CHAPTER 4
RIGHT TO EDUCATION
UNDER THE INDIAN
CONSTITUTION
Chapter IV

RIGHT TO EDUCATION UNDER THE INDIAN CONSTITUTION

Education has many facets within and beyond the constitution as well as its contents and development in pre-independent period. The concept of education primarily meant the learning and imparting of knowledge. This issue may involve a variety of the questions relating to the opportunities available, liberty of the people to learn their assess ability in their area and the right to education. It further involves various modes and methods of education centres, including the issues as to eligibility and availability of education to various classes of beneficiaries. It becomes significant to analyse concept of education and how it is desirable looking to the needs and resources of the country. Whether it includes the primary education or it should be strengthen over to the higher levels also. It is very difficult for any country more particularly for developing country like India to afford the entire cost of education at all levels. Therefore a discussion under this chapter centres around the constitutional guarantee of education and how far it would go to fulfil the needs of the Indian people at the basic level in particular, as it gives foundation for every human being and so it is being treated as human right as well as fundamental right.

4.1 Constitutional provisions

The Constitution of India (Constitution) expressly provides for the right to equality (Article 14), right to non-discrimination (Article 15), right to freedom of speech and expression (Article 19) and the right to life (Article 21). Indian courts have routinely upheld the rights of persons with disability and the Supreme Court of India has specifically recognized that the “right to life” as enshrined in Article 21 of the Constitution includes right to dignity including basic necessities such as reading and writing. The right to education has also been recognized as a fundamental right. For print impaired persons to enjoy their fundamental rights, it is essential that they have access to material, including but not limited to educational material, in accessible formats.

The expression “Education” in the different Articles of the Constitution means and include education at all levels that is from the primary school levels up to the post
graduate levels. It includes professional education also. The expression “Educational Institution” means institutions that impart education. The “Educational Institution” is of different types. They have been classified broadly in Government/Private educational institutions. There is further classification on the basis of receipt of aid. That is classification in to aided and un-aided educational institutions. A further classification exists on the basis levels of education that it imparts, e.g. schools, under graduate or post-graduate colleges and professional institutions.

The framers of the Constitution have provided for legislation an education by competent legislature the Forty-Second Amendment to the Constitution included in the Concurrent list under Entry 25. That however does not in any way change the position with regard to the determination of a “religious” or “linguistic minority” for the purpose of Article 30. By transfer of entries the character of the entries is not lost or destroyed. In this view of matter by transfer of contents of Entry 11 of the list II to list III as Entry 25 has not denuded the power of State Legislature to enact law on the subject ‘Education’ but rather has also conferred power on the parliament to enact law on the subject.

4.1.1 Preamble of Indian Constitution

The preamble to the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document.

“We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY, of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

4.1.2. Fundamental Rights

'Part III - Fundamental Rights' is a charter of rights contained in the Constitution of India. It guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs habeas corpus, Mandamus, prohibition, quo- warranto and certiorari. Mandamus is a writ given under Article 32 to approach Supreme court and Under Article 226 to approach High court. Violation of these rights result in punishments as prescribed in the Indian Penal Code or other special laws, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights are universally applicable to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or gender. Aliens (persons who are not citizens) are also considered in matters like equality before law and are enforceable by the courts, subject to certain restrictions. These fundamental rights in India have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France Declaration of the Rights of Man.

The six fundamental rights recognised by the constitution are, Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment, abolition of untouchability and abolition of titles (Article 14). Right to freedom which includes speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation (some of these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality), right to life and liberty, right to education, protection in respect to conviction in offences and protection against arrest and detention in certain cases (Article 19). Right against exploitation, prohibiting all forms
of forced labour, child labour and traffic in human beings (Article 23 & 24). Right to freedom of religion, including freedom of conscience and free profession, practice, and propagation of religion, freedom to manage religious affairs, freedom from certain taxes and freedom from religious instructions in certain educational institutes (Article 25). Cultural and Educational rights preserved Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice (Article 29 & 30). Right to constitutional remedies for enforcement of Fundamental Rights, Right to property was originally a fundamental right, but is now a legal right (Article 32) these rights has been discussed elaborately in the following pages.

4.1.3. Right to Equality and Right to Education

In the constitution field of education the broad objectives is “to promote freedom, progress and equal opportunity” for all Indians. The state is under constitutional obligation to secure to the people of India, the right to education. But the unfortunate part was that the state hardly moved in this direction and it was judiciary who had to take initiative to see that the state rises from hibernation. A fundamental right to education was given a place by the judiciary under part III of the constitution of India. The second fundamental right, which was mostly availed in the area of reservation, was the right to equality in educational institutions. To these claims of fundamental rights, article 51A was added to provide correlative fundamental duties which include to respect the ideals of the constitution, to follow the nobles which inspired the freedom struggle, to promote harmony and the spirit of common brotherhood amongst all the people of India, and last but not least, to strive towards excellence in all spheres of individual and collective Activities. The discussion cannot stop here. There is the provision of centre-state relationship in the field of education. It started with state’s exclusive power except in the matters allotted to parliament. But latter on the exclusive power was transferred to the concurrent power where both the state legislature and parliament or either of them may legislate on education matter. The present study highlights the directions of the constitutional vision of the sixty years in the present field of reservations.126

The provision relating to equality of educational opportunities are contained in the preamble to the constitution as also in parts IV there of containing respectively the Fundamental Rights and Directive principles of the state policy. It may be noted here that Fundamental Rights and Directive principles had their roots in the struggle for independence. The right and principles respectively denote the negative and positive obligation of the state towards fostering the goals and social revolution in the country. It will be relevant to mention here about, the nature of social revolution that has been going on in our country.

India attained the independence in August 1947, which marked the culmination of the national revolution was to be carried on further, writing in 1938. Nehru had felt that with independence, the national revolution would be completed, but the social revolution, must go on. Freedom was not end in itself, only a means an end, that end being the raising of the people… to higher level and hence the general advancement of humanity. The social revolution, according to him, was to be aimed at ending of poverty and ignorance and disease and inequality of opportunities. The aforesaid ideals we are taken into account and incorporated in preamble of the constitution of India and various other articles. The preamble to the constitution of India states in sonorous terms the solemn resolve of the people of the India to secure to all its citizens, among other things, equality of status and opportunity. The constitution makers gave to the preamble “the place of pride and has incorporated the concept of equality of opportunity. The concept of equality is further elaborated in part III of the constitution under Article 14. It was accepted long back that Art 14 provides further protection to the right to life and personal liberty guaranteed under article 21. Therefore it is irrelevant to discuss the right to equality here as it would provide further protection and strengthen the right to education included under Article 21.

