CHAPTER I

INTRODUCTION
'Learning' is always a continuous process. We adapt suitable education determined by the 'education' about life knowingly or unknowingly and consciously or unconsciously. The adjustment is for living a better life and for 'earning the livelihood'. It seen from a different perspective, anyone can understand that the current social system, the system of production and distribution, the definitions of 'enjoyment' and 'happiness', the standard of 'modernity' and 'civility' - all are based on the system of our social, cultural and vocational - 'education'. For instance, we learn what is 'smartness' or 'dexterity', sign of 'skill' and 'promptness' or the sample of elegance or culturing 'modernity', 'femininity' or 'masculinity' from the advertisement or 'mass media' dominated by the multinational companies, don't we? Do we not learn those from their MDs, salespeople, intellectuals, cultural activists and daalals? A large number of people anticipate their nominated social, cultural and vocational institutes to be the school for their children. Education, therefore, a political procedure; hence its process and aim can be changed, is a right?

**Education to All!?**

Governments aim at putting every child in a school – within the four walls of a class room. Many children suffer suffocation. Forgetting the variety in the human nature, can all the children be put to same type of education, in the same set up and in the same environment? The answer to the question may not be very
interesting and significant. But another fundamental question would be more intriguing. If every child is put to a school and an educated person prefers taking up certain fields of work, it would be the fate of other branches of work? The Indian reality is, an educated person may not take up work in certain areas like agriculture etc. In such a case how agriculture, which is very very prominent in a populous country like ours, gets skilled and talented persons. The fate of agriculture in our country can be attributed to this. A person who has some education in a school or college may not work in agriculture. In such a scenario, the further elevation of education may further deteriorate agriculture and allied fields. Even though elementary education may help one in understanding fundamentals of modern agriculture, higher education to all may hamper the growth of agriculture and other fields. The government has a duty to vitalize agriculture. The scarcity of skilled labour and entrepreneurs in the field of agriculture has to be addressed and suitable way outs must be worked out.

1.1 SIGNIFICANCE OF THE STUDY

The aim of education is to promote personal development, strengthen respect for human rights and freedoms, enable individuals to participate effectively in a free society, and promote understanding, friendship and tolerance. The right to education has long been recognized as encompassing not only access to educational provision, but also the obligation to eliminate
discrimination at all levels of the educational system, to set minimum standards and to improve quality. In addition, education is necessary for the fulfillment of any other civil, political, economic or social right.

In India, there were 331 million children between the ages of 0-14. Of these 179 million were between the ages of 6-14 and 90 million of these children do not go to school. A large number of them are child workers, street children or child laborers. Obviously the State has failed in its “duty” to provide free and compulsory education even in sixty years.

The activist phase of the Supreme Court during recent years included the declaration of the right to education up to fourteen years a fundamental right.

The journey of the right to education — from being initially enumerated in the directive principles to being declared a fundamental right — has been a huge struggle and a triumph, for activists, child rights advocates, educationists and NGOs working on education all over the country. This journey however has been quite different from that of the other constitutional social rights, the main reason being that Article 45 of the directive principles gave a very different promise than the other provisions within the Constitution as it imposed a time-limit of ten years to implement the right to free and compulsory primary education.

Article 45 is the only article among all the articles in Part IV of the Constitution, which speaks of a time-limit within which this right should be made
justifiable. Therefore, it was clear that when the Constitution of India was adopted in 1950, the framers of the Constitution were aware that for the realization of a person’s capabilities and for full protection of her rights, education was an important tool. Thus, in addition to Article 45, the right to education has been referred in Articles 41 and 46 of the directive principles as well.

The theory of the complementary nature of rights declared in Part III and Part IV, and the harmonious interpretation of these rights has been the foundation for the realization of primary education being declared a fundamental right today in India. The two crucial judgments of the Supreme Court which paved the way for the declaration of the right to education as a fundamental right, give full realization to the interdependence argument of social and civil/political rights, as discussed below.

Education as a necessary means of achieving socio-political justice was largely ignored until the 1992 Supreme Court judgment in *Mohini Jain v. State of Karnataka*\(^1\). In this case, the two-Judge Bench of the Supreme Court, while declaring that the charging of capitation fees as illegal and categorically held that “the right to education flows directly from the right to life as the right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education”, and “the fundamental rights guaranteed under Part III of the

\(^1\) AIR 1992 SC 1858
Constitution of India, including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity”.

The Supreme Court, in Mohini Jain, referred to the UDHR principles and to Article 41 of the Constitution, which recognizes an individual's right to education. Borrowing the words of Dr Ambedkar, the Court held that “although a citizen cannot enforce the directive principles contained in Chapter IV of the Constitution but these were not intended to be mere pious declarations ... [and] the directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III”. The Court also relied upon Article 21 elaborations and expansion laid down in earlier judgments to uphold the right to education.

The zeal demonstrated in Mohini Jain continued in the later Constitution Bench decision in Unni Krishnan v. State of A.P.\(^2\) where the Constitution Bench articulated that the fundamental right to education flows from Article 21. While declaring the right to education to be a fundamental right, it was held not to be an absolute right, and its content was defined by the parameters of Articles 45 and 41. In other words, every child/citizen has a right to free education up to the age of fourteen years and thereafter the right would be subject to the limits of the economic capacity of the State. This was in the nature of waking up the State

\(^2\) (1993) 1 SCC 645
from hibernation so that it may be fully alive to its obligations under the directives than an expansion of “life” or “liberty” in Article 21.

In *Unni Krishnan* the Court took support from UDHR\(^3\) and Article 13 of ICESCR\(^4\) and for the first time articulated education as a ‘social right’. By holding the right to free primary education up to the age of 14 years, the Court was thus reminding the State of the Endeavour it had to take under Article 45 within a prescribed time-limit, which had expired long ago. This has been one of the first judgments where the courts have employed ICESCR language for progressive realization of the right to higher education while declaring the fundamental right to free primary education. The argument that the right to life in Article 21 is merely negative in character was rejected by the Court. The question of insufficient resources was also very ingeniously dealt with by Jeevan Reddy, J. He states quite naturally that it is only Article 41 which speaks of economic capacity of the State, whereas Article 45 does not speak of the limits of its economic capacity as does Article 41 and therefore this hurdle does not stand as an obstacle in carving out a fundamental right to primary education from Article 21! Knowing that this would have grave budgetary implications, he goes on to hold that: “[W]e are not seeking to lay down the priorities for the Government — we

\(^{3}\) Universal Declaration of Human Rights, 1948  
\(^{4}\) International Covenant on Economic, Social and Cultural Rights, 1966
are only emphasizing the constitutional policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question."

The declarations of the right to education as a fundamental right, has been further upheld and recently confirmed by the eleven-Judge Constitutional Bench of the Supreme Court in T.M.A. Pai Foundation v. State of Karnataka and Islamic Academy of Education v. State of Karnataka. The Supreme Court, in P.A. Inamdar v. State of Maharashtra accorded wide freedom to private non-State funded educational institutions and made them beyond State control and regulation. In, Prof. Yashpal v. State of Chhattisgarh held that the importance to the overall quality and standard that is to be maintained in institutions of higher education and accords primacy to the Union Government's policies on education.

Thus, constructing a fundamental right to education from a long-ignored directive principle as presented in Unni Krishnan as merely an example of the old idea that the directive principles furnish the technology of construction of Part III and now as a swayambhu (self-manifesting) aspect of new judicial power.

The Amendment to the Constitution which sought to introduce a change to Article 21 of the Constitution to make the right to primary education for children up to the age of 14 a fundamental right. This sparked off a nationwide

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5. AIR 2003 SC 355
6. 2003 (6) SCC 697
7. 2005 (6) SCC 537
8. 2005 (5) SCC 420
campaign spearheaded by NGOs working with various aspects of children’s rights to pressurize the Government into passing the Amendment Act. The Amendment was finally passed in 2002 and inserted in the Constitution as Article 21A.

Finally, The Constitutional 86th Amendment Act, 2002, made three specific provisions in the Constitution to facilitate the realization of free and compulsory education to children between the age of six and 14 years as a fundamental right. These were (i) adding Article 21A in Part III (fundamental rights), (ii) modifying Article 45, and (iii) adding a new clause (k) under Article 51A (fundamental duties), making the parent or guardian responsible for providing opportunities for education to their children between six and 14 years. After much dithering for almost seven years subsequent to the 86th Amendment to the Constitution, the RTE Act, 2009 received Presidential assent on 26 August 2009, taking forward the agenda of free and universal elementary education. On the basis of this Act, the centre has framed a subordinate legislation, the Model Rules, which are guidelines to states for implementing the Act. The states are now required to frame their own rules, for which only a few have started consultations.

9. Article 21A: The State Shall provide free and compulsory education to all children of the age six to fourteen years in such manner as the State may, by law, determine.

10. Article 45: The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

11. Article 51A(k): who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years.

In addition to the declaration and amendment declaring the right to education as a fundamental right, several States in India have passed legislation making primary education compulsory. These Acts, however, remain unenforced due to various socio-economic and cultural factors as well as administrative and financial constraints. With the Supreme Court declarations, it is to be seen whether the State machinery is put into work to enforce the right, and also to implement the State-level legislations, which seek to provide free and compulsory primary education. Therefore, the issue would be of enforceability and not one of justiciability.

1.2 Hypotheses

Human rights are regarded as worth of respect and protection. They are considered essential for the good governance, for example, advocating for participation and inclusiveness as well as transparency and rule of law. Although there is wide acceptance of human rights, a wide gap between theory and practice is noticeable. Even though worries about such negative gaps have been expressed, few analyses of the conditions which enable the realization of rights have been carried out. This is what this research proposes to do in the case of education by taking up the following key research questions:
 Whether the Right to Education Act, 2009\textsuperscript{13} (RTEA) is sufficient in realization of educational rights of children in India?

 Whether free and compulsory education is feasible in the Indian circumstances?

 Whether Schools and Teachers are ready to take up the responsibilities under the Act?

 Whether necessary curriculum of elementary education and evaluation procedures can be developed?

 Whether the appropriate governments and Local bodies are equipped sufficient to take up the challenges?

 Whether RTEA is in conformity with UN’s Child Rights Convention?

 Whether education under RTEA can really be free?

 Whether Quality of education be guaranteed under RTEA?

 Whether it feasible to provide 25% reservation in private schools?

 Whether sufficient mechanism is set up to implement and monitor the child rights under RTEA?

Broadly, development and human rights are directed to the same purposes - enabling livelihood in dignity, equity and freedom and, throughout the process, centering policies in the human person. "Development and human rights

\textsuperscript{13} Ibid
are interdependent, yet, development and human rights become different but inseparable aspects of the same process, as if different strands of the same fabric".

The incorporation of human rights in the debate a re-politicization of the development agenda occurred. Such an inclusion "requires understanding rights not merely as legal entitlements, but as a political tool in social change strategies". The introduction of rights in the development debate enables the re-emergence of the discussion of power division and argues for equality of all.

Education is undoubtedly a human right which, has been transformed into a "luxury" instead of a right in many places. Signs of that can be seen through words and images of student journalists who report on the condition of education worldwide for the Education for all consortia and observe that hindrances in education range from lack of schools to issues that affect curricula formulation and not living up to the prestige of a previous era. In India the situation is no different as many people were excluded from their right to education for very many years. In this research, analyze the potential scenario of the education rights on ground after the commission of ‘Right to Education Act’.

Decentralization in India divides education in a way that all levels of government have concurrent power in oversight and regulation for different
levels of schooling. The decentralized system gives equal powers to the sub-national states but how they use their discretionary powers and engender the implementation of policies is part of each state's judgment. This is one of the circumstances which can make a difference in the realization of the right to education.

Huge regional disparities are a trait of any country of India's size and its observation in the educational panorama is not a surprise. However, note that even in places of success in the realization of education, like Kerala, there are negative gaps and certain groups are excluded from having the education they are entitled to as a right.

1.3 THEORETICAL FRAMEWORK

This study will be built more on the qualitative data as it requires a broad view of education in the contexts under analysis. The main source of qualitative data is literature review. There is a wide body of literature regarding education, Right to education legislation, human rights and development that can be drawn upon and complemented by information from other sources - such as bilateral and multilateral agents, NGOs and official country reports.
METHODOLOGY

As the work is framed on rights issues, Doctrinal method of research is applied. Several doctrines are developed on theoretical framework and analysed properly. No empirical work is taken up as the Act was passed very recently.

1.4 ORGANIZATION OF THE THESIS

In order to address the issues set forth, this research is structured as follows:

Chapter 1 explores Introduction, gives an outline of the present research work. It explains the significance of the study and its relevance. It also presents the design of the study, objectives of the study, hypotheses of the study and the methodology adopted.

Chapter 2 provides a brief historical overview of the right to education, international commitments to its realization and key aspects of a rights-based approach to development. It also discusses applying this approach to education policy and programming, philosophy and looks at some of the tensions that may arise between different rights, among rights holders, and between rights and responsibilities.
Chapter 3 explores the link between human rights and development providing the theoretical framework for this analysis. By defining the right to education and putting it in perspective, this chapter will enable us to embark on the analysis of the international human rights framework and how it is in place at the moment.

Chapter 4 is divided into many small subsections to analyze the types of education and Right to Education.

Chapter 5 concludes with a summary of the study, restating its main findings and emphasizing the enabling conditions for the realization of the right to education and answering the question of whether legislation matters for the realization of a right and better enforcement of and recognition of right to education.

This research finds that legislation is not an imperative for realizing rights but it a useful tool, which can assist on the claiming of a right. It is not, however, a determinant of whether or not people have their right to education realized but it can used as a mobilization tool to transform rights and policies into reality.