Sabha passed the bill.

• On 26 August 2009, the President gave her assent to the bill.

• On 1 April 2010, the Act “Right of Children to Free and Compulsory Education Act, 2009” came into force.

This is considered as one of the major achievement for Right to Education movement despite of the fact that so many doubts100 have been raised before and after the enactments of the Act. Nevertheless, it is

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pertinent to mention here that the very enactment of the Act itself is a positive step in the right direction. Evaluating success and failure of the Act at this stage is undesirable. However, the above argument is not to suggest that if there are some practical problems at the stage of implementation those should not be removed by amendment. It is submitted that the evaluation of success and failure can be done at appropriate time since this span is very short for the above said purpose.

(c.2) Right to Education; a tour of policies and plans, 1950–2010: For long time nations were giving priority to invest in their armies, trade and any thing else but the investment on human development was their last priority. But soon most of them have realised that human is the centre of all the development and education is the most vital investment in human development. As mentioned earlier also education strongly influences upgrading in health, hygiene, and over all standard of life. The investments in human development and consequently investment in education sector going to be a big issue in the policy matter and governance in the next decade. The great Indian dream to be a developed nation can not be fulfilled without a solid foundation of elementary education in India, which is pivotal in the development of every citizen. However providing primary education to all in India has also been one of the Herculean tasks for all the governments.

Keeping above mentioned reasons in mind it is very much clear that the Policies and plannings are fundamental in governance and development of any
country. Policies are like those seeds which have been put in the ground and at the same time laws are like those seeds which are still in the farmer’s basket. Therefore it is important to examine the policies and plannings of succeeding governments to understand the developments regarding the right to education.

India decided to go for a planned economic growth and hence it decided under the leadership of the first Prime Minister Jawahar Lal Nehru to set up a planning commission at central level. The planning commission is supposed to decide and give direction to economic growth in the country. As far as planning commission is concerned its vision regarding education is reflected in various planning commission’s document. Those documents talk at length regarding education and its development. At the same time education and its relation with development have also been reflected in various plans. This relation can be understood with the help of following table.
Education and its relation with development through various planning commission

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<tr>
<td>Relationship</td>
<td>Education is of basic importance in the planned development of a nation. (chapter 33.1)</td>
<td>The system of education has a determining influence on the rate at which economic progress achieved (chapter 23.1)</td>
<td>Education is the most important single factor in achieving rapid economic development ..., and to develop human resources. (chapter 29.1)</td>
<td>A suitably oriented system of education can facilitate and promote social change and contribute to economic growth. (chapter 16.1)</td>
<td>Plan outlays for education have been somewhat modest because of the economic situation. (chapter 5.1.36)</td>
<td>Educatio n, broadly perceived as a is essential for human resource development at every age level. (chapter 21.1)</td>
<td>Human resources development has necessarily to be assigned a key role in any development strategy ... education develops basic skills and support national developme nt. (chapter 3.3.1)</td>
<td>It is now universally acknowledged that the goal of Plan efforts is human development ... Education is the catalytic factor, which leads to human resource (chapter 23.1)</td>
<td>Education is the most crucial investment in human development. ... The Ninth Plan treats education as the most crucial investment in human development (chapter 2.2.1)</td>
<td>Education is a critical input in facilitating social and economic progress is well recognized ... Education, in its broadest sense of development of youth, The Eleventh Plan places</td>
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<td>the highest priority on education as a central instrument for achieving rapid and inclusive growth. (Chapter 11.1.1)</td>
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As it is clear from the above mentioned table that in almost all the five year plans spread over almost more than 60 years importance of education has been duly recognized. However, it is pertinent to mention here that despite the unequivocal commitment to education, the thrust of education policy in the first 20 years after Independence remained on higher and secondary education. During this period, a number of commissions such as the Radhakrishnan Commission (1948) and the L. Mudaliar Commission (1952) emphasized university and secondary education. The first commission to deal with primary education was formed as late as 1964 under the chairmanship of D. S. Kothari and its recommendations formed the basis of the National Policy on Education. The most significant event since then was the National Policy on Education formulated in 1986 along with the Programme for action (revised in 1992) which provided for a comprehensive policy framework for the development of education for the next decade. This was the first attempt at formulating an integrated education policy encompassing all levels of education. The task of providing basic education gained momentum after the national policy for education was adopted. After that another important development in this direction was Yashpal committee report on higher education in 2009. On the basis of these commissions educational development can be divided into four important segments from the policy point of view. This can be explained with the help of the following table:

\[\text{Table}\]

\[\text{Supra note 4 at 196.}\]
|-----------|-----------|-----------|--------------|

After independence congress was ruling at the centre as well as in most of the states without any major threat from its political opponents. But by the year 1967 India witnessed a shift in politics. The positioning of education in the concurrent list was not a problem since the policy and related implications could be resolved by taking the advantage of since party rule. It was in 1967 when opposite parties came in to power in the states which lead to various types of confrontations and party became irrelevant in this matter. The role of Central advisory Board of Education gained new status and significance. However, in subsequent year i.e.1968 Kothari Commission gave its recommendation which formed basis for the first National policy on Education in 1968.102

In the next decade (1970’s) India saw even major political upheaval than previous years. India bearded the burns of the

102 Supra note 86 at 5.
emergency in 1975 and it saw the downfall of Indira Gandhi. By the year 1977 the first non-congress governments occupied the power at the centre. The government prepared a draft education policy in 1979 but it could not see the light of the day because of premature fall of the government. When the Congress came back in the power after the fall of Janta government, it once again took initiative to reformulate the national policy on education. The year 1985 can be marked as one of the very important watersheds in the history of Indian education policy making. "The challenge of education"—the document on education—was developed and it was comprehensively deliberated throughout the nation. On this important participative platform, the foundation of national education policy was laid.103

The late Prime Minister Rajiv Gandhi was instrumental in bringing the second national policy on education and got it approved by the parliament in 1986. Second national policy on education was a breather, bringing fresh and vigorous lease of life to Indian education when the enthusiasm of the first policy had weaned, and ran out of steam.104 Between two Congress Prime Ministers namely Rajiv Gandhi government and Narshima Rao, there was a short span of non-Congress coalition governments at the centre. During this period, the second national policy on education was reviewed by a committee chaired by Sri Acharya Ramamurthy. Consequently it resulted into revision of the programme of action in 1992.

The period during 1980-2000 is known for the resurgence of regional parties and the coalition’s governments at the centre. During the United Front government (1996-1998) the central government was considered as one of the weakest government India ever had where some of chief ministers were more powerful than the Prime Minister. Probably due to its political compulsions it could not make any

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103 Ibid.
104 Ibid.
specific attempt on policy enactment, however, government included basic education in their Common Minimum Programme, and drafted the bill for the amendment of the constitution for making universal elementary education free and compulsory.

The National policy on education 1986 was the milestone from the point of governance and policy issues. The policy was adopted and implemented by both all the main political parties formed the governments at the centre even if they remained principal opposition party to each other. As mentioned earlier also that on the basis of policy initiative till date the period can be divided in to four major parts and the final phase, from 1998 till 2010, is the period of educational activism, judicial positivism, politicisation of education. Keeping in mind the limited scope of this chapter, all these aspects can not be discussed here. However, it would be obligatory to highlight the objective and features of policies and the important schemes for their implementation.

Objectives and features of Indian Equation Policy of 1986 and 1992 as follows:

- Development of international cooperation and peaceful coexistence through education.
- Promotion of equality. It could be achieved by providing equal access and equal condition of success to children.
- A common educational structure [10+2+3] for the whole of India.
- Education for women’s equality. The Indian education should be used as a tool to change the status of women in the society.
• Equalization of Scheduled Caste population with others in the matter of education. This is ensured by giving incentives to parents who send their children to schools, providing scholarship to Scheduled Caste students for higher studies, reservation of seats in institution of higher studies in India, recruitment of Scheduled Caste teachers.

• Opening of primary schools in tribal area for promotion of education in Scheduled Tribes population.

• Development of curriculum and study material in the language of tribal people.

• Emphasis on the education of minorities. Adult education – Institution of national literacy mission, for teaching illiterate people of age group 15-35. And making them aware of the day to day realities of their surroundings.

• Special emphasis on early childhood care and education by opening up of the day care centers, promotion of child focused programs. Increasing the scope of operation Blackboard for upliftment of standard of primary education in India.

• Secondary education curriculum should expose the students to differentiated role of science the humanities and social science. Redesigning of courses of higher education to meet the increasing demand of professionalism.
• Providing enhanced support to the research work in universities. Efforts to relate ancient Indian knowledge with the contemporary reality.

• Setting up of Open Universities and Distant learning centers to promote the goal of education as a life long process.

• A combined perspective of technical and management education.

• Minimum exposure to computers and training in their use to be the part of professional education. The all India council for Technical Education will be responsible for maintenance of norms and standards, accreditation, funding, and monitoring of technical and management education in India.

• Multiple task performance for teachers such as teaching, research, development of learning resource material, extension and management of the institution.

• Providing teachers a better deal to make education system in India work in proper way, as teachers are the backbone of education system in India. Providing better facilities to institution and improved services to students.

• Development of education to a great deal.

• Measures to be taken for easy accessibility of books at minimum cost to all section of students.
- Strengthening of science education for the development of spirit of enquiry and the objectivity in the minds of students.

- The purpose of examination to bring about qualitative improvements in education. It should discourage memorization.

- Methods of teacher recruitment to be recognized to ensure merit and objectivity in the system.

- Overhauling of the system of teacher education and establishment of District Institutes of Education and training to organize courses for elementary school teachers.

- Reviewing of educational developments by the Central Advisory Board of Education.

- Involvement of local communities for school improvement programs.

- Review of the implementation of the parameters of the policy every five years.

- Strengthening the base of pyramid of Indian population for proper development of education system in India.

National policy of Education (1992) laid down many objectives for the development of education system in India but it has not been successful in achieving all of them. It has specified that the examination system should discourage the memorizing but that is what is happening on the ground. The education in India seems not to encourage rote experimentation and questioning. There is some
disparity in assessment as all the state Boards have different standards of evaluation.

Recently the United Progressive Alliance government has indicated some major changes in the education policy. The Human Resource Development has suggested to do away with the marking system and it has replaced it with the grading system.

Centrally Sponsored Schemes to Implement the National Policy on Primary Education

To implement the 1986 National policy on Education, the Ministry of Human Resource Development / Department of Education initiated a series of grant programs (or centrally sponsored schemes) to assist states with the development of primary Education, are following:

- **Operation blackboard: 1986**

  The department of Education established operation blackboard to counter conditions seen as constraints on retention and learning: The large number of single-teacher schools, and the inadequacy of teaching materials. The scheme provides grants to states to construct an additional classroom and post additional teacher in single teacher schools, requiring that half the teachers posted be women. It also provides grants to finance the purchase and distribution a predetermined, standardized package of teaching materials and aids by the states.

- **Districts Institute of Education and Training (DIETs): 1988**
Recognizing that professional support for teachers would improve their effectiveness, the Department of Education established a scheme to finance the creation of institutes of Education and Training in all rural districts by converting existing teacher training institutes and constructing new ones. All Districts Institute of Education and Training follow a standard organizational model, with departments for teacher Education and Training, planning and management, Research and evaluation, curriculum and materials development, Educational technology, and work experience education.

- **Total literacy campaigns: 1988**

  After an unsuccessful attempt to provide adult literacy instructions, along with vocational skills training, through formal classes, the department of Education turned to total literacy campaigns to increase adult literacy. Supervised by a National literacy mission board, the literacy program provides grants to districts administrations for organizing intensive campaigns to mobilize large numbers of volunteers. State resource centers develop literacy materials and training courses for volunteer instructors.

- **Minimum levels of learning: 1989**

  Inappropriately complex and difficult primary curricula and text books were recognized as barrier to learning and a factor in decisions to drop out. To address this problem, the department of Education initiated a National Research and development program to identify,
for each state, basic competencies in language, mathematics, and social and environmental studies to be taught in the primary grades. Known as minimum levels of learning, these competency statements have been largely completed and tested; they are ready to form the basis for new curricula and a new generation of primary textbook in the states.

- **District Primary Education Program**

  In 1992 the central Advisory Board on Education completed a revision of the National Policy on Education of 1986, calling for an integrated approach to primary Education development focused on the district level. The result has been the District Primary Education Program, the most intensive effort by the central government to increase enrollment, retention, and quality in primary Education. The program targets investment to districts with below-average female literacy rates and decentralizes planning to districts to encourage popular participation. Although the District Primary Education Program finances some new school construction, it emphasizes investment in the quality of primary instruction, particularly in-service teacher training, improved teaching and learning materials, and improved school facilities the program is strengthening community and school organizations and replacing the operation Blackboard materials approach with grants to these organizations and to teachers for the purchase of materials. The program is also enhancing state education support Programs, including textbook development and
publication, planning and management, research and evaluation, and teacher training.

The District Primary Education Program is managed at National level by the newly created District Primary Education Program Bureau in the Ministry of Human Resource Development. The bureau serves as financial and technical intermediary, appraising, financing, monitoring, and supervising state and districts expenditures, with the balance provided by state budgets on the basis of seven-year district and state investment plans. The District Primary Education Program also finances national technical assistance and research and development state institutional capacity.

The District Primary Education Program differs in five principal ways from other centrally sponsored schemes, which provide resources to states for programs that follow standard designs:

- Proposals for financing subprojects are developed by each participating district and state.
- Proposals are appraised by the District Primary Education Program bureau against technical, managerial, and financing criteria.
- Participating states must make District Primary Education Program grants fully additional to normal growth in education budgets.
- Funds are made available to states and districts annually on the basis of performance reviews and proposals for
the next year, and poorly performing sub projects can be dropped from the program and replaced.

- Implementation support and technical assistance are made available to states and districts through contracts with research and development agencies.

**Sarva Shiksha Abhiyan (SSA) -2001**

The Sarva Shiksha Abhiyan a national flagship programme is being implemented in all districts of the country. The aim of Sarva Shiksha Abhiyan is to provide useful and relevant elementary education for all children in the 6-14 age group by 2010. The scheme of the Sarva Shiksha Abhiyan was launched in 2001. The objectives of Sarva Shiksha Abhiyan are as follows:

- All children between the ages of 6-14 should be enrolled in school by year 2025.
- Bridge all genders and social category gaps at primary stage by 2007 and at elementary education level by 2010.
- Universal retention by 2010.
- Focus on elementary education of satisfactory quality with emphasis on education for life.

**Mid-Day Meal Scheme**

With view to enhancing enrollment, retention and attendance and simultaneously improving nutritional levels among children, the National Programme of Nutritional Support to Primary Education was launched as a centrally sponsored scheme on 15th Aug 1995.

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initially in 2408 blocks in the country. It was further extended in 2002 to cover not only children in classes 1st to 5th of government, government aided and local body schools, but also children studying in Education Guarantee Scheme and Alternative Innovative Education centre. Central Assistance under the scheme consisted of free supply of 100 grams of food grains per child per school day, and subsidy for transportation of food grains up to maximum of Rs. .50 per Quintal.

In September 2004 the scheme was revised to provide cooked mid-day meal with 300 calories and 8-12 grams of protein to all children studying in classes 1st to 4th in government and aided schools and Education Guarantee Scheme / Alternative Innovative Education. In July 2006 the scheme was further revised to provide assistance for cooking cost at the rate of (A) Rs. 1.80 per child / school day for states in the north eastern states, provided the North Eastern states contributed Rs.0.20 per child / school day, and

(B) Rs. 1.50 per child / school day for other states and UT’s, provided these states and UT’s contributed Rs. 0.50 per child / school day.106

On the basis of analysis of the international and domestic developments regarding right to education, it can be said that the world community as well as states parties to the international conventions and commitments are aware and sensitive to the importance of the right to education. It has been confirmed and reaffirmed so many times by the International bodies like UN and it has been resolved to ensure the access to free and compulsory education to all children by 2015.107

106 Id. at 212.
107 Supra note 76 at 23.
Even in India so many legislative and policy related steps have been taken and it has been observed that the demand for free and compulsory education finally manifested in the form of the fundamental right and the legislation namely “Right of Children to free and Compulsory education Act, 2009”. But it is pertinent to mention here that there are so many hurdles still existing due to systematic and other lapses.

As far as amendment of the constitution and enactment of the legislation is concerned, these are just starting point for the execution of right to education at the ground level. It has to be seen when this dream of access to primary education for all become reality. The importance of education in Indian context has been recently emphasized by the Prime Minister Manmohan Singh, while inaugurating 98th science congress he observed:

“Unless we strengthen the base of our educational system, we can never hope to extend the height of the pyramid of excellence. We also need to create an innovative eco-system so that innovation becomes a way of life in our knowledge institutions” 108

In the light of the above observation by none other than the political head of the country, it can be said that in principle there is total consensus about the importance of Right to Education in the development of the society. But at the same time it is also explicitly clear that yet there is long distance to be covered where it can be claimed that Right to Education is being given due importance as an indispensable component of Right to Development.

108 The Tribune, Chandigarh at 1, 4.01.2011.