The followed by Article 15 which contains a prohibition on certain grounds only for religion, race, caste, sex, and place of birth or any of them.” This is later reinforced by a specific guarantee as to right of every citizen to admission into a state maintained or state aided educational institutions. This guarantee is incorporated in

---

129 Article 14 says, "The state shall not deny to any person equality before the law or the equal protection of the law within, the territory of India.
130 Kashi Rarning v. state of saurashtra. AIR 1952, SC.123,Patanjali Sasteri, C.J
Article 29(2). It should however, be noted that all these provisions namely right to equality before the law, equal protection of laws, prohibiting against discrimination and guarantee of non-discrimination in education to state educational institutions review the situation only from the point of view of individual. These rights are not absolute but are subject to restriction and regulation in the larger interest of society.

It is true that this provisions are included in the list of fundamental rights contained in part III and are specifically made justifiable and the constitution declares any unauthorized curtailment or abridgement thereof obnoxious under article 13(2) and 32 of the constitution of India. But then there is exception to these general rights either specifically written into the constitution itself or inserted by judicial constitution of these provisions by judiciary. The court has recognized the state’s power of reasonable classification when a group of person can be singled out for a preferential treatment provided they are selected for a different treatment on the basis a rational or intelligible differentia which is related to the object of the Act. Thus, the doctrine of classification ensures that all are not equal and there are no such things as absolute equality. It is possible to discuss in detail about the right to equality under the present study as it merit another study. A brief reference however, is made here to the relevant provisions so as to better appreciate the right to education and matters related thereof under that Fundamental Right.

The position is slightly different under article 15 which while prohibiting discrimination on certain grounds in its first part recognizes in the subsequent parts the power of the state to make positive discrimination or protective discrimination in favour of certain weaker section of society. Article 15(3) specifically recognizes the power of the state to make special provision for advancement for any socially and educationally backward classes of citizens or for the scheduled caste and scheduled tribes.

These were thus the fundamental rights that had some bearing on the question relating to quality of educational opportunity. Now let us make a brief reference to some of the directive principles of state policy that have a similar bearing on the

131 Article 29(e) says, "no citizen shall be denied admission into any educational institution maintained by the states or receiving aid out of state funds on grounds only of religious, race, caste, language or any of them."

132 Chiranjit Lal v. union of India, AIR 1951 SC 42
question. As focused\textsuperscript{133} to the principles to equal educational opportunities, now, we must take a careful note of the two general principles which in a way regulate the application of all other principles. Firstly, the directive principle is not enforceable but is nevertheless fundamental in the governance, of country and it shall be the duty of the state to apply them in making laws.\textsuperscript{134} Secondly, the state shall strive to promote the welfare of the people by securing and protecting as efficiently as it may a social order in which justice, social, economic and political, shall inform all the institution of the national life.\textsuperscript{135}

It is against the background of these constitutional provisions that an effort was made to examine the problems that have arisen in the realm of constitution law in the country after the commencement of the constitution. The Supreme Court always found with the task of adjustment between two very importance fundamental rights of citizens on the one hand namely non-discrimination in admissions and the special provision on reservation in favour of people belonging to backward classes or scheduled castes or tribes on the others. It becomes now relevant to examine whether the Supreme Court has widened the scope of Article 14 beyond the intent of the framers of the constitution. Justice Krishna Iyer aptly observed, “Right to equality is not merely equality of treatment before the established system of law and order but also of opportunity for self expression or self realization that may be inherent in every human being.”\textsuperscript{136} In Pradeep Jain v. Union of India\textsuperscript{137}, the Supreme Court held that admission in courses such as MBBS, MS, MD. Etc should be made primarily on the basis of merit and not on the basis of residential requirement or institutional preference. The equality of educational opportunity cannot be made dependent upon residence because it would not be justified on the touchstone of Article 14.

Again in Mohini Jain v. Sate of Karnataka\textsuperscript{138}, the question before the Supreme Court was whether charging the capitation fee to educational institution is violative of right to equality under article 14; the court held that, the capitation fee brings to fore a clear class bias. It enables the rich to take admission whereas the poor has to withdraw due to financial inability. Poor students with better merit can not get admission because he has no money whereas the rich can purchase the admission. Such a treatment is

\textsuperscript{133} Supra note 128.p.12-13
\textsuperscript{134} Article, 37.
\textsuperscript{135} Article, 38.
\textsuperscript{137} (1984) 3. SCC 654
\textsuperscript{138} AIR. 1992 S.C 1858, 1867.
patently unreasonable, unfair and unjust. There is, therefore, no escape from the conclusion that charging of capitation fee in consideration of admission to educational institution is wholly arbitrary and such infract article 14 of the constitution.

In the Mohini Jain case the court also looked into the provision of Directive principles of the state policy and connected with the equality of opportunities with regard to education, and linked those provisions with article 14. The obligation of the state to “promote with special care the educational and to economic interest of the poor section of the people,” and to protect them from social injustice and exploitation was utilized to stuck down the capitation fee as violative of the constitutional mandate as well as art 14. However, it is submitted that while protecting the educational interest of the particular section of the weak people, the court should remember that it is equally in the national interest that qualified competent and otherwise deserving candidate belonging to other classes must not be unreasonable excluded from education particularly the higher university education.

4.1.4. Education and Right to life

Article 21 starts with negative word but the word No has been used in relation to the word deprived. The object of the fundamental right under Article 21 is to prevent encroachment upon personal liberty and deprivation of life except according to procedure established by law. It clearly means that this fundamental right has been provided against state only. An Act of private individual amounts to encroachment upon the personal liberty or deprivation of life of other persons. Such violation would not fall under the parameters set for the Article 21. In such a case the remedy for aggrieved person would be either under Article 226 of the constitution or under general law. But, where an Act of private individual supported by the state infringes the personal liberty or life of another person, the Act will certainly come under the ambit of Article 21. Article 21 of the Constitution deals with prevention of encroachment upon personal liberty or deprivation of life of a person.

The meaning of the word life includes the right to live in fair and reasonable conditions, right to rehabilitation after release, right to live hood by legal means and

---

139 Article 41,45 and 46 of the constitution of India
140 Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.
decent environment. The expanded scope of Article 21 has been explained by the Apex Court in the case of Unni Krishnan v. State of A.P. The Apex Court itself provided the list of some of the rights covered under Article 21 on the basis of earlier pronouncements and some of them are The right to go abroad, The right to privacy, The right against solitary confinement, The right against hand cuffing, The right against delayed execution, The right to shelter, The right against custodial death, The right against public hanging and Doctors assistance.

It was observed in Unni Krishnan’s case that Article 21 is the heart of Fundamental Rights and it has extended the scope of Article 21 by observing that the life includes the education as well as, as the right to education flows from the right to life. In India the Judiciary has given an extended meaning to constitutional expression like ‘life’ and ‘personal liberty’ and has in unequivocal terms recognized ‘right to education’ as fundamental rights. The Supreme Court of India in Francis C. Mullin v. Administrator, Union Territory of Delhi has remarked, whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing one self in diverse forms, freely moving about and mixing and commingling with human beings. Of course the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter. Include a right to basis necessities of life and also the right to constitute the bare minimum expression of the human self. The observation of the court gives due legitimacy to the right to education as a basis necessity of life and as one of the Activities constituting “the bare minimum expression of human self”. In 1984, the Supreme Court of India in Bandhua Mukti Morcha v. Union of India held that the education is implicit it flows from ‘the right to life’. Later in Bapuji Education Association v. State Justice Rama Jois, of the Karnataka High Court found right to education to be an essential attribute of personal liberty. He observed that “the right of an individual to have and or to impart education is one the

---

141 AIR 1993 SC 2178
142 AIR 1981 SC 746,
143 AIR 1984 SC 902.
144 AIR 1986 SC 119.
most valuable and sacred rights'', and further observed that "among various types of personal liberties which can be regarded as include in the expression 'personal liberty' and in Article 21, education is certainty the foremost''.

The question whether a 'right to education' is guaranteed to the people of India under the constitution was deal with by the Supreme Court at length in Mohini Jain v. State of Karnataka145. The main question in this case related to the admission of Mohini Jain who was selected for MBBS courses but was asked to pay a tuition fee of Rs.60,000 per annum and a capitation fee of four and half lakhs. The matter assumed extraordinary significant after reaching the court Justice Kuldip Sigh referred, to the preamble of the constitution which promises to secure to all citizens of India "justice-social economic and political, liberty of thought, expression, belief, faith and worship." Provides for "equality of status and opportunity" and assures dignity of individual. The court also referred to article 21, 38, 39(a), 39(f) and 45 of the Constitution which guarantee the protection of life and personal liberty and direct the State to secure a social order for the promotion of welfare of the people; protection against exploitation; right to work to education and public assistance in certain cases and provision for free and compulsory education for children.

After referring to the aforesaid constitutional provisions the court observed that 'right to education' has not been guaranteed expressly as fundamental rights under part III of the constitution but the framers of the Constitution have made it obligatory for the state to provide education to its citizens. The court forcefully put forward the view that the preamble of the constitution promises to secure to all citizens "justice, social, economic and political", combining social and economic rights along with political and justifiable legal rights. In order to establish social justice and to make the masses free in the possible sense the state was to strive to achieve the goals set out in the preamble of the constitution. As regard social justice it has been specially enjoyed as an object without providing education to the large majority who are illiterate. A dispassionate consideration of the matter leads to the conclusion that these objectives shall only remain on paper unless the people in this country are educated. The court observed, the three pronged justice (social, economic and political) promised by the preamble is only an illusion to the teeming-millions who are illiterate. It is only the

145 AIR 1992 SC 1858.
education which equips a citizen to participate in achieving the objectives enshrined in the preamble. Bringing to focus another significant aspect of the issue the court remarked that the preamble also assures the dignity of the individual and the constitution seeks to achieve this objects by guaranteeing fundamental rights to each individual which he can get enforce, if necessary through court of law. The directive principles in part IV of the constitution are also with the same objective. The court made it clear that; the dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primary education which brings forth the dignity of man the framers of the Constitution were aware that more than seventy percent of the people, to whom they were giving the Constitution of India, were illiterate. They were also hopeful that within a period of ten years illiteracy would be wiped out form the country. It was with that hope that Article 41 and 45 were brought in chapter IV of the Constitution. An individual cannot be assured of human dignity unless his personality is developed and the only way to that is to educate him. This is why the Universal Declaration of Human Rights, 1948 emphasis "Education shall be directed to the full development of the Human personality."

Another vital question that was considered by the apex court related to recognize of an individual’s right “to education” in Article 41 of the Constitution which provides that “the state shall, within the limit of its economic capacity and development, make effective provisions for securing the right to education”. The court observed that although a citizen cannot enforce the directive principles contained in chapter IV of the Constitution but these were not intended to be mere pious declarations in support of its argument the court invoked the following words of Dr.Ambedkar, “In enacting this part of the Constitution, the Assembly is given certain directions to the future legislative and the executive to show in what manner they are to be exercising the legislative power they will have. Surely it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles but that they should be made the basis of all

146 AIR 1992 SC 1858.
147 AIR 1992 SC 1858.
legislation and executive action that they may be taking hereafter in the matter of the governance of the country".  

The apex court as enlisted the following principles before deciding the case. 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 Article 41 of the Constitution a reality the fundamental rights under chapter III shall remain beyond the reach of large majority who are illiterates. The court also beneficially referred to its earlier observation regarding right to life with human dignity and directive principles of state policy in Bandhua Mukti Morcha v. Union of India. The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State policy and particular clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include educational facilities in order to enable a person to live with human dignity.

After a due consideration of all the above observations the court held that the right to education flows directly from the right to life. It said: ‘Right to life’ is the compendious expression for all those rights which the courts must enforce because they are the basis to basic right that is dignified enjoyment of life. It extends to the full range of conflict which the individual is free to pursue. The right to education flows directly from the right to life. The right to life under Article 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 and to provide educational facilities at all levels to its citizens.

The basic question whether the constitution of India guarantees a fundamental rights of education to its citizens came again for consideration before the Supreme Court in Unni Krishnan v. State of Andhra Pradesh. The Court asserted that Article 45 has a ten year limit for a reason, and noted that it is the only article in Part IV of the constitution.

149 AIR 1984 SC 802.
150 AIR 1984 SC 802.
151 AIR 1993 SCC 645.
constitution to contain such a limit. It held, therefore, that the passage of 44 years since the enactment of the Constitution had effectively converted the non-justifiable right to education of children under 14 into one enforceable under the law.

However, the Court expressed dismay in adding: ‘it is relevant to notice that Article 45 does not speak of the “limits of its economic capacity and development” as does Article 41, which amongst other things speaks of the right to education. What has actually happened is more money is spent and more attention is directed to higher education than to—and at the cost of—primary education (up to 14 years of age)’

‘The right to education further means that 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. By saying so, the court did not mean that transferring Article 41 from Part IV [directive principles within the Constitution] to Part III [fundamental rights within the Constitution] – but relied upon Article 41 to illustrate the content of the right to education flowing from Article 21. The court observed that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State.’ The Court continued by asserting the right to education’s position as being fundamental to enjoying the right to life:

‘We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21, it does not follow automatically that each and every obligation referred to in Part IV [of the Constitution] gets automatically included within the purview of Article 21. We have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact, we have referred to Articles 41, 45 and 46 merely to determine the parameters of the said right.’

The Court held that the right to basic education is implied by the fundamental right to life (Article 21), when read in conjunction with the directive principle on education (Article 41). The Court held that the parameters of the right must be understood in the context of the Directive Principles of State Policy, including Article 45 which provides that the state is to endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all
children under the age of 14. Article 41 indicates that after the age of 14, the right to education is subject to the limits of economic capacity and development of the state. Indeed it was found that there is no fundamental right to education for a professional degree that flows from Article 21. Quoting Article 13 of the International Covenant on Economic, Social and Cultural Rights, the Court stated that the state's obligation to provide higher education requires it to take steps to the maximum of its available resources with a view to achieve progressively the full realization of the right of education by all appropriate means.

The state responded to this declaration nine years later by inserting, through the Ninety-third amendment to the Constitution, Article 21A, which provides for the fundamental right to education for children between the ages of six and fourteen. In addition, several States in India have passed legislation making primary education compulsory. Although the Court in Unni Krishnan case stated specifically that it was not transferring Article 41 from Part IV to Part III, in the subsequent case of M.C. Mehta v State of Tamil Nadu & Ors (1996) 6 SCC 756; AIR 1997 SC 699, the Supreme Court stated that Article 45 had acquired the status of a fundamental right following the Constitutional Bench's decision in Unni Krishnan. In addition, the Court said that, in order to treat a right as 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 Part IV are supplementary and complementary to each other”. The Court rejected that the rights reflected in the provisions of Part III are superior to the moral claims and aspirations reflected in the provisions of Part IV.

On the basis of all these and similar other views the Supreme Court declared right to education as a fundamental right of all citizens and connected it with right to life and personal liberty under article 21 of the Constitution of India.

4.1.5. Inclusion of Article 21A Right to Education under Article-21.

The Parliament in order to bring right to education a social reality included Article 21A right to Education which deals with right to life rightly pointing that without education, life has no meaning. Article 21 of the Indian Constitution states, “No person shall be deprived of his life or personal liberty except according to the procedure established by law.” The right to life under Article 21 of the Constitution and the dignity of the individual cannot be around unless it is accompanied by the right
to education. The right to education is a fundamental right under Article 21 of the constitution, which cannot be denied to a citizen. The right to education flows directly from the right to life. A natural extension of the argument for the expansion of the scope of right to life to include a right to a political, social and cultural life and to a life of human dignity would lead to the inclusion of the right to education within the ambit of the right to life under Article 21. By introducing a qualitative concept into the right to life under Article 21, the Supreme Court has made way for any aspect which promotes the quality of life to fall within the parameters of Article 21. As a result, many Directive Principles of State Policy which were hitherto not enforceable have become enforceable under Article 21. Further, the Supreme Court has also implied a number of fundamental rights from Article 21 even though these rights have not been expressly provided for under the Constitution.

Article 21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law determine. Till 2002 Constitution Eighty-Sixth Amendment, right to education was not a specially guaranteed fundamental right under the Constitution, it was only Unnikrishnan v. State of Andhra Pradesh which had, widely interpreted Article 21, recognized right to education as one of the aspects of personal liberty. This was done by the judiciary exercising its role of judicial Activism not by our legislatures who are deemed to be reflecting the wishes of the people. However, through at a very late stage, right to education has been made by the Constitution (Eighty-Sixth Amendment) Act, 2002 a fundamental right. The 86th Constitutional Amendment the State's obligation to provide free and compulsory education to children below the age of 14 years which was hitherto a judicial law became a statutory one when the Constitution (Eighty Sixth Amendment) Act, 2002 was passed by the Parliament of India hereby Article 21A was inserted into the Constitution of India. Article 21A provides that “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” The 86th amendment further inserted Article 51A (k) making it a fundamental duty on part of a

---

152 Inserted by the constitution (Eighty-Sixth Amendment) Act, 2002. This Article is substituted for Article 45 before this Amendment, which is as follows: “provision for free and compulsory education for children the state shall endeavour to provide within a period of ten years from the commencement of this constitution for free and compulsory education for all children until they complete the age of fourteen years.
153 AIR 1993 SC 2178.
154 Article 21A of the Indian Constitution.
“parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.” Even while fundamental duties in the Constitution are not in the nature of public duties and are thus unenforceable in a court of law by way of a writ of mandamus or otherwise, they are guiding principles and are directory in nature and can be promoted by constitutional means. Thus, Article 51A can be used to interpret ambiguous statutes as was held by the Supreme Court on various occasions.\(^{155}\)

In addition to constitutional amendments the parliament enacted a legislation titled ‘Right to Education Act’\(^{156}\) entrusting the Government to make Education compulsory. ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

Some of the provisions of RTE Act are, Right of children to free and compulsory education till completion of elementary education in a neighbourhood school, It clarifies that ‘compulsory education’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. ‘Free’ means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education, It makes provisions for a non-admitted child to be admitted to an age appropriate class, It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State

\(^{156}\) Here in after called RTE Act.
Governments, It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours, It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief. It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications. It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition. It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child’s knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning.

Thus, the right to free and compulsory education is the fundamental right of every child between six and fourteen years of age as guaranteed under the Constitution. It is further, the fundamental duty of every parent or guardian to provide opportunities for education of their child or ward between six and fourteen years of age.

Persons with print impairment who are not provided access to printed material in alternate formats are unable to enjoy their fundamental right to education and this constitutes deprivation of their right to life by the State. Thus, the State must ensure that any legislative or other barrier preventing access to printed material of persons with print impairment is removed in keeping with its obligation to enable its Citizens to enjoy their fundamental rights and freedoms including the right to education and the right to life guaranteed to them under the Constitution. Considering that it is the Fundamental duty of every parent or guardian to ensure that opportunities for education are provided to their child or ward, it is important to ensure that parents or guardians of Children too are allowed access to printed material in accessible format for the purpose of providing access of the same to their child or ward.
4.1.6. Rights of Educational Institutions

The Right to establish and administer an educational institution comprises of the right to admit students, a reasonable fee structure, to constitute a governing body, to appoint staff and take action if there is negligence in their duties.

Where a school is run by a society/trust, there is an onus on the society or trust to initiate, develop and maintain a good atmosphere for academic pursuit and enable the school to fulfill its aims and objects, to enable the staff to provide quality, education. The Society/Trust is generally required to perform on behalf of the school. Enable the school to acquire suitable proper land, building, equipment, furniture and qualified staff; ensure that runs as a community service the money earned is spent for the school, generate funds for the needs of the school, also ensure that the school has the basic essential facilities such as Laboratory equipment, equipment for games and sports and other co-curricular Activities Selection Committee / Departmental Promotion committees for various categories of staff, the Society/Trust will ensure that the school is running as per the provisions of the Education Act/affiliation norms and shall be committed to provide quality education to the children and for this shall take necessary steps as per its needs. With regard to the establishment of educational institutions, three Articles of the Constitution come into play. Article 19(1) (g) gives the right to all the citizens to practice any professions or to carry on any occupation, trade or business; this right is subject to restrictions that may be placed under Article (19) (6). Article 19(1) (g) employs four expressions, viz., profession, occupation, trade and business. Their fields may overlap, but each of them does have a content of its own. Education is per se regarded as an activity that is charitable in nature. Education has so far not been regarded as a trade or business where profit is the motive. Even if there is any doubt about whether education is a profession or not, it does appear the education will fall within the meaning of the expression “occupation”. Article 19(1) (g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated, and which can consequently be regulated under Article 19(6). In Webster’s 3rd New International Dictionary, “occupation” is, inter alia, defined as

158Anitha Abraham, Formation and Management of Educational Institutions Universal Law Publishing Co. 2005, p.29
160Webster’s Third New International Dictionary, p.1650.
“an activity in which one engages” or “a craft, trade, profession or other means of earning a living”.

According to Law Lexicon “Occupation” means: “The principal business of one’s life, vocation, trade, the business which a man follows to procure a living or obtain wealth; that which occupies or engages one’s time or attention, vocation, employment, calling trade; the business in which a man usually engaged, to the knowledge of his neighbour.”

According to Black’s Law Dictionary164, “Occupation” means: “Possession; control; tenure; use. The Act or process by which real property is possessed and enjoyed. Where a person exercises physical control over land. That which principally takes up one time, thought, and energies, especially, one’s regular business or employment; also, whatever one follows as the means of making a livelihood. Particular business, profession, trade, or calling which engages individual’s time and efforts; employment in which one regularly engages or vocation of his life.” In Corpus Juris Secundum162, the word “occupation” is defined as under: The word “occupation” also is employed as referring to that which occupies time and attention; a calling; or a trade; and it is only as in this sense that the word is discussed in the following paragraphs.

There is nothing ambiguous about the word “occupation” as it is used in the sense of employing one’s time. It is a relative term, in common uses with a well understand meaning and very broad in its scope and significance. It is described as a generic and very comprehensive term, which includes every species of the genus, and compasses the incidental, as well as the main, requirements of one’s vocation, calling, or business. The work “occupation” is variously defined as meaning the principal business of one’s life; the principal or usual business in which a man engages; that which principally takes up one’s time, thought and energies that which occupies or engages the time or attention; that particular business, profession, trade, or calling which engages the time and efforts of an individual; the employment in which one engages, or the vocation of one’s life; the state of being occupied or employed in any

way; that Activity in which a person, natural, or artificial, is engaged with the element of a degree of permanency attached”.

In P.V.G. Raju v. Commissioner of Expenditure, it was observed thus: “The Activity termed as ‘occupation’, if the wider import than vocation or profession. It is also distinct from a hobby which can be resorted to only in leisure hours for the purpose of killing time. Occupation, therefore, is that with which a person occupies himself either temporarily or permanently or for a considerable period with continuity of Activity. It is analogous to a business, calling or pursuit. A person may have more than one occupation in a previous year. The occupations may be seasonal or for the whole year.” “Firstly, there can be a business, profession, vocation, or occupation without any profit motive or on “no profit no loss basis “To, illustrate, Co-operative societies or mutual insurance companies may carry on Business without earning any income or without any profit motive. The vocation or occupation to do social service of various kinds for the uplift of the people would also come under this category. The profit motive or earning of income is not an essential ingredient to constitute the Activity, termed as business, profession, vocation or occupation.”

In Commissioner of Expenditure Tax v. Mrs. Manorama Sarabhai, it was held that the educational Activities of the assessee an occupation within the meaning of section 5(a) and that no profit motive is necessary to treat an Activity as a vocation or occupation within the meaning of section 5(a). For all these reasons, we must negative this submission of Mr. Ramarao relating to the interpretation of the “business, profession, vocation or occupation” in section 5(a) of wording.

A Five Judge Bench in Sodan Singh and Others v. New Delhi Municipal Committee and others observed as follows: “The word occupation has a wide meaning such as any regular work, profession, job, principal Activity, employment, business or a calling in which a individual is engaged. The object of using four analogous and overlapping words in Article 19(1 ((g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. In a nutshell the guarantee takes into its fold any Activity

---

163 ITR (1972) 86 p.267 A.P.
164 AIR 1963 Gj 166.
165 Income Tax Act 1961
166 (1989)4 SCC 155 p.174
carried on by a citizen of India to earn his living....". In Unni Krishnan's\textsuperscript{167} Case, while referring to education, it was observed as follows:— "It may perhaps fall under the category of occupation provide no recognition is sought from the State or affiliation from the University is asked that it is a fundamental right...". “occupation” comprehends the establishment of educational institutions is correct, the proviso in the aforesaid observation to the effect that this is so provided no recognition is sought from the State or affiliation from the concerned university is, with the utmost respect, erroneous. The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject matter of controls. The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an Activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). “Occupation” would be an Activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in Sodan Singh's\textsuperscript{168} case correctly interpret the expression “occupation” in Article 19(1)(g).

The right to establish and maintain educational institutions may also be sourced to Art. 26(a) which grants, in positive terms, the right to every religions, denomination or any section thereof to establish and maintain institutions for religious and charitable purposes, subject to public order, morality and health. Education is a recognized head of charity. Therefore, religious denominations or sections, thereof, which do not fall within the special categories, carved out in Art 29(1) and 30(1), have the right to establish and maintain religious and educational institutions. This would allow members belonging to any religious denominations, including the majority religious

\textsuperscript{167} AIR 1993 SC 2178, p.687
\textsuperscript{168} Supra note 16
community, to set up an educational institution. Given this, the phrase ‘private-educational institutions’ as used in the T.M.A. Foundation v State of Karnataka would include not only those educational institutions set up by secular persons or bodies, but also educational institutions set up by religious denominations; the word ‘private’ is used in contradiction to Government Institutions.

Justice Quadri (concurring) in the same case said that the right under Art 26(a) is a group right and is available to every religious denomination or any section thereof, is it majority or any section thereof. It is evident from the opening words of Art 26 that this right is subject to public order, morality and health.

However, the scheme in Unni Krishnan case has the effect of nationalizing education in respect of important features, viz., and the right of a private unaided institution to give admission and to fix the fee. By framing this scheme, which has led to the State Governments legislating in conformity with the scheme, the private institutions are indistinguishable from the government institutions; curtailing all the essential features of the right of administration of a private unaided educational institution can neither be called fair or reasonable. Even in the decision in Unni Krishnan’s case, it has been observed by Jeevan Reddy, J, as follows: “The hard reality that emerges is that private educational institutions are a necessity in the present context. It is not possible to do without because the Government 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.” That private educational institution are a necessity becomes evident from the fact that the number of government-maintained professional colleges has more or less remained stationary, while more private institutions have been established. For example, in the State of Karnataka there are 19 medical colleges out of which there are only 4 government-maintained medical colleges. Similarly, out of 14 Dental Colleges in Karnataka, only one has been established by the government, while in the same State, out of 51

---

170 Ibid.
171 AIR 1993 SC 2181
172 AIR 1993 SC 2181.
Engineering Colleges, only 12 have been established by the government. The aforesaid figures clearly indicate the important role played by private unaided educational institutions, both minority and non-minority, which cater to the needs of students seeking professional education.

Any system of student selection would be reasonable if it deprives the private unaided institution of the right of rational selection, which it devised for itself, subject to the minimum qualification that may be prescribed and to some system of computing the equivalence between different kinds of qualification, like a common entrance test. Such a system of selection can involve both written and oral tests for selection, based on principal of fairness.

Generally, under any of the laws that cover different educational institutions an education institution may not exclude an otherwise qualified student with a disability from any part of its program or services, or otherwise discriminate against a student with a disability. Educational institutions must provide educational opportunities that are equal to, effective as, and appropriately integrated with the education provided to others. As part of their legal obligations, educational institutions must provide students with known disabilities academic adjustments to meet their non-discrimination obligations, including modifying how specific courses are conducted. Examinations, and other ways of evaluating the students, must be provided to students with disabilities that bring ensure that the results of the evaluation represent the student’s achievement in the course, rather than reflecting the student’s impaired skills. However, the institution does not have to provide an academic adjustment where it will be an undue burden or hardship, or fundamentally alter the nature of the program and services provided. While the education institution may provide the aids for students with disabilities, it has flexibility in choosing the methods by which the aids will be supplied, and need not have all aids available all times as long as no student with a disability is excluded from a program because of the lack of an appropriate aid. The institution cannot put the burden of acquiring or funding auxiliary aids on the students with a disability when the student needs the aids to have an equal educational opportunity, for services over and above the legal requirement, the university may charge a fee for their provision.

---

4.1.7. Minorities and Minority institutions

The constitution makes special provisions for education by and to minorities. They are as follows, Subject to Public order, morality and health, every religious denomination or any section thereof shall have the rights to establish and maintain institutions for religious and charitable purpose. Religious denomination or any section thereof will definitely include religious minorities. But under Article 28 certain restrictions may be inferred regarding educational institution established by religious minorities they include, No religious instruction shall be provided in any educational institution wholly maintained out of State funds. Nothing in clauses (1) shall apply to an educational institution, which is administered by the states but has been established under any endowment or trust, which requires that religious instructions shall be imparted in such institution. No persons attending any educational institution recognizes by the state of receiving aid out of state funds shall be required to take part in any religious instruction that may be imparted in such instructions or to attend any religious worship that may be conducted in such institution or in any premises attached there to unless such persons or, if such persons is a minor, his guardian has give his consent there to.

The protection of Interest of Minorities any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Analyzing the provisions of Article 30, Right of minorities to establish and administer educational institutions, all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause, the State shall not, in granting aid to

---

174 Article 26 of the Indian Constitution
175 Article 29 of the Indian Constitution
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.

It is celebrated principle of modern constitutional democracy that when government is ruled by a majority and the societies are divided on the basis of some militant factors than the minorities need special protection. This principle mainly aimed at protecting the social discrimination in the west. In India after independence there were different classes and communities divided not only on factors of race and castes but also on the factors of religion and language. It was great problem to protect such vast and complex minorities. In this context the constitution adopted the provision of special treatment to the special classes under the equality principles. It was thought that to protect the minorities is concomitant to the protection of their languages scripts and culture. Therefore, the special provisions of cultural and educational right were needed under articles 29 and 30 of the constitution. On one hand it declares rights of the minority to protect their languages scripts and culture; on the other hand it curtails the absolute domain of minority in the interest of the masses. It further, gives the right to establish and administer the educational institutions of the minorities depending upon the factors of language and religion. The right of minorities depending upon three factors i.e. languages scripts and culture are protected in other respect, but the rights of educational institutions has been given only to the minorities depending upon two factors i.e. language and religion. Particular religions communities are linguistic minority who have been recognized as the minority in one state in respect of the whole population of that state may be a majority in other states and therefore can not claim right of the minority in latter state. Another significant issue in respect of minority is that such educational institutions have right of ‘affiliation’ ‘recognition’ and ‘financial aid’ from the government. The affiliation and recognition depend upon the fulfilment of certain conditions and availability of state funds. In this sense, there is not fundamental right to received recognition and affiliation. The most complex problem with regard to the minority institution is the extent of autonomy and independence of such institution in the matter of administration and the scope of governmental role in the name of affiliation and recognition. The courts made an attempt to strike a balance between the above conflicting areas. This issue was thoroughly considered by the Supreme Court in

176 Article 29 constitutions of India.
177 Article 30 constitutions of India.
St. Xaviers College Society v. State of Gujarat where a Bench Consisting of nine Judges were called upon to consider the scope and ambit to taking regulatory measures vis-à-vis the fundamental right guaranteed under constitution of India wherein it was held that minority has right to impart general education but there is no fundamental right to affiliation of minority educational institutions. Chief Justice Ray, concurring with the view of palekar, J expressed the view that there was no fundamental right of education institutions to be affiliated to a university. When a minority institutions applies to the university to be affiliated and its choice to participate in the system of general education and courses, institutions prescribed by that university it must be agreed to follow the uniform course of study.

Another significant development took place in State of Tamil Nadu v. St. Joseph Teachers Training Institute where the court opined that, under article 30 of the constitutions, minorities based on religion or language have fundamental freedom to establish educational institutions of their own choice, but the state has right to prescribe regulatory provisions for ensuring educational excellence. Minority institutions which do not seek recognition are free to function according to their own choice, but if such an institution seeks recognition from the state, it has to comply with the prescribed conditions for granting recognition, and in that event the minority institution has to follow prescribed syllabus for examination, courses of study and other allied matters. These conditions are necessary to be followed to ensure efficiency and educational standard in minority institutions. However, the whole provisions of affiliation and recognition were reviewed by the Supreme Court in Managing Board of Milli Talimi Mission v. State of Bihar where the appellant started a Teaching Training College names as the Milli Talimi Missions. In 1977 the college applied to the University for Affiliation and Recognition. The University authorities inspected the college and recommended for granting affiliation. The Government Granted affiliation for three sections, There after, the college applied, for permanent affiliation which was rejected. The High Court quashed this order of refusal and directed the state to dispose of the application for permanent recognition. In 1982 the Education Commission also made a recommendation for grant of affiliation to the appellant college. Despite this no Action was taken by the government and the appellant had to file another writ petition.

178 AIR 1974 SC 87
179 (1991) 3 SC 1389
180 (1984) 4 SC 500
in the High Court in 1983 which was dismissed. The appellant filed appeal before the Supreme Court which directed the government to grant affiliation could not be granted namely, absence of fulltime teachers, recognized school attached to it, running college during evening hours making it impracticable for practicable classes, absence of fulltime teachers, recognized school attached to it, running college during evening hours making it impracticable for practicable classes, absence of building, libraries, and laboratories.

The court held that refusal to grant affiliation on purely illusory ground without considering the recommendations of the Education Commission, and the university authorities was violative of Article 30 and hence, liable to be set aside. The court directed the government to grant affiliation to the college in the circumstances of the case. However, it agreed that there is no fundamental right to claim affiliation. Although the state on university can lay down reasonable conditions for maintaining the excellence of standard of education and courses of study to be followed by institutions before they could be considered for affiliation, but refusal of affiliation on terms and conditions or situation which practically denies the progress and autonomy of the institution is violative of Article 30 as it’s direct consequence would be to destroy the very existence of the institution for the protection of which Article 30 was inserted in the constitution.181

(a) What does Minority mean?

The word ‘minority’ has not been defined in the Constitution. Though, this word occurs in the marginal note to Article 29 it does not occur in the text. The U.N. sub-commissions on prevention of discrimination and Protection of Minorities has defined ‘minority’ (by an inclusive definition) as under.182 The term ‘minority’ includes only those non-document groups in a population, which passes and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population. Such minorities should properly include a number of person sufficient by themselves to preserve such traditions or characteristics; and Such minorities must be loyal to the State of which they are nationals.

Recently in TMA Pai Foundation v State of Karnataka the Supreme Court has stated the meaning and content of minorities as follows: "Linguistic and religious minorities are covered by the expression ‘minority’ under Art. 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put at par, in Art. 30 have to be considered state wise."

Art15 (4) provides special provisions for the weaker sections. It is a constitutional obligation of the State to promote educational and economic interests of the weaker sections of the people and in particular of the scheduled castes and the scheduled tribes. Some of the measures adopted by the state to fulfil the obligation were declared unconstitutional by the Supreme Court in view of the provisions of the fundamental rights. Hence, Parliament amended the Constitution and inserted a new clause (4) in Art. 15. This clause runs as follows: “Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes." These provisions reinforces that India and Indian constitution envisages that India is a welfare State.

(b) Right to Management

The expression, establishment and management of educational institutions, is of very wide amplitude. The establishment and administration of educational institutions by various communities, minority’s or by charitable and religious associations, societies or other bodies corporate or otherwise will include several activities like:

Management of the institution, e.g. enrolment of members of the society or association under whose agencies the educational institution is to run, constitution of managing committee or managing body or council, meeting of the managing committee, election or nomination or other mode of constitution of the members of the managing committee and all other allied matters, collection of funds, such as by obtaining grants, donations and all other ways and means by which funds may be raised for running the institution, construction or expansion of buildings and accessories

AIR 2003 SC 355
Added by Constitution (First Amendment) Act 1951.
thereeto, the naming of the institutions, providing amenities to students and other staff, providing classrooms, furniture, library, workshop, laboratories and equipment thereof, framing of regular curriculum, subjects to be taught, framing of syllabus, courses, degrees and diploma's imparting of any special instructions, religious or otherwise, observance of certain prayers or rituals, observing certain special holidays, celebrating certain special religious or other functions, prescribing dresses for the students and teachers, giving moral and religious instructions, granting of scholarship on the basis of merit or religious persuasion, imparting of physical training or organizing NCC and the like, regulating discipline, decorum, etc. in the institution and laying down standards of education; and Appointing of teaching and other staff, their service conditions, promotion, seniority, disciplinary Action, such as dismissal, removal or reduction in rank.186

In re Kerala Education Bill187 the Supreme Court observes that the right of management and administration granted to the minorities under Article 30 (1) was an absolute right had been followed literally in other cases. In reference to management of minority educational institutions, Ray, CJ, in St. Xaviers observed. "Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institution. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The choice in the personnel of management is a part of administration. Earlier, in State of Kerala v. Mother Provincial, Hidayatullah188, CJ, observed: Administration means management of the affairs of the institution. This management must be free of control so that the founders or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interest of the community in general and the institution in particular will be best served. No part of this management can be taken away and vested in another body without an encroachment upon the guaranteed rights though the standards of education are not part of management. From these observations it appears that the courts take the view that the minority's right to manage their institutions is absolute or near absolute. The only concession that has been made is that the right to choose the personnel of the governing body in certain circumstances may come under the regulator power of the State.

187 (1959)SCR 1995
188 AIR 1971 SC 2082
In Gandhi Faiz-e-am College v. University of Agra\(^{189}\) the Supreme Court, upholding the statues of the Agra University ordinance which laid down that no private college would be accorded recognition unless its governing body included the principal and the senior-most teacher, observed that the statute was facilitative, promotional and calculated to improve the tone and temper of the administration of an educational institution. Denying to the minority any absolute right to constitute the governing body. Krishna Iyer, J, observed that “For some regulations may impinge marginally upon the composition of the administrative organ though manifestly meant to save the institution from mismanagement”.\(^{190}\)

In Gandhi-Faiz-e-am case, the imposition on the governing body was that of the ‘insiders’ of the governing body or management council has not received approval. It appears that the courts have treated the right to choose the governing body almost an absolute right. In Rev. Bishop S.K Patro v. State of Bihar\(^{191}\) the order of the Government for inclusion of three of its nominees on the governing body of the church missionary society higher secondary school, a minority institution, was resisted by the church mission society on the plea that Article 30 guaranteed the minorities the fundamental right to administer their educational institutions the way they thought fit and proper. The Supreme Court (without much reasoning) held that the order of the government was an immanangement of the minority institution. In State of Kerala v. Rev Mother Provincial\(^{192}\) certain provisions of Kerala University Act, 1969 vested regulating powers of the minority college in the vice-chancellor and the syndicate of the university. The Act provided for the constitution of a governing body of the college as consisting of 11 members and of managing council consisting of 21 members. The Act laid down that the governing body should be, the principal of the private college, the manager of the private college, A nominee of the university, A nominee of the Government, An elected representative of the permanent teachers of the college, and Not more than six persons nominated by the corporate management of the minority.

Similarly, the Act provided for the composition of the managing council. This was considered to be an interference in the minority’s right of management. Similar

\(^{189}\) AIR 1975 SC 1821  
\(^{190}\) Ibid p.1825  
\(^{191}\) AIR 1970 SC 259  
\(^{192}\) AIR 1970 SC 2079
questions arose in DAV College v. State of Punjab\textsuperscript{193}, and in St. Xaviers College v. State of Gujarat\textsuperscript{194} in the former case the statutes framed under the Guru Nanak Dev University Act, 1969, required a college applying for affiliation to have a regularly constituted governing body consisting of not more than 20 members of which there should be two representatives of the university and the principal as ex-officio member. The governing body was required to be approved by the senate of the university. P. Jagamohan Reddy, J (Who delivered the judgment of the court), held that these provisions ‘decidedly interfered with the right of management’ of the minority educational institution. In St. Xaviers case the Gujarat University Act 1949-73 laid down that the sensitive of the university nominated by the vice-chancellor, one representative of teachers, one of non-teaching staff and one of students. Once again, it was held that the provision interfered with the right of management by the minority of its educational institutions. St. Xaviers case would have passed in line with the four other cases reviewed here but for the vehemence of certain observations made by Mathew, J (for himself and Chandrachud, J). Adverting to the well-laid proposition that the fundamental right under Article 30 was absolute and the only regulations that might validly apply to minority institutions were those which related to “the excellence of educational institutions in respect of their educational standards.” The learned judge observed: “The parents have the right to determine to which school or college their children should be sent for education... The fundamental postulate of personal liberty excludes any power of the State to standardize and socialize its children by forcing them to attend public schools only... There can be no surrender of constitutional protection of rights of minorities to popular will masquerading as the common pattern of ‘education’.

It would appear that the general observation made by Das CJ, in re Kerala Education Bill that “the right to administer cannot obviously include the right to maladminister, and the minorities cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any sem balance of qualification, and which does not maintain even a fair standard of teaching or which teaches matter sub-service of the welfare of the scholars has more or less become redundant, though generality has been repeated in

\textsuperscript{193} AIR 1971 SC 1737
\textsuperscript{194} AIR 1974 SC 1389
Rev. Sidhrajbhai when it was said that "regulation made in true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed." After reviewing most of the Supreme Course decisions, except Gandhi Faiz-e-am College, the majority judgment in St. Xavier’s case has been approved by the Supreme Court in Lilly Kurinn and All Saints High School.

(c) Right to Select Teachers

It appears that our courts have consistently (and, it is submitted unfortunately) maintained that the minority educational institutions have absolute right of appointment, removal, dismissal, termination of services or reduction in rank of teaching and non-teaching staff of the educational institutions. The Kerala High Court considered this question.

4.1.8. Entries Mentioned in Union, State and Concurrent List

Entries Mentioned in the Union List

The constitution mentions three lists union, State and concurrent list. The union government is authorised to make laws on the subjects mentioned under the union list, the State government is authorised to make law on subjects which falls under the State list and finally the central and state governments are authorised to make laws on subjects which come under concurrent list.

To provide Educational and Cultural relations with foreign countries, the institutions known at the commencement of the Constitution as National Library, The Indian Museum, the Imperial War Museum, the Victoria Memorial, and Indian War Memorial. Any other such institutions financed by the Government of India wholly or in part and declared by the Parliament by law to be an institution of national importance, institutions of national importance. The institution known at the commencement of this Constitution as the Benaras Hindu University, Aligarh Muslim University and Delhi University etc. declared by Parliament by law to be an institution of national importance. Various universities like Jawaharlal Nehru University have been established by parliament under this Entry, the institution of scientific and technical education financed by the Government of India wholly or in part and declared.

195 AIR 1979 SCC (2) 124.
196 Entry 13 of Union List
197 Entry 62 of Union List
198 Entry 63 of Union List
by law to be institutions of national importance like IITs and IIMs. Professional, vocational or technical training, including the training of police officers, the promotion of special studies or research, Scientific or technical assistance in the investigation of detection of crime, Coordination and determination of standards in the institution of higher education or research and scientific and technical institutions.

Entries mentioned in State List:

State list consists of 66 entries, out of which the following is the entry related to education:

Entry 12: According to this entry all libraries, museums and other similar institutions controlled or financed by the state, ancient and historical monuments and records other than those declared by or under law made by the Parliament to be of the national importance.

Entries mentioned in Concurrent List

Entry 25: Education, including technical education, medical education and universities subject to provision of entries 63, 64, 65, 66 of list (Union List). Vocational and Technical training of labour. Entry 26: Legal, Medical and other professions.

Thus, State Legislature may establish Universities under Entry 25. But these universities may also be controlled by Union List Entries mentioned as above. Hence, every legislature seeking to establish a State University is required to be cleared by the Union Government under the provision of the Constitution. By virtue of Entry 25 List II (Concurrent List) predominance has been given to the centre in matter of education. The tests who are linguistic and religious minorities with in the meaning of Article 30 would not be one and the same either in relation to a State Legislature or Central Legislation. There can not be two tests; one in relation to central legislation and other in relation to State legislation. The meaning assigned to linguistic or religious minorities would not be different when the subject ‘education’ has been transferred to the concurrent list form the state list. The tests that are linguistic of religious minorities as settled in Kerala Education Bill’s Case continues to hold good even after the subject ‘education’ was transposed into Entry 25 List III of the Seventh Schedule by the Forty-

---

199 Entry 64 of Union List  
200 Entry 65 of Union List  
201 Entry 66 of Union List

4.2 Education in Directive principles of State policy and fundamental duties

Directive Principles of State Policy, embodied in Part IV of the Constitution, are directions given to the State to guide the establishment of an economic and social democracy, as proposed by the Preamble which includes the following provisions relating to education.

Article 41: Right to work, to education and to public assistance in certain cases:

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

Article 45: Provision for free and compulsory education for children:

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. Before Constitution (Eighty-Sixth Amendment) Act, