CHAPTER - III

Right to Education – Evolution and Judicial contribution – International Instruments - The parameters of the Right and the problems of enforcement
3.1 Right to education under the Indian System

Article 41 of the constitution lays down that the state shall, within the limits of its economic capacity and development, make effective provision for securing the right to education. Article 45 of the Constitution provides that the State shall provide early childhood care and compulsory education for all children until they complete the age of six years. The right to education up to the age of fourteen years has been raised, by the decision of the Supreme Court, in *UnniKrishnan v. State of A.P.*, 33 to the level of fundamental right. It was held by the court that right to education flows directly from right to life under Article 21. *The constitution (86th) Amendment Act, 2002*, inserts *new Article 21 A* in the Constitution to make right to education a fundamental right for all children between six and fourteen years of age. The obligation of state to provide education to the children above the age of fourteen years would still depend upon the economic capacity and development of the state.

*Article 46* of the Constitution requires the State to promote with special care the educational and economic interests of the weaker sections of the people, specially of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation.

Moreover, Articles 29 and 30 which are incorporated in the part III of the Constitution as fundamental rights also lay down following provisions in regard to right of education.

(i) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the grounds only of religion, race, caste, language or any of them. The right to admission to an educational institution is a right of a citizen as such which cannot be denied on the grounds of religion, race, caste, language or any of them. An educational institution receiving aid out of state funds cannot refuse admission to the children belonging to a particular community. Since minorities have rights to establish and administer educational institutions of their choice they can be permitted to reserve 50% of the seats for the member of their own community in the educational institutions so established by them. But institutions cannot be allowed to impart religious teaching within the premises of the institutions.

(ii) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
(iii) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language\textsuperscript{39}.

Minorities based on religion or language is entitled to establish and administer educational institution of their choice. The minorities, whether religious or linguistic minorities, are enabled under Article 30. To establish such institutions in which general education may be imparted along with religious or linguistic teachings\textsuperscript{40}. The right to establish educational institution does not carry with it the right to receive recognition and affiliation. However, recognition and affiliation will neither be denied nor be subjected to such conditions which amounts denial of this fundamental rights\textsuperscript{41}. Minority institutions receiving aid out of State Fund cannot deny admissions to the members of other communities.

### 3.2 EVOLUTION OF RIGHT TO EDUCATION

**National Education Policy**

A nation is said to be strong and united when divisive forces causing disintegration are totally absent in it. A nation is socially integrated when all its members enjoy a sense of equality of opportunities in political, economic and social spheres of activity and when they have mutual understanding of respect for each other’s ways of life.

\textsuperscript{39} Ibid, Article 30(2).
\textsuperscript{40} Kerala Education Bill, 1957 Re AIR 1958 SC 946.
\textsuperscript{41} Ibid.
**Gravity of the Problem.** The attainment of social and national integration as one of the objectives of the national system of education is a challenging problem. Education is promoting divisive tendencies. The schools for the rich and the poor are segregated. There is a lack of national consciousness everywhere. Communal riots, corruption, strikes, lawlessness, disregard for public property is some of the symptoms of social disintegration.

**Steps Suggested.** The Education Commission (1964-66) suggested certain steps to create a strong and united country to make people conscious of what ‘India’ is and to create an integrated society.

1. **The common School System.** The educational system as it exists even today is undemocratic and harmful for national unity and social solidarity. The children of the masses are sent to schools managed by the government or by the local authorities. The schools charge either no fees or normal fees. They provide sub-standard or poor quality education. The children of the privileged class are sent to the private, fee-charging, better schools.

   The common school system of public education has been suggested by the Commission as a powerful instrument for achieving social and national integration, because the schools under this system would be open to all ‘children, irrespective of caste, creed, community, religion, economic conditions or social status’.
2. **Social and National Service as an integral Part of Education.** The commission suggested that programmers of social and national service should be incorporated in the education of children at all stages. The programmes should run together with academic studies in schools and colleges and start from the upper primary stage (V-VII) and continue up to the university. At the higher primary stage students may be encouraged to serve the community in a number of ways. Social and national service so organized and made obligatory for all students at all stages would certainly lead to a decrease in the social distance between the educated and the uneducated, the intelligentsia and the masses. It will also help up in evolving a united nation.

3. **Evolving a Language Policy for National and Social Integration.** The Emotional Integration Committee regarded the use of regional languages from the primary to the college level as media of education, ‘a matter of profound importance for national integration’. The National Integration Council (1962) spoke in support of the same view. The education Commission (1964-66) also agreed with these observations.

4. **Promoting National Consciousness.** The schools under the English regime taught loyalty to the English people by giving instruction to our students in their literature, history and culture. Love for the motherland was never developed before 1937. It was struggle for Independence between 1900 and 1947 that
made people nationally conscious. The development of national consciousness was effected outside the school walls. It suggested that the Indian youth could be made to understand his cultural heritage by a well-organized instruction in Indian languages, literature, history and philosophy, and that he could be helped to instill faith in the future of the nation through a systematic course in civics and politics and political economy.

*Circumstances to setup the Education Commission (1964-66)*

*A need for Social Change after Independence*

Education, all the world over, has been used as a powerful tool of social, economic and political language. The political upheaval that took place in our country in the beginning of the century brought in its train a set of changes in the life of the nation. The Government of India expressed its grave concern at the state of affairs in 1964 in the following words, “While some advances have been made in (certain) directions, the education system has not generally evolved in accordance with the needs of the times, and a wide and distressing gulf continues to persist between thought and action in several sectors of this crucial field of national activity.” The scheme of basic education could not achieve desired success. The multipurpose scheme of diversified courses have to meet the same fate. Problems of education reconstruction had been reviewed by a number of Committees and Commissions which attempted to solve difficulties
faced in specific areas only. For example, the University Education Commission (1948-49) and the Secondary Education Commission (1952-53) surveyed the fields of university and school education respectively. Towards the end of the Third Five Year Plan, a need began to be felt to make a review of the present education system so comprehensive that it may cover the entire field.

A need for improving quality of Education

The need for appointing a fresh Education Commission in 1964 arose out of a grave concern for the improvement of quality of education. The Resolution of the Government of India in 1964 said, “It is desirable to survey the entire field of educational development as the various parts of the educational system strongly interact with and influence one another. It is not possible to have progressive and strong universities without efficient secondary school and the quality of these schools is determined by the functioning of elementary schools. What is needed, therefore, is a synoptic survey and an imaginative look at education considered as a whole and not fragmented into parts and stages. In the past several commissions and committees have examined limited sectors and specific aspects of education. It is now proposed to have a comprehensive review of the entire educational system.”
On April 20, 1986 a new Educational Policy was placed before the Indian Parliament for consideration and approval. The following objectives of education were particularly emphasized in this policy.

1. Vocationalization of Education. Particularly, at the secondary stage of education, the curriculum should be job-oriented.

2. To encourage the governmental and non-governmental efforts for wiping out illiteracy and to emphasize the necessity of adult education, formal education, farmers' education and 'open' schools.

3. To awaken the people about the various scientific and technological developments and to make the students at the various stages of education aware of the same in order that they may utilize them in their future life.

Onwards we shall look into some basic details of this new policy.

1. **National Forum of Education:** At least 75 percent of the curriculum should be identical for all the States. The remaining 25 percent may be related to the particular local conditions of a State. The purpose of incorporation this basic feature is to acquaint all the citizens of the country with their basic rights and duties, history of the freedom struggle, the common cultural heritage and national identity.
2. Delinking Degree for any Service: If the compulsoriness of a degree for securing a job is done away with, many will automatically refrain from obtaining higher education. At the T.V. centres for the Chaupal for Krishi Darshan Programmes, B.Sc.(Agr.) has been made as compulsory for a person conducting them. Similarly, in our country a degree has been made compulsory for a job. In fact, many students of our colleges and universities have absolutely no interest in their studies.

3. Emphasis on Learning: The teacher must not harbour the notion that the child learns through his teaching alone. In fact, the child learns many more things by himself. Therefore, the teacher must not emphasize only by teaching procedures in the class-room. The prescribed curriculum for children does not contain the latest information's of the concerned subject. Generally, they are four or five years old. So they are not very useful, because they contain incomplete information's. Therefore the teacher must inspire the students to learn things on their own as far as possible. The mental development of children should be so guided that they make understand the utility of knowledge themselves. The education policy of 1986 has particularly emphasized this point.

4. Education for the Weaker Section of the Society: The education of scheduled castes, scheduled tribes, handicapped and girls has been greatly emphasized because in the interest of national progress, their development has been
considered necessary. Hence, reservation for such persons has been recommended in various types of educational institution.

5. Vocationalization of Education: Vocationalization of education has been particularly been emphasised in this new education policy. As far as possible, education should be given in a natural environment. The child must acquire some skill in some area of his interest. This is necessary for a happy life in future. With this end in view this new education policy has advocated for inclusion of scientific and technical subjects in the curriculum.

6. Emphasis on Reforms in Examination System: It has been suggested in this new policy that ‘grade’ should be given in examination the student scoring between 45 to 48 percent of marks is placed in the second class and those sixty or above are placed in the second class and those sixty or above are placed in the first class. In this situation the students getting within the range of 44 and 47 and also only 59 think that they have lost their higher division by one mark only. This feature develops a kind of frustration and anguish in them. In order to do away with this situation, this new policy has suggested giving of “grades” and not “class” or “division”. According to this new policy those coming within the range of 40 to 50 or 45 to 55 will be given “B” or “C” grade. A determination of assigning “B” or “C” grade will depend upon the nature of achievements of all the
students taking up an examination. Similarly, appointment of external examiners, too, has been considered as undesirable.

7. Importance of Moral Values: The importance of moral values has been recognized by this new policy. The development of healthy moral values in an individual will help him to depend upon his own efforts and not on his self-imposed destiny. Education is a tool for bringing in desirable change in a society. Therefore importance of moral values in life should be pointed out wherever possible in teaching. This method of teaching moral values will be moral helpful to students.

8. Ever-Continual Primary School: According to this new education policy each primary school will have at least a two-room-building with at least two teachers. Of these two teachers, one will be a lady. Each primary school will function throughout the twelve months a year. Thus all the young children in an area will be receiving primary education.

9. All India Educational Service: In order to tone up educational administration, this policy has emphasized the necessity of starting an All India Education Service Cadre. Under this scheme any education officer may be transferred anywhere in the country. It has been felt that this kind of transfer will weaken the undesirable bond of regionalism and will bring dynamism in the educational administration. The policy of transfer will dissuade the education officers from coming into the
pressure of politicians in the sphere of their work and as a result they will be more honest in the performance of their duties.

10. Modernization of Education: Computerization has been suggested in this policy. This method will be employed in the expansion of literacy. The utility of correspondence courses, T.V., Radio and Satellite, and Video-cassettes has been accepted for education in this policy.

11. Importance of Sports and Games: In this new policy importance of sports and games has been recognized because participation in them will maintain the health of children. With this end in view forming of active committees of sports and games has been particularly emphasized. Framing of curriculum of small sports and games has also been suggested.

12. Right Persons Alone to be teachers: This education policy has considered the training of teacher as very important for raising the falling standard of education. The society should be well awakened for giving due respect to teachers. Refresher course for teachers after every five years period has been considered necessary in order to acquaint them with the latest developed technique of teaching.

13. Establishing Navodaya Schools: Students in these schools will be admitted to class VI on the basis of an admission test. All these boy and girl students will have to reside in the respective associated hostels after being admitted to Navodaya
schools. Such students will be given free boarding and lodging and free education.

14. **Open University:** In this policy starting of Open Universities has been emphasised. These universities are meant for those persons who have not able to obtain higher education, but are desirous of receiving the same in order to better their prospects. The necessity of open universities has been recognized also for expansion of higher education.

15. **New Educational Institutions:** In the education policy of 1986, it has been recommended that “District Institute of Education and Training” and “District Education” should be established in the various states of the country. These institutions will survey the educational needs of people of various areas separately and will inform the concerned education officers about the same from time to time. The constitution of a national institute has also been proposed with a view to raise the standard of education.

16. **Protection of Environment Necessary:** Protection of environment has been emphasized in the new policy of 1986. The students and teachers will be urged to protect rivers, lakes, hills, mountains, forests, and pasture lands. They will also see that the existing mills and factories do not pollute the surrounding environments.
17. **Women Education:** According to this policy the standard of education of women should be raised. In vocational and technical education, women will be assigned their proper place in order to equate them with men as far as possible. An attempt will also be made to minimize the difference existing in the curriculum meant for women and men.

18. **Preservation of Own culture:** These appear to be a wide gulf between the modern formal education and our cultural traditions. This new education policy wants to bridge this gulf, because the scientific and technical developments have to be associated with our proud history and culture. Modern education has led many of our youths to drug-addiction and it has not taught many of them how to be respectful to teachers and other elders in the society. As a result, deplorable marks of indiscipline in these usually stare at us.

19. **Adult Education:** A literacy programme will be organised for making illiterate persons literate within the age group of 15 and 35. For this purpose Continuing Education Centres will be established in rural areas. It will be a duty of a Project Officer to spread literacy amongst labourers. Distance education will be given through Radio, T.V. and films. These media will be utilized for vocational programmes as well.

20. **Operation Black Board:** In this new policy the term “Operation Black Board” has been used for conveying the ideas that minimum facilities will be provided to
a primary school. The minimum facilities will include at least two rooms, some necessary charts and maps, a black-board, Tat Patti (about one meter wide and 10 meter long pieces of carpet) for seating children and other essential material equipments. In the beginning at least two teachers will be appointed for each primary school. Afterwards more teachers may be appointed as new classes are added. In the “Operation Black Board” the co-operation of voluntary organizations, local bodies and desirous persons will be enlisted. At first-some building will be provided to a primary school if it does not have any.

**Philosophy of New Policy**

1. **New Acculturating Role of Education.** One of the most important contributions of new policy of Education is that it has provided a comprehensive educational philosophy covering the new acculturating role of education by way of refining sensitiveness, building scientific temper and cultivating independence of mind and spirit.

2. **Natural Perspective.** Manpower planning and its educational investment have brought in a national perspective to our development needs. A unifying policy in the development of human resources provides a social dimension to an area of personal perception. The pooling or resources in the area of personnel and research at the national level with the provision for interregional mobility with
equal access for every Indian of requisite merit is a most welcome and timely policy statement.

3. **Equalization.** The special emphasis laid on the removal of disparities and equalization of opportunity by attending to the specific needs of different groups of distressed people including women, scheduled castes, minorities and the handicapped, should enhance the sense of social responsibility and a fair distribution on justice to all concerned.

4. **Efficiency.** The policy determination to promote efficiency and effectiveness at all levels (though easier said that done) brings in new dimension in the performance of teachers, students, administrators, Government officials and institutions.

5. **Universalisation.** The universalisation of education up to a given level with access of education of a comparable quality is another positive aspect of the policy.

6. **Cultural Perspective.** Another special future of the policy is the concept of providing a cultural perspective in the formal system of education.

7. **Beneficial.** The realization of education needs to be managed in an atmosphere of utmost intellectual rigour, seriousness of purposes with adequate freedom for innovation and creativity should bear beneficial fruits.
8. **Value Education.** The focus on value education and work experience as an integral part of the learning process will enable us to uphold human values necessary for raising the quality of life for all. The document speaks about combating certain negative values and promoting positive ones from our heritage. It mentions social, ethical and moral values which have to be cultivated.

**The Essence and Role of Education**

*The policy envisaged the role of education as follows*

1. Education is fundamental to our all-round development, material and spiritual.
2. Education is the highway to derive the maximum benefit from the areas already created by the economic and technical development and a means to ensure that the funds must reach all sections.
3. Education has an acculturating role. It refines sensitivity and perceptions that contribute to national cohesion, a scientific temper and independence of mind and spirit.
4. Education should be an effective instrument of reducing rural-urban disparities.
5. Education needs to be planned meticulously and developed with great sensitivity so as to make the best use of human being who is a positive asset and precious national resources.
6. Spread of literacy and education among women in the largest single factor in bringing down the growth of population in India.

7. Education must prevent the erosion of long-cherished values.

8. Education should imbibe the coming generations with a strong commitment of human values and to social justice.

9. Education should assist in the realization of goals of secularism, socialism and professional ethics.

10. Education develops manpower of different level of the economy.

11. Education should develop the activity of the coming generation to internalize new ideas constantly and creatively.

12. Education is unique investment in the present and the future.

**Features of National System of Education Envisaged by NPE, 1986.**

The National Policy on Education, 1986 has envisaged the following main features of the National Systems of Education.

1. Based on Constitutional Principles. It derives its inspiration from the ideals and values of democracy, secularism and socialism enshrined in our Constitution.

2. Access of Education. It implies that up to a given level all students, irrespective of caste, creed, location, sex, have access to education of a comparable quality. To achieve this, the Government will initiate appropriate funded programmers.
Effective measures will be taken in the direction of the Common School recommended in the 1968 policy.

3. Minimum Levels of Learning. Minimum levels of learning will be laid down for each stage of education. Steps will also be taken to foster students an understanding of the diverse cultural and social systems of the people living in different parts of the country.

4. Education for International Understanding. India has always worked for peace and understanding between nations, treating the whole world as one family. True to this hoary, tradition, education has to strengthen this world view and motivate the younger generations for international cooperation and peaceful co-existence. This aspect cannot be neglected.

5. Common Educational Structure. It envisages of common educational structure. The 10+2+3 structure has now been accepted in all parts of the country. Regarding the further break-up of the first 10 years efforts will be made to move towards an elementary system comprising five years of primary education and three years of upper primary, followed by two years of High School.

6. National Curricular Framework with a Common Core. It will base on a national curricular framework which contains a common core along with other components that are flexible. The common core will include the history of India’s freedom movement, the constitutional obligations and other controls essential to
nurture national identify. These elements cut across subject areas and will be
designed to promote values such as India’s common cultural heritage,
egalitarianism, democracy and secularism, equality of the sexes, protection of the
environment, removal of social barriers, observance of the small family norms
and inculcation of the scientific temper. All educational programmes will be
carried on in strict conformity with secular values.

7. Universal Character of Higher Education. In higher education in general and
technical education in particular, steps will be taken to facilitate inter-regional
mobility by providing equal access to very Indian of requisite merit, regardless of
his origins. The universal character of universities and other institutions of higher
education are to be understood.

8. Promotion of Languages. Besides the promotion of the link languages,
programmes will also be launched to increase substantially the translation of
books from glossaries. The young will be encouraged to undertake the
rediscovery of India each in his own image and perception.

9. Priorities in Educational Reform. The Nation as a whole will assume the
responsibility of providing resource support for implementing programmes of
educational transformation, reducing disparities, universalisation of elementary
education, adult literacy, scientific and technical research, etc.
10. Equality of Opportunity in Education. To promote equality it will be necessary to provide for equal opportunity to all not only in access, but also in the conditions for success. Besides, awareness of the internet equality of all will be created through the core curriculum. The purpose is to remove prejudices and complexes transmitted through the social environment and accident of birth.

11. Open and Distance Learning. Life-long education is a cherished goal of the education process. This presupposes universal literacy. Opportunities will be provided to the youth, house-wives, agricultural and industrial workers and professionals to continue the education of the choice, and the pace suited to them. The further thrust will be in the direction of open and distance learning.

12. Strengthening of National Institutions. National institutions which will be strengthened to play an important role in giving shape to the National System of Education, are the University Grants Commission. The All India Council of Technical Education, the Indian Council of Agricultural Research and the Indian Medical Council. Integrated Planning will be instituted among all these bodies so as to establish functional linkages and reinforce programmes of research and post graduate education. These, together with the National Council of Education Research and Training, the National Institute of Educational Planning and Administration and the International Institute of Science and Technology Education will be involved in implementing the Education Policy.
EIGHT BOLD STEPS ON NPE, 1986.

1. **National System of Education.** National system of education to provide access to education of a comparable quality to all students, to have common educational structure with national curricular framework containing a common core.

2. **Navodaya Schools.** Pace setting Navodaya Schools to be started which will be residential and free of charge?

3. **Vocational Targets.** Vocational courses to cover 10 percent of higher secondary students by 1990 and 25 percent by 1955.

4. **Performance and Accountability.** To ensure that all teachers should teach and all students study.

5. **Declining Degree from jobs.** Beginning to be made in delinking degrees from jobs in selected areas.

6. **The Management of Education.** Evolving a strategy of decentralization and the creation of a spirit of autonomy for educational institutions.

7. **Indian Education Service.** Constitution of this service is likely to bring a national perspective in education.

8. **Raising Resources. Resources to be raised through:**

   (i) Asking beneficiary communities to maintain school buildings.

   (ii) Raising fees at the higher levels of education, and
(iii) Levying cess or charge on the user agencies.

**Missing links and Limitations**

1. Confined to Privileged. A lion’s share of the benefit of education is cornered by about six percent of students who have been fortunate to join colleges. It is this privileged section which corners 99 percent of Government jobs. Educational expenditure has become a mechanism of transferring resources from rural sector to urban sector or in other words from poor to the rich.

2. Neglect of Neighborhood Concepts. The New Education policy has ignored the ‘neighborhood’ concept of school system advocated by the Kothari Commission. It is interesting to note that the Kothari Commission considered that the Neighborhood School was a step towards eliminating the segregation that now takes place between the schools for the poor and the underprivileged classes and those for the rich and the privileged one.

3. Need of Basic Education. The Education Policy does not refer to Basic Education although it has an important place in the ideology of freedom struggle and procedures were finalized as long back as 1937.

4. No Reference to working days. The New Education Policy should have recommended increased number of working days in educational institutions. These should be about 300 working days instead of about 200 at present.
5. Wrong Basics of Reservation. The New Education Policy should have suggested reservation not on the basics of merit but on the basics of economic conditions.

6. No check on Nursery Schools. The New education policy has not mentioned concrete steps to curb the mushroom growth of nursery schools charging high fees and meant only for the rich.

7. Lakhs of Teachers and Equipments. The emphasis on teaching and learning through discovery has little meaning as the nation has thousands of schools without adequate teachers and equipment.

8. No Check on Minority Institutions. Some suitable checks on the working of the schools run by the minority communities should have been proposed so as to prevent them from exploiting the staff working in these institutions.

9. No Research Basis. There is practically no proposal in the documents which is based on authentic research.

10. No Supervision. The New Education Policy does not include specific measures for supervising and monitoring Government and Central schools properly. There is an urgent need to ensure that, ‘All teachers should teach and all students study’.

11. No Check on Public Schools. The New Education policy has, by and large, evaded the issue of the ‘loot’ by so-called public schools which take money only and do not give good education.
12. No Fixed Target. It is very unfortunate that no target has been fixed in different areas of reforms.

13. Multiplication of Authorities. Setting up State Advisory Boards of Education, District Institutes of Education and District Boards of Education is not likely to serve any useful purpose. Already there is multiplicity of authorities in the field of education.

14. Lack of Funds. There is very little hope of obtaining community funds for educational purposes as there is a growing tendency on the part of the rich members of the community to contribute liberally to political parties due to obvious reasons. People, in general, are not motivated to donate funds for welfare services.

Revised Policy Formulations, May 1992

The National Policy of Education (NPE), 1986 is a landmark in educational development of the country. A review of the NPE, 1986 was conducted during 1990-92. The Central Advisory Board of Education (CABE) in its 47th meeting held on May 5-6, 1992 considered the report of the CABE Committee on policy set-up to make an in-depth study of the report of the Committee for review of NPE, 1986. While broadly endorsing the policy, it recommended certain modifications in the light of the developments during the last the policy. The revised policy
formulations containing these modifications recommended by the CABE were tabled in the Parliament on May 7, 1992.

Following the adoption of the revised policy formulations in May 1992, a revised POA was prepared. The POA 1992 was tabled in the Parliament on August 19, 1992.

Universalisation of elementary education, equalization of educational opportunities, women's education and development, vocationalisation of school education, consolidation of higher education, modernization of technical education, improvement of quality content and process of education at all levels continue to be the themes of national Endeavour in the field of education.

**Committee for Girls Education and Public Corporation 1963-65.**

As its meeting held in April, 1963 the National Council for Women's Education endorsed the suggestion made by the Union Education Minister that a small committee be appointed to look into the causes for lack of public support, particularly in rural areas, for girls education and to enlist public co-operation. The chairman of the National Council for Women's Education accordingly appointed in May 1963, a Committee with M.Bhaktavatsalam, Chief Minister, Madras as Chairman the Committee in this field. The committee submitted its report in 1964 and the report was published in 1965.

**Recommendations**
It is only through a willing, educated and informed public that any progress can be made at all. Not only is the need urgent, but the ground is also ready for a comprehensive programme for mobilizing public co-operation to promote girls’ education and giving it constructive channels for expression. It is essential that official action and the programme based on public initiative must move forward in close foremen. There has to be a sense of partnership and shared responsibility between official and voluntary agencies. There is also the need for a systematic and sustained programme with an adequate organization for mobilizing community efforts.

1. Public Co-operation. Direct co-operation of the public should be encouraged in the following fields:

(i) Establishing private schools;

(ii) Putting up of schools buildings;

(iii) Contributing voluntary labour for construction of school buildings;

(iv) Helping in providing suitable accommodation for teachers and students, particularly in the rural areas;

(v) Helping in the maintenance of school buildings.

(vi) Popularising co-education at the primary stage.

(vii) Creating public opinion in favour of the teaching profession and to give greater respect to the teacher in the community.
(viii) Initiating action and participating in educative propaganda to break down traditional prejudices against girls' education;

(ix) Setting up and organizing school betterment committees, improvement conferences.

(x) Undertaking necessary propaganda to make the profession of teaching for women popular;

(xi) Encouraging married women to take-up at least part-time teaching in village schools and to work as school mothers;

(xii) Supplying free text-books and writing materials to needy children; and

(xiii) Supplying uniforms to poor and needy children.

2. The State Council for women's Education: These are the most suitable agencies for providing the organization and leadership for mobilizing community effort. They should function as a part of the network of which the district councils at the district level, and the Mahila Mandals and similar voluntary bodies at the town and village levels would be strong and active links. These agencies should look upon mobilizing of community effort and education public opinion to promote girls' education as their main and primary responsibility. They should aim at building up in villages and towns' teams of voluntary workers, men and women, who are willing to devote themselves to this cause and work actively for its promotion.
3. **State’s Responsibility.** The state should educate public opinion in favour of girls’ education through:

(i) School improvement conferences;

(ii) Seminars;

(iii) Assisting voluntary, welfare and other organizations, private individuals and associations engaged in the field of education of girls and women;

(iv) Radio talks, audio-visual aids and distribution of informative pamphlets;

(v) Enrolment drives, generally in June and special additional drives for girl’s education during Dussehra.

4. **State Help.** The state should continue to help in an abundant measure in providing necessary schooling facilities in all the areas and in the habitations, however, so that the local population can make use of them.

5. **School Improvement Conferences.** These should be arranged widely throughout the State and particularly in the less advanced States in order to encourage people to contribute to educational awakening and advancement.

6. **Pre-primary schools.** It is necessary that in rural areas particularly, pre-primary schools should be attached to primary schools so that children get accustomed to schooling even at the tender age.

7. **More Attractive.** School work should be made more attractive and should present education in terms more acceptable to pupils.
8. Reform and Inspection. The existing functional deficiencies of schools should be remedied by replacing buildings which are totally inadequate to modern educational needs. There should be periodical inspection of school buildings and hostels so as to ensure their structural soundness and suitable sanitary facilities.

9. Recruitment of Women teachers. Concerted efforts have to be made to recruit as many women teachers as possible. Women are by general consent the best teacher's forth primary classes in all schools. It should be the aim of all states to appoint women teachers in primary schools and a greater number of women teachers in mixed schools. A school staffed by women will inspire greater confidence in the parents and make them willing to send their children to mixed institutions.

(i) Conditions of Recruitment. The basis of recruitment of women teachers should be widened and their conditions of work should be made more attractive. Financial incentives like special allowances for hilly, isolated or any other specific backward rural areas should be given to teachers. Each state may specify areas were such allowances would be available.

(ii) Recruitment Age Limit. In order to attract more women teachers the age limit for the unmarried and married women teachers should be relaxed in the case of those working in village schools. The service conditions of such married women who do part time teaching work should be made more attractive.
(iii) Married Women Teachers. Attempt should be made to bring back to the teaching profession married women who have left in recent years and to bring women from other occupations to supplement the teaching staff.

(iv) Posting. As far as possible women teachers should be posted in or near their own villages.

(v) Condensed Course. Condensed courses should be organised on a large scale foretold, women particularly from rural areas so that they could take up teaching jobs in the villages.

(vi) Training Schools. Training schools with hostels need to be located in the rural centres and near ‘different’ areas where girls from the villages are trained and sent back to work in their own or neighboring villages.

(vii) Special Attention. Special drives should be organized to as the best from of social service needed for the upliftment of the villages.

(viii) Pay scale. The pay scales of all teachers should be improved and the teachers should be paid an economic wage, so that they may be retained in the profession.

(ix) Training. During selection of trainees for training schools and colleges, special preference should be given to women from rural areas seeking admission.

(x) Sufficient Facilities. The training facilities available in each State should be of such a magnitude that the annual output of trained teachers would be equal to the demand for additional teachers.

(xi) Hostels. The absence of hostel facilities as also the slow progress in the construction of those that have been undertaken, have affected the hostel.
construction of hostels should be included as one of the priority objectives in the Plans of the States and necessary financial assistance for the construction of hostels and maintenance stipends is made available more liberally to local authorities and voluntary organizations working in the field of education of girls and women.

(xii) Lodging. It is only by providing women teachers with quarters near the schools that we can attract many educated women to the teaching profession.

(xiii) Inspection. The inspecting staff should be adequate and strong of improvement into be secured and waste reduced. A separate women inspectorate will help to bring in more girls to school.

10. Building and Equipment. Local bodies should be made responsible for the provision of school buildings, equipments, playing fields and the like and observance of the educational code in the State.

11. Social Education. In the field of social education, a determined effort should be made to increase the number of literacy classes for women in rural areas and to carry out intensive campaigns for the spread of literacy amongst women. Activities in this field should be administered by the education departments of the State Governments.

12. Central Assistance. Such central assistance should

(a) At the elementary stage for:

(i) Preparation and employment of women teachers;

(ii) Grant of free books, writing material and clothing to girls; and
(iii) Twin quarters for women teachers.

(b) At the secondary stage for:

(i) Provision of separate schools for girls;

(ii) Hostels;

(iii) Grant of free books, writing materials and clothing to girls; and

(iv) Preparation and appointment of women teachers in increasing numbers.

13. Curriculum. While the curriculum can be the same for both boys and girls at the primary and middle stages, provision should be made for offering of electives comprising subjects which would be of special interest to girls and which would help them later in their fields of activity.

14. Seasonal Adjustment. Changing of school hours and school holidays to seasonal requirements has been found in some places to be a helpful concession to parents who would otherwise not be in a position to spare the children for attending classes.

3.3 JUDICIAL CONTRIBUTION

Right to Education has been recognized as a human right to be protected and preserved. Its importance has also been recognized by the framers of the constitution under 44 of the Constitution. So as to convert a Right To Education into a fundamental right to education, the Courts in India played a vital role.
Mohini Jain Vs. State of Karnataka and others: The observations of the court are as follows:

The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making “right to education” under Art.41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

“Right to life” is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Art.21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make Endeavour to provide educational facilities at all levels to its citizens.

The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights
under Art. 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.

The "right to education", therefore, is concomitant to the fundamental rights enshrined under Part III of the Constitution. The State is under a constitutional-mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society.

The Court holds that every citizen has a ‘right to education’ under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right. The State may discharge its obligation through State-owned or State-recognized educational institutions. When the State Government grants recognition to the private educational institutions it creates an agency to fulfill its obligation under the Constitution. The students are given admission to the educational institutions whether State-owned or State-recognized in recognition of their ‘right to education’ under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent to educational institutions, is a patent denial of a citizen’s right to education under the Constitution.
Indian civilization recognizes education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale. Looking at the economic-front, even forty five years after achieving independence, thirty per cent of the population is living below poverty-line and the bulk of the remaining population is struggling for existence under poverty-conditions. The preamble promises and the directive principles are a mandate to the State to eradicate poverty so that the poor of this country can enjoy the right to life guaranteed under the Constitution. The State action or inaction per se arbitrary and cannot be sustained. Capitation fee makes the availability of education beyond the reach of the poor.

*Unnikrishnan, JP and others Vs. State of Andhra Pradesh and others:*-

The Court observes right to education a fundamental right or not...

In order to treat a right as a fundamental right it is not necessary that it should be expressly stated as one in Part III of the Constitution. The provisions of Part III and IV are supplementary and complementary to each other. Fundamental rights are but a means to achieve the goal indicated in Part IV and must be constructed in the light of the directive principles.
Though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21 having regard to the broad and expansive interpretation given by the Court. The right to education has been treated as one of transcendental importance. It has fundamental significance to the life of an individual and the nation. Without education being provided to the citizens of this country, the objectives set forth in the Preamble to the Constitution cannot be achieved. The Constitution would fail.

The fact that right to education occurs in as many as three Articles in Part IV viz., Articles 41, 45 and 46 shows the importance attached to it by the founding fathers. Even some of the Articles in Part III viz., Articles 29 and 30 speak of education.

That right to education is implicit in the right to life is that the State cannot deprive the citizen of his right to education except in accordance with the procedure prescribed by law.

The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be constructed in the light of the directive principles in Part IV of the Constitution.

Right to education, understood in the context of Articles 45 and 41, means: (a) every child/citizen of this country had a right to free education until he
completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.

The right to education which flows from Article 21 is not an absolute right. It must be constructed in the light of directive principles. A true democracy is one where education is universal, where people understand what is good for them and the nation and knows how to govern them. Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means that every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development. It is significant that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does. It is not a mere pious wish and the State cannot 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. The passage of 44 years – more than four times the period stipulated in Article 45 – has converted the
obligation created by the article into an enforceable right. At least now the State should honor the command of Article 45. It must be made a reality.

This does not however mean that this obligation can be performed only through the State schools. It can be also be done by permitting, recognizing and aiding voluntary non-governmental organizations, who are prepared to impart free education to children. This does not also mean that unaided private schools cannot continue. They can, indeed, they too have a role to play. They meet the demand of that segment of population who may not with to have their children educated in State-run schools. They have necessarily to charge fees from the students.

While allocating the available resources, due regard should be had to the wise words of Founding Fathers in Articles 45 and 46. Though the importance and significance of higher education cannot be denied, but there should be a proper balancing of the various sectors of education.

The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development of the State. A citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. The limits of
economic capacity are ordinary speaking, matters within the subjective satisfaction of the State.

The obligations created by Articles 41, 45 and 46 of the Constitution can be discharged by the State either by establishing institutions of its own or by aiding, recognizing and/or granting affiliation to private educational institutions. Private educational institutions are a necessity in the present day context. It is not possible to do without them because the Governments are in no position to meet the demand- particularly in the sector of medical and technical education which call for substantial outlays. While education is one of the most important functions of the Indian State it has no monopoly therein. Private educational institutions - including minority educational institutions - too have a role to play.

Anilkumar Roy Sharma Vs. State:- The Court observed “The rights of a student below fourteen years to appeared in class VIII board are a facet of right to education guaranteed under Article 21 of the Constitution.”

3.4 INTERNATIONAL INSTRUMENTS

UNIVERSAL DECLARATION OF HUMAN RIGHTS

It was adopted by general Assembly. The Declaration has been hailed as an historic event of the profound significance and as one of the greatest achievements of the United Nations. The Declaration”..... is the mine from which

other conventions as well as national constitutions protecting these rights have been and are being quarried.**43

**Preamble of the Universal Declaration of Human Rights.** - It is as follows:—

*Whereas* recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of the freedom, justice and peace in the world.

The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all people, and of all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect of these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member of States themselves and among the peoples of territories under their jurisdiction.

The rights proclaimed in the Universal Declaration of Human Rights,**44** may be classified into following four categories:

(i) General (Articles 1 and 2),

(ii) International Covenant on Civil and Political Rights (Articles 3 to 21)

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44 For the text of the Universal Declaration of Human Rights, See Appendix I.
(iii) International Covenant on Economic, Social and Cultural Rights (Articles 22 to 27), and

(iv) Concluding (Articles 28 to 30)

In a number of cases the judges of international court of justice have cited the provisions of universal declaration of human rights. Such as Columbia vs. Peru, (1950), Anglo-Iranian oil Co. Case(1955), and Nottebolhm Case.

The Indian Constitution based impact of Universal Declaration and this has been recognized by the Supreme Court of India. While referring to fundamental rights in Part-III of the Constitution Chief Justice Sikri observed in Keshavanand Bharti Vs. State of Kerala “I am unable to hold that these provisions show that some rights are not natural or inalienable rights. As a matter of fact India was a party to the Universal Declaration of Human Rights.... And that Declaration describes some fundamental rights as inalienable.”

The Universal Declaration which was originally conceived as a Statement of objectives to be achieved by Government and as such, no part of binding law, has now (53 years later) been accepted by so many States to be an international standard against which their behavior is measured.45 Indeed the Universal Declaration has become legally binding constituting an authoritative interpretation of the Chapter and as new rules of customary international law

binding on all States. To some extent at least the Declaration has by custom recognized, as laying down rules binding upon States.

The International Conference of Human Rights at Tehran has pointed out that without full realization of economic, social and cultural rights the implementation of Civil and Political Rights was not possible. Being aware of this fact, the Commission on Human Rights expressed its being deep concern in its resolution of 14 March 1985 for considerable gap prevailing in the implementation of economic, social and cultural rights in many countries of the world. In the opinion of the commission the implementation of economic, social and cultural rights has not received adequate attention within the frame works of the United Nations system, therefore, it requested the States to direct their policy in such a manner that the realization of social, economic and cultural rights may progressively become possible.\(^{46}\)

Economic, social and cultural rights are incorporated in the International Covenant on Economic, Social and cultural rights which were adopted by the General Assembly on 16 December, 1966 and entered into force on 3 January, 1976.

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In pursuance of the general obligation undertaken by the member States under the United Nations Charter to ensure higher standard of living, full employment and conditions of economic and social progress and development, solutions of international economic, social, health, and related problems, and international cultural and educational co-operation, a number of United Nations organs are engaged in the promotional activities for realization of economic, social and cultural rights. These various bodies, such as, the General Assembly, the Economic and Social Council, the Commission on Human Rights, the Subcommission on Prevention of Discrimination and protection of Minorities and the Commission on Status of Women, are striving for implementation of economic, social and cultural rights. For monitoring the implementation of these rights, the Committee on Economic, social and cultural rights has been established. Furthermore; there are several specialized agencies of the United Nations, such as UNESCO, FAO, WHO and ILO which are engaged in the promotion of realization of economic, social and cultural rights acting within their field of specialization.

**International Covenant on Economic, Social and Cultural Rights:**

The States Parties to the covenant have undertaken to take step, individually or through international economic and technical assistance and co-operation, to the maximum of their available resources for achieving progressively the full realization of rights recognized in the present Covenant.

47 United Nations Charter, Articles 55 and 56.
States have also guaranteed that the rights recognized in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.\textsuperscript{48}

The Covenant includes the following rights: right to work;\textsuperscript{49} right to education;\textsuperscript{50} right to health;\textsuperscript{51} right to adequate food;\textsuperscript{52} right to culture;\textsuperscript{53} right to enjoyment of just and favorable conditions of work;\textsuperscript{54} right to form and join trade union;\textsuperscript{55} right to social security;\textsuperscript{56} right to family and protection of motherhood and childhood;\textsuperscript{57} and right to adequate standard of living.\textsuperscript{58}

It may be mentioned that under the International Covenant on Economic, Social and Cultural Rights the States Parties undertake “to take steps” progressively for the full realization of the rights recognized in the present Covenant. The obligation of the States Parties under this Covenant is only “to take steps”. It may be compared with their obligation under the International Covenant on Civil and Political Rights under which the States Parties undertake “to respect and ensure” to all individuals within its territory the right recognized

\begin{itemize}
\item \textsuperscript{48} International Covenant on Economic, Social and Cultural Rights, Article 2.
\item \textsuperscript{49} Ibid. Article 6.
\item \textsuperscript{50} Ibid. Article 13 and 14.
\item \textsuperscript{51} Ibid. Article 12.
\item \textsuperscript{52} Ibid. Article 11, Para 2.
\item \textsuperscript{53} Ibid. Article 15.
\item \textsuperscript{54} Ibid. Article 7.
\item \textsuperscript{55} Ibid. Article 8.
\item \textsuperscript{56} Ibid. Article 9.
\item \textsuperscript{57} Ibid. Article 10.
\item \textsuperscript{58} Ibid. Article 11.
\end{itemize}
in the said Covenant. Thus, States Parties under the International Covenant on Economic, Social and Cultural Rights are not under an obligation “to respect and ensure” to all individuals within its territory the right recognized in the said Covenant. Thus, States parties under the International Covenant on Economic, Social and Cultural Right are not under an obligation “to respect and ensure”, rather they are under obligation “to take steps” towards the realization of those rights incorporated therein.

The position of economic, social and cultural rights is almost same as that of the Directive Principles of State Policy under the Constitution of India, for Article 37 of the Constitution provides that the provisions contained in Part IV (The Directive Principles of State Policy) shall not be enforceable by any court, rather these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

3.5 The UNESCO convention against discrimination in Education

The General Conference of UNESCO had adopted the Convention against Discrimination in Education on 4 December 1996. The states parties to this convention undertake\(^{59}\)

\(^{59}\) The UNESCO convention against the Discrimination, Article 3.
(a) To abrogate any statutory provision and by administrative instructions and to
discontinue any administrative practices which involve discrimination in
education.

(b) To ensure by legislation wherever necessary that there is no discrimination in
the admission of pupils to educational institutions.

(c) Not to allow any difference 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.

(d) Not to allow, in any form of assistance granted by the public authorities to
educational institutions, any restriction or preference based solely on the ground
that pupils belong to a particular group;

(e) To give foreign nationals resident within their territory the same access to
education as that given to their own nationals;

(f) To develop and apply a national policy which, by methods appropriate to the
circumstances and to the national usage, will tend to promote equality of
opportunity and treatment in the matter of education.\textsuperscript{60}

The General Conference of UNESCO had also adopted the
Simultaneously with the Convention discussed above. It was adopted in response

\textsuperscript{60}Ibid. Article 4.
to the desire to take account of the difficulties which certain states might, because of their federal structure, experience in ratifying the Convention. The provisions of the Recommendation are identical with that of the Convention.\textsuperscript{61}

The General Conference of UNESCO also adopted in 10 December, 1962, the protocol instituting a Conciliation and Good offices Commission with the responsibility to settle any dispute which may arise between the State parties to the convention against discrimination in education.\textsuperscript{62}

3.6 Right to Education and Indian Constitution

Directive Principles of State Policy

Part IV of the Constitution (Article 37 to 51) contains what may be described as the Directive Principles of social engineering and ideals of social order that contains popular aspirations and expectations of the people, more particularly, the ideals of economic democracy. Indeed, they are compromise between ideals and reality. Commenting on the nature of Directive Principles of State Policy, Paras Diwan has observed that it is like “a vast beautiful vase in which everyone was permitted to put a bunch of flowers of his own liking and choice, and the Directive principles became more than percepts.... The flowers of all the ideals, sentiments, aspirations, percepts and goals were placed in this base. The Gandhian ideology, the Hindu orthodoxy, ideals of socialism,

\textsuperscript{62} Ibid, p.136, Para, 1185.
aspirations of weaker sections of society, sentiments of minorities all found a place."\(^{63}\)

Speaking in the justification of Directive Principles in the Constitution, Dr. B.R.Ambedkar observed that "our object in framing the Constitutions is really two-fold (1) to lay down the form of political democracy, and (2) to lay down that our ideal is economic democracy and also prescribe that every government whatsoever is in power, shall strive to bring about economic democracy."\(^{64}\)

The Directive Principles do not set any particular form of economic democracy, like, individualism, or socialistic or communistic form of democracy. They simply set the goals to be achieved in accordance with available material resources and economic capacity of the State from time to time. The goals so set are, in fact, to advance the aims and objectives stated in the Preamble to the Constitution, i.e. to establish an equalitarian society based on social, economic and political justice.

The Directive Principles impose obligation upon the State to take positive action to promote the welfare of the people by securing and protecting as effectively as may be, social order in which justice, social, economic and political shall inform all the institutions of national life. Thus, the Directive Principles differ

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\(^{63}\) Paras Diwan and Peeyushi Diwan, Human Rights and Law, Universal and Indian, 1996 pp.504-505.

\(^{64}\) Constitutional Assembly Debate Vol III p 495
from the fundamental rights in respect that the fundamental rights cast a negative duty upon the State to refrain from doing something. The various fundamental rights incorporated in part III of the Constitution constitute restraint upon the action, both executive as well as legislative of State. They require the State to refrain from doing something prejudicial to the rights of individuals so guaranteed. On the other hand, the Directive Principles enjoin the State to do something positive for the welfare of the people. In reality, the Directive Principles constitute directions to the legislature as well as executive to orient their policy of administration in accordance with these principles.

Article 37 of the Constitution clearly states that the Directive Principles are not enforceable by any court. It is argued that the obligation of State to implement, these principles to judicial proceeding can be instituted against it. As a matter of fact, the implementation of these principles depends upon the mobilization of resources, thus keeping in view the financial constraints of States. It is left on them to implement these principles in accordance with their economic capacity. Here again, the Directive Principles may be distinguished from the fundamental rights on the ground that the fundamental rights are enforceable through courts. Article 13 of the Constitution specifically provides that any law which is inconsistent with fundamental rights is void. There are no such provisions in respect of the Directive Principles with the result that these
principles are regarded as directory in their scope and operation. Thus, they constitute guidelines for the legislature but they do not confer any additional power of competence upon the legislature.

However, the Directive Principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Moreover, the courts look to these principles as yardstick for determining the reasonableness and public purpose in the sense that they constitute as dependable index of public purpose and criteria of reasonableness of restrictions that may be imposed upon fundamental rights. In State of Gujarat v. Mirzapur Moti Kureshi kassab Jamat uphelding sections 5 (As applicable to Gujarat) of Bombay Animal Preservation Act, 1954, which prohibits slaughter of cow and her progeny and passed in pursuance of the directive principles, the Supreme Court held that in interpreting the inter play of rights and restrictions which may reasonably be imposed, the fundamental rights and directive principles are to be read together. “The restrictions which can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6). The provisions contained in the Chapter on Directive Principles of State Policy can also be pressed into service and relied on for the purpose of adjudging the

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68 State of Bihar v. kameshwar, AIR 1952 SC 252.
70 AIR 2006 SC 212.
reasonability of restrictions placed on the Fundamental Rights.71 A restriction placed on any Fundamental Right, aimed at securing Directive Principles will be held as reasonable and hence intra-virus subject to two limitations: first, that it does not run in clear conflict with fundamental right, and secondly, that it has been enacted within the legislative competence of the enacting legislature.72 So, the Directive Principles are uplifted by the judiciary to such a level as to make them enforceable human rights.

Contents of Directive Principles

A. Socialistic and Welfare Provisions. - The socialistic and welfare provisions are incorporated in Articles 38 and 39 of the constitution. Article 38 lays down that State shall promote the welfare of the people by securing them social order in which justice, social, economic and political shall inform all the institution of life. It shall be an obligation to make efforts to minimize the inequalities in income and to eliminate inequalities in status, facilities and opportunities, not only among the individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39 of the Constitution requires State to direct its policy towards securing-

71 Ibid at P.228.
72 Ibid at p. 227.
The right to an adequate means of livelihood to men and women equally; Distribution of the ownership and control of the material resources of the community as such a ways as to promote common good; That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; Equal pay for equal work for both men and women. To secure the health and strength of the workers, men and women and tender age of children are not abused and the citizens are not forced by economic necessity to their avocations unsuited to their age and strength: To provide to children with opportunities and facilities to develop in a healthy manner and no condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The provisions for adequate means of livelihood, fair distribution of wealth equal pay for equal work and protection of children and labour from exploitations are the hall marks of any welfare society because equalitarian social order can be attained only through them.

B. Social Security Provisions

Provisions for free legal aid and equal justice to economically weaker – section of society, (Article 39-A);

Provisions for securing right to work within the limits of economic capacity and development; (Article 39-A);
Provisions to secure public assistance in cases of old age, sickness and disablement; (Article 41)

Provisions for just and human conditions of work and maternity relief; (Article 42)

Provisions for living wages for workers (Article 43)

Provisions for early childhood care and education for all children until they complete the age of six years (Article 45)

Provisions for raising standard of living and improvement of public health (Article 47)

Provisions for educational and economic interests of weaker sections; (Article 46)

And, Provision for participation of workers in management of industries. (Article 43-A)

C. Community welfare Provisions

Following provisions of Part IV of the Constitution may be categorized as community welfare provisions because of their emphasis upon community welfare-

Provisions for uniform civil code for citizens;\(^\text{73}\)

Organization of agriculture and animal husbandary;\(^\text{74}\)

Protection and improvement of environment and safeguarding of forests and wild life;\(^\text{75}\)

\(^{73}\) Constitution of India, Article 44.

\(^{74}\) Ibid. Article 48.
Protection of monuments and places and objects of national importance;\textsuperscript{76}  
Separation of Judiciary and executive;\textsuperscript{77} and  
Promotion of International peace and security;\textsuperscript{78}

**Kinds of Economic, Social and Cultural Rights**

There are following kinds of economic, social and cultural rights recognized in the International Covenant on Economic, Social and Cultural Rights and other International Human Rights Instruments—

- Right to work;
- **Right to education**;
- Right to health;
- Right to adequate food;
- Right to adequate shelter and services;
- Right to culture;
- Right to family and right to marriage; and
- Right to form and join trade union.

**Right to education**

\textsuperscript{75} Ibid. Article 48-A
\textsuperscript{76} Ibid. Article 49.
\textsuperscript{77} Ibid. Article 50.
\textsuperscript{78} Ibid. Article 51.
In the matters relating to the right to education, illiteracy, the education of youth to respect human rights and fundamental freedoms and the eradication of discrimination in education, the United Nations is working in unison and co-operation with, UNESCO. There has been close co-operation between them in the observance of 1970 as International Education Year and in the establishment of the United Nations University.\(^79\)

The right to education is dealt with in the Universal Declaration of Human rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention of the Elimination of all Forms of Racial Discrimination, the convention on the elimination of all forms of discrimination against women, the convention on the right of child and in the convention and recommendation against discrimination in education, the protocol to the convention and other instruments prepared under the auspices of UNESCO.

Provisions of United Nations Human Rights Instruments

**General Provisions:**- The enjoyment by everyone of the right to education as such has been recognized in the universal declaration of human rights as well as in the international covenant on economic, social and cultural rights. Article 26 of the universal education lays down that every one has right to education. Elementary education shall be free and compulsory. Technical and professional

education shall be generally available and higher education shall be equally accessible to all on the basis of merits.

The purpose of education\(^{80}\) shall be Full development of human personality and the sense of its dignity; Strengthening the respect for human right and fundamental freedoms; Enabling all persons to participate effectively in a free society; Promoting understanding, tolerance and friendship among all nations and all racial, ethnic and religious groups; and Furthering the activities of the United Nations for the maintenance of peace. With a view to achieving full realization of right to education, the States parties to the International Covenant on Economic, social and Cultural Rights recognize that:\(^{81}\) Primary education shall be compulsory and available free to all; 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; 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;

\(^{80}\) The international covenant on Economic, social and cultural rights, Article 13 paragraph 1. The provisions of this paragraph are similar to the provisions of Article 26, paragraph 2 of universal declaration.

\(^{81}\) Ibid. Article 13, Paragraph 2.
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; The development of a system 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.

The state parties, which have not been able to secure compulsory primary education free of charge at the time of becoming party to the Covenant on economic, social and cultural rights, should adopt, within two years, a detailed plan of action for the progressive implementation within reasonable time, of the principle of compulsory education free of charge for all.\textsuperscript{82}

States parties to the International Convention on the Elimination of all Forms of Racial Discrimination guarantee the right of education to everyone, without distinction as to race, color or national or ethnic origin.\textsuperscript{83}

\textit{Parent's Liberty:} The States parties to the International Covenant on Economic, social and cultural rights undertake-

(i) To have respect for the liberty of parents and, when applicable, legal guardians to choose for children schools other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State; and

\textsuperscript{82} Ibid. Article 14.
\textsuperscript{83} The International Convention on Elimination of All Forms of Racial Discrimination, Article 5.
(ii) To ensure liberty to parents or legal guardians, as the case may be, to have the religious and moral education of their children in conformity with their own convictions.\textsuperscript{84}

**Individual's Liberty:** The individuals or bodies will have liberty to establish and direct educational institution provided –

(i) Such institutions fulfill the purpose of education set out in paragraph 1 of Article 13 of the International Covenant on Economic, social and cultural rights, namely, the development of the human personality, strengthening respect for human rights and fundamental freedoms, promoting understanding, tolerance and friendship among all nations and furthering the activities of the United Nations for the maintenance of peace; and

(ii) Such institutions shall conform to such minimum standard as may be laid down by the state.

### 3.7 Problems of extreme poverty and exclusion from education

The Commission on Human Rights in its resolution of 23 February, 1990, has expressed its concern for the extreme poverty and exclusion from society, violation of human dignity, the commission, therefore, laid emphasis upon the urgent national and international action to eliminate it.

\textsuperscript{84} *The International Covenant on Economic, Social and Cultural Rights, Article 13.3*
The problem of extreme poverty is not confined to any particular area. It is a worldwide phenomenon and India is no exception to it. Keeping in view on the economic and social inequalities, the framers of the Indian Constitution had incorporated the Directive Principles of State Policy in Part IV of the Constitution for ensuring economic and social justice to all. They believed that in the absence of economic and social upliftment the political freedom will have no viability and meaning.

Educational Rights of Women

Elimination of Discrimination against Women

The states parties to the convention on the elimination of all forms of discrimination are required to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal with men in the field of education and in particular to ensure, on a basis of equality of men and women-

(a) 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 and higher technical education, as well as in all types of vocational training.
(b) 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;

(c) The elimination of any stereotyped concept of the roles of men and women at
all levels and in all forms of education by encouraging co-education and other
types if education which will help to achieve this aim and, in particular, by the
revision of text books and school programmes and the adoption of teaching
methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) 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.

(f) The reduction of female student drop-out rates and the organization of
programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical
education; and

(h) Access to specific educational information to help to ensure the health and
well-being of families, including information and advice on family-planning.

Educational rights of Children
The provisions relating to educational rights of children are incorporated in Articles 28 and 29 of the convention on the rights of the child. Article 28 of this convention lays down that the State parties recognize the right of the child to education, and with a view to achieving this progressively and on the basis of equal opportunity, they shall-

(a) Make primary education compulsory and available free to all;

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

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and reduction of drop-out rates.

(f) Take all appropriate measures to ensure that school discipline administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
States Parties are required to promote and encourage international co-operation in matters relating to education, with a view to contributing to the elimination of ignorance and illiteracy throughout the world. They are further required to facilitate access to scientific and technical knowledge and modern teaching methods. The needs of developing countries shall be taken into account in this regard.\(^85\)

The Principles on the basis of which the rights of the child shall be directed are as follows\(^86\):

(a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;

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

(c) 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 a child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) 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 the peoples, ethnic, national and religious groups and persons of indigenous origin;

\(^85\) The convention on the Rights of the Child, Article 28, Paragraph 3.
\(^86\) Ibid. Article 29, Paragraph 1
(e) The development of respect for natural environment.

3.8 RIGHT TO EDUCATION ACT, 2009

The Right to Education Bill is the enabling legislation to notify the 86th constitutional amendment that gives every child between the age of six and fourteen the right to free and compulsory education. But it has been 61 years in the making. In 1937, when Mahatma Gandhi voiced the need for universal education he met with the same stonewalling about cost that dogs the issue today. The Constitution left it as a vague plea to the state to “Endeavour to provide free and compulsory education to all children up to age 14”, but access to elementary school still remains elusive today. It was only in 2002 that education was made a fundamental right in the 86th Amendment to the Constitution. Six years after an amendment was made in the Indian Constitution, Government of India implemented the Right to Education Act on 1st April 2010. More than six decades after Independence, the Indian Government has made the education, free and compulsory for all children between the ages of 6 and 14.

In an unprecedented move, Prime Minister Manmohan Singh announced the operationalisation of the Act. For the first time, education will become a constitutional right. It is a tryst with destiny in the area of education. Children, who had either dropped out of schools or never been to any educational
institution, will get elementary education as it will be binding on the part of the local and the State Governments to ensure that all children in the 6-14 age group get schooling. As per the Act, private educational institutions should reserve 25 percent seats for children from the weaker sections of society. The Centre and the States have agreed to share the financial burden in the ratio of 55:45, while the Finance Commission has given Rs. 25,000 crore to the States for implementing the Act. The Centre has approved an outlay of Rs. 15000 crore for 2010-2011.

**Key provisions of the Act:** 25% reservation in private schools for disadvantaged children from the neighborhood, at the entry level. The Government will reimburse expenditure incurred by schools; no donation or capitation fee on admission; and no interviewing the child or parents as part of the screening process. The bill also prohibits physical punishment, expulsion or detention of a child and deployment of teachers for non-educational purposes other than census or election duty and disaster relief. Running a school without recognition will attract penal action. The RTE is a detailed and comprehensive piece of legislation which includes provisions regarding schools, teachers, curriculum, evaluation, access and specific division of duties and responsibilities of different stakeholders. The key division of duties and responsibilities of different stakeholders.
The key features of the Right of Children for Free and compulsory Education Act are:

(a) **Free and Compulsory education** to all children of India in the 6 to 14 age group;

(b) No Child shall be held back, expelled, or required to pass a board examination until completion of elementary education;

(c) A child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed. Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.

(d) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed. No child shall be denied admission in a school for lack of age proof;

(e) A child who completes elementary education shall be awarded a certificate.
(f) Calls for a fixed student-teacher ratio;

(g) Provides for 25 percent reservation for economically disadvantaged communities in admission to Class One in all private schools;

(h) Mandates improvement in quality of education;

(i) All schools except private unaided schools are to be managed by School Management Committees with 75 percent parents and guardians as members.

(j) School teachers will need adequate professional degree within five years or else will lose job.

(k) School infrastructure to be improved in three years, else recognition will be cancelled.

(l) Financial burden will be shared between State and Central Governments.

(m) that each privately run school, however small it may be, would be required to obtain a certificate of recognition from a certifying authority of State Government. “Such schools would have to meet the minimum infrastructure and teacher-student ratio specified in the RTE Act, and the teacher qualification requirements, in order to be considered for recognition by the certifying authority.
RULES FOR IMPLEMENTATION OF THE ACT

The model rules for implementation of the Act, as approved by the HRD ministry and circulated to all states, highlight the responsibilities of State Governments, local authorities, school management, parents and teachers are.¹

1. That State Governments or local authorities will determine neighborhood schools by undertaking household surveys and school mappings. Such agencies shall ensure that no child is subjected to caste, class, religious or gender abuse at school.

2. Local authorities will conduct household surveys and maintain a record of all children in their jurisdiction. The record will contain detailed information on children and their parents, and will specify whether they belong to weaker sections or disadvantaged group, or have a disability.

3. The State Government or local authority will identify children with disabilities and children from disadvantaged groups every year. Unaided and private schools shall ensure that children from weaker sections and disadvantaged groups shall not be segregated from other children in the classroom, nor shall their classes be held in places and timings different from classes held for the other children.

4. **Such children shall not be treated differently** from the rest of the children in any manner pertaining to entitlements and facilities like textbooks, uniforms, library, ICT facilities, extra-curricular activities and sports, the rules say.

5. The school management committee or local authority will **identify drop-outs** or out-of-school children above six years of age and admit them in classes appropriate to their age after special training. The duration of the training shall be for the three months and can be extended to two years. After admission, these children will continue to receive special attention by teachers for the successful integration into the class “academically and emotionally”, the rules say.

6. The State Government and local authorities will **establish primary schools** within a walking distance of 1 km from the neighborhood. In case of Class VI to VIII children, the school should be within a **walking distance of 3 km** from the neighborhood.

7. Private schools will **reserve 25% of their seats for poor children**, and provide free education to them. The Government will reimburse the cost according to the per-child expenditure fixed by it.

8. **The rules** prescribe a formula **to calculate per-child expenditure**. The annual recurring expenditure incurred by the State Government on elementary education in respect of all schools established, owned or controlled by it or by
the local authority, divided by the total number of children enrolled in all such schools, shall be the per-child expenditure.

9. **In the absence of schools** in small hamlets, the State Government shall make adequate arrangements like **free transportation and residential facilities**. For physically challenged children, the State Government will make arrangement for their smooth transport and schooling.

10. **Every child** between the ages of 6 to 14 years irrespective of gender and social category **has the right to free and compulsory education**. The education given in this age group would be the ground work for their future and would act as a stepping stone towards the visionary developed India.

11. **Any cost** that prevents a child from accessing school **will be borne by the State** which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling.

12. **No child shall be denied admission for want of documents**; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test. Children with disabilities will also be educated in the mainstream schools.

13. Further, **all private schools** shall be **required to enroll children from weaker sections and disadvantaged communities** in the incoming class **to the extent of**
25% of their enrolment, by simple random selection. No seats in this quota can be left vacant.

14. **These children will be treated on par with all the other children** in the school and subsidized by the State at the rate of average per learner costs in the government schools. All schools will have to prescribe to norms and standards laid out in the Act and no school that does not fulfill these standards within 3 years will be allowed to function.

15. **All private schools will have to apply for recognition**, failing which they will **be penalized to the tune of Rs. 1 Lakh** and if they still continue to function will be liable to pay Rs 10,000 per day as fine.

16. The National Commission for Protection of Child Rights (NCPCR) has been mandated to monitor the implementation of this historic Right.

**CRITICISM**

After the many rounds of drafting and redrafting that went into the Right of Children to Free and Compulsory Education Act of 2009, it was hoped that the Act would be an affective instrument for any child to demand his/her basic element. The act has been criticized by many scholars in the field of education by raising following points:

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1. Critics of the RTE rightly suspect that it could speed up commercial privatization.

2. The Act is challenged before Supreme Court by a society for Unaided Private Schools of Rajasthan, on the ground that the Right of Children to Free and Compulsory Education Act, 2009, was drafted in a hurry and it would violate fundamental rights of the people in providing compulsory free education to the children below 14 years. They further contended that. The Right to Education Act has serious anomalies and provisions which are violative of the basic structure of the Constitution and fundamental rights enshrined by the Constitution, and are liable to be struck down after being held constitutionally invalid. Unrecognized private schools, which cater to the poor in slums and villages of India, have been under threat for a long time. With the passage of the Right to Education Act, the threat becomes reality. The new law specifically calls for these schools to be closed or recognized within three years. The reason why budget schools do not get recognition is because they do not meet standards. They, for example, do not have a playground of a certain size or they cannot pay the minimum salary for a government school's teacher, which is over Rs. 20,000/- a month after the Sixth Pay Commission. To pay such a salary or to have such a playground, they would have to quadruple their fee, and the poor would no longer to able to afford it.
3. The United Nations Convention on Rights of the Child (UNCRC) defines any individual below 18 years of age as a child. While the Juvenile Justice Act in our country considers persons below 14 years of age to be children, the RTE Act 2009 narrows the definition down to persons between six to 14 years. Though the Act expresses interest in taking necessary steps in providing free pre-school education above three years of age\(^9\), leaving out this critical segment of the child population from the definition is worrisome. Not only does the Act fail to cover all children, it does not provide definite timelines for many provisions\(^9\).

4. Several provisions have scope for the government to delay effective implementation. For instance, the question of establishing a neighborhood school where there is none within three years of commencement of the Act is a case in point\(^9\). The extent of ambiguity becomes obvious as the Act does not clarify the area or limits for establishment of a neighborhood school, leaving this to be decided by the Government at a later date through rules that it may deem fit to alter\(^9\).

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\(^8\) Section, 11 RTE Act 2009 states that: “With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate Government may take necessary arrangement for providing free pre-school education for such children”


\(^9\) Section 6, RTE Act 2009: “For carrying out the provisions of this Act, the appropriate Government and the local authority shall establish, within such area or limits of neighborhood, as may be prescribed, a school, where it is not so established, within a period of three years from the commencement of this Act.”

\(^9\) Section 38.2b, RTE Act 2009: “The appropriate Government may, by notification, make rules. In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all
5. **Education is the State’s business** it is a right, and it cannot outsource to private parties, by either footing the bill of private school fees or by expecting private schools to reserve 25%. If the states give up this responsibility by quoting the poor state of teaching, it might as well start giving up its other responsibilities too— notably security. Under the Act all private and unaided schools would have to reserve 25 percent seats for disadvantaged children from SCs, STs, minorities and disabled categories. In return, they would get the per child expenditure, which States incur. “Reserving 25 percent seats would amount to discriminating against the other 75 percent kids who don’t make it to high quality public schools.

6. There will be **serious problems with the implementation of the school-voucher program.** It mandates that private schools will have to admit 25% of their students from economically poor backgrounds and socially disadvantaged groups, such as scheduled castes and scheduled tribes and other groups as determined by State Governments. This will put more power in the hands of bureaucrats to determine which students are eligible to attend private schools, should they choose to do so.93

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93 Opening School Doors to India’s Poor, The Right to Education Act will create the world’s biggest educational voucher – Retrieved from [http://onlinewsj.com](http://onlinewsj.com), visited on 28.4.2010.
7, a major problem in India is the lack of incentives faced by teachers either in terms of carrot or stick. In the RTE Act, proper disciplinary channels for teachers have not been defined. An average of 25 percent teachers are absent from schools at any given point of time and almost half of those who are present are not engaged in teaching activity.

8. No mechanism has been marked in this Act to address the huge problem of dropouts in the schools. In India, in a very large number of cases education is not the first priority of the family. Survival is their topmost priority. Their main reason for dropping out is to supplement the family income. A major hurdle in implementing the Act is lack of funding. Budget allocation for the implementation of this Act is not adequate considering requirements of quality of education, trained staff in schools, establishing new schools wherever required, proper facilities in the proximity of the school, etc. This uncertainty is also evident in determining the eligibility of a teacher. The Act allows for unqualified teachers to continue for five years after the Act comes into effect, on grounds of lack of availability of trained teachers. It also provides for relaxation of rules and appointment of unqualified teachers for five years till the Act is notified. This only reflects the Government non-serious approach for implementing the Act and its disregard of quality of outcomes.94

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9. The Act also maintains that legal proceedings against such actions of the Government cannot be initiated in the event that these have been undertaken in good faith the best interests of the children\textsuperscript{95}. Rather than pursuing on objective vision, the Act is ridden with loopholes.

**Compulsory education vs. freedom of religion**

On the issue of compulsion and legal exceptions, one needs to examine the conflict between compulsory education and right to freedom of religion. At the very outset is important to clarify that all human rights instruments re-affirm parental choice with respect to education in accordance with their religious and moral conviction\textsuperscript{96}. Article 25 of the Constitution guarantees freedom of religion. However, this is subject to the other provisions in Part III of the Constitution, which deals with fundamental rights. This would imply that the fundamental right to freedom of religion [Article 25] is subject to the fundamental right to FCE [Article 21-A]

\textsuperscript{95} Section 37. RTE Act 2009: “No suit or other legal proceeding shall be lie against the Central Government, the State Government, the National Commission for Protection of Child Rights, the State Commission for Protection of Child Rights, the local authority, the School Management Committee or any person, in respect of anything which is in good faith done or intended to be done, in pursuance of this Act, or any rules or order made there under.”

\textsuperscript{96} Article 26(3), UDHR, Article 13(3) ICESCR.

See also Article 18(3) of the International Covenant on Civil and Political Rights, 1966. It states as follows: “3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”. 

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Three types of conflicts may arise between education and religion:

Direct conflict where parents may want to provide purely religious education to their children. For example, where a child is inducted into the monastic order of a particular religion at the age of six and thereafter is being given religious instruction, the obvious question is whether such a practice should be exempted as a religious/cultural right or whether it may be viewed as violation of a child’s fundamental right to primary education. In cases of such direct conflict, it may be argued that since Article 25 of the Constitution, is subject to Article 21-A, no parent would be in a position to choose religious education to the exclusion of free and compulsory formal secular education.

Conflict, which has plagued many countries in recent times, revolves around the limits of religious expression in schools. For example, bans on wearing hijabs, schools displaying pictures of gods and goddesses of a particular faith, prayers conducted in a particular faith and so on. In such cases, there may be conflicts between a student’s right to education, right to religion and the secular nature of the State especially in public schools. Conflict occurs where religious beliefs are opposed to the curriculum of education in government schools. The following case illustrates the need for clarity on the right to content of education, as part of the guarantee of FCE. The issue of parental choice and content regulation was dealt with by the European Court of
Human Rights in the case of Kjeldsdm, Busk Madsen and Pedersen V. Denmark. The applicants were parents of children who were going to State primary schools in Denmark. As per the Danish Constitution, all children have the right to FCE in State primary schools. The State had introduced by a Bill passed by the Parliament. There were guidelines and safeguards against a) showing pornography, b) teachers giving sex education to pupils when they were alone, c) giving information to methods of sexual intercourse and d) using vulgar language while imparting sex education. The applicants, who were parents of schools going children, gave several petitions to have their children exempted from sex education in the concerned State schools. However, these requests were not met and all of them withdrew their children from the said schools.

The applicants argued that the Denmark Government had violated Article 2 of Protocol No. 1 to the European Convention on Human Rights which states “No person shall be denied the right to education. In the exercise of any functions which is assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions”. The State argued that Article

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98 Article 76 of the Danish Constitution as cited in para 15, Pedersen Case, id..

99 Article 2 of Protocol No. 1 to the European Convention on Human Rights as cited in para 49, Pedersen Case, id.
2 would cover only religious instruction and not all forms of instruction. The Court rejected this argument and held that any teaching should respect parental’ religious and moral convictions. However, the Court also held that article 2 would be violated only if while imparting sex education, the teachers advocated sex at a particular age or particular type of sexual behavior. Moreover, the parents still had the freedom to educate their children at home to instill their own religious convictions and beliefs and therefore, imparting sex education per se was not a violation of the above mentioned Article 2.

The Danish Case assumes importance in the Indian context because there have been several controversies regarding curriculum in schools in the context of religion. For instance, the saffronisation of education by the Bharatiya Janata Party and Indian governments’ policy of ‘modernization of Madrasas (religious schools of Muslims)’,¹⁰⁰ pose serious questions of curricular entitlements and safeguards. While these two examples raise several complex questions regarding curriculum, it also has a common thread – that of a right to secular education of all children, irrespective of their religion.

The saffronisation of education combines content regulation with the need for social accountability of the Government. A combination of a positive and a negative right to curriculum may adequately guard against problems such

¹⁰⁰ For more information on Madrasas, see infra note 76
as saffronisation. Every child should have a right to core non-negotiable content in education that is coupled with a duty of the State to refrain from arbitrarily interfering with such content. In defining the core minimum content of curriculum, it is advisable to prescribe the non-negotiable minimum in terms of competencies that need to be achieved at the end of each grade. The advantage of defining the core minimum in terms of competencies is that it gives States and teachers the freedom to contextualize learning within a specific local setting by creating localized syllabus. As regards the negative right, given the nature and increasing evidence of polarization based on religion in India, it may be stated that right to education should at least include certain safeguards against propaganda-driven curriculum or syllabus. Therefore, the negative right is procedural right against arbitrary State intervention, whereas the positive right is a substantive right to minimum competencies.

The case of madrasas raises the crucial question of balancing the interests of religious minority institutions and the right of the child to secular education. Madrasas are largely autonomous and therefore decide upon their curriculum, hours of study, duration of study and so on. The Central Government's policy of modernizing madrasas by introducing subjects such as mathematics and

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science has been criticized as being volatile of not only Madrasas’ autonomy but also doing injustice to children’s right to secular education and free and compulsory full-time formal education. Without getting into the merits and demerits of modernizing madrasas, it may be argued that while minority groups have the right to manage their own educational institutions, the same cannot be considered as having fulfilled the requirement of Article 21-A unless. Certain core minimum in terms of competencies is adhered to and there are procedural safeguards against arbitrary alteration of syllabus.

**Compulsion and medium of instruction**

Another controversial issue in the Indian context would be medium of instruction and right to education. For example, while defining the nature of the relationship between the parent and the State and also defining the scope of compulsion, the law should address whether a child should be compelled to attend a government school where the medium of instruction is completely alien to the child. Alternatively, the law should examine whether the right to education includes the right to be educated in a manner that is not alien to the child i.e., where language is not a barrier to education. This issue has been examined by the European Court of Human Rights in the *Belgian Linguistic Case*.103 The

103 *Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium, Application no. 1474/62; 1677/62; 1691/62; 1769/63; 2126/64, judgment dated 23 July 1968, available at http://www.echor.org* [herein after cited as *Belgian Linguistic Case*].
applicants were French-speaking Belgian nationals who were aggrieved that the Belgian Government had not set up any government school in their District whose language of instruction was French. It is important to note that there were other French-medium schools, which were not within the same District. The court held that the State was under no obligation to respect the linguistic preferences of parents. This is because Article 2 of Protocol No. 2 to the European Convention on Human Rights states that the State “... Shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions”. The Court held that the phrase ‘religious and philosophical convictions’ does not include linguistic preferences.\textsuperscript{104} The Court further held that non-provision of education in a particular language of instruction does not amount to discrimination based on language.\textsuperscript{105}

Even though it may be argued that lack of schools in a particular medium of instruction does not amount to discrimination, given the extent of migration and diversity in language in the Indian context, the letter may be a genuine barrier to school education. For example, in Manipur, several Naga children are being educated in a language and curriculum that is completely alien to them. As a result of this, the Naga underground movement has issued threats to the

\textsuperscript{104} Para 6, Belgian Linguistic case, ibid at p.29.

\textsuperscript{105} Para 9, Belgian Linguistic Case, ibid at p. 30.
Manipuri schools demanding that the Naga population in these schools be taught in a manner that is acceptable to the Nagas. This is illustrative of the fact that in order to make elementary education an effective right, the law should necessarily address the language issue in such a manner that it enables all children to attend schools.

**Role of community and child education**

The law would also need to lay down the kind of relationship the State should create with respect to ‘State-communities-children’ in the context of education. For example, how would the law respond to employers who engage children in labor, how would the law respond to the government's slum demolition drives which completely ruin a school-going child's ability to attend schools. These two examples are classic cases of third party intervention that hinders a child’s right to education. The State's duty do protect the right would imply that the State should protect a child's right to education from any form of interference or hindrance.

Another aspect of the ‘State-communities-children’ relationship is the empowerment of communities, i.e. communities should be empowered with a right of participation in school education. As mentioned before, the Karnataka example of community participatory methods of school management is a case in
point. Using such creative legal tools, the law could create avenues for legal claims to be made by children vis-a-vsa such imperfect obligations.

**Private Educational Institutions and Right to Education**

Recently Supreme Court has delivered a judgment concerning Right To Education Act, its constitutionality and providing of reservation of 25% seats in private educational institutions relating to weaker sections and economically disadvantaged communities in the case of a Society for unaided private schools of Rajasthan vs Union of India. The observations of court as follows:

The Supreme Court while upholding the constitutional validity of Right to Education Act, 2009, a Bench comprising of Chief Justice Kapadia and Justice Swatanter Kumar has held earmarking of seats for children belonging to a specified category who face financial barrier in the matter of accessing education satisfies the test of classification in Article 14. Further Section 12 (1) © of Right to Education Act provides for level playing field in the matter of Right to Education to children who are prevented from accessing education because they do not have the means or their parents do not have the means to pay for their fees. Such a condition would come within the Principle of reasonableness of in Article 19 (6). The Court further observed RTE Act mandates governments, aided and non-minority unaided schools to reserve 25% of seats for these children.
The Bench observed that reservation of 25% of seats in an unaided minority schools result in changing the character of the schools if right to establish and administer such schools flows from the right to conserve the language, script or culture which right is conferred on such unaided minority schools. Thus, RTE Act including section 12(1)© violates the right conferred on such unaided minority schools under Article 30 (1).

While upholding the constitutional validity of the Act in respect of others the Bench holds that “the act has been enacted keeping in mind the crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all. There is a power in the 2009 Act coupled with the duty of the State to ensure that only such government funded schools that fulfill the norms and standards are allowed to continue with the object of providing free and compulsory education to the children in the neighborhood schools.

Every citizen has a right to establish and administer educational institutions under Article 19 (1) (g) so long as the activity remains charitable. Such an activity undertaken by private institutions supplements the primary obligations of States. Thus, the State can regulate by law the activities of Private Institutions by imposing reasonable restrictions under Article 19 (6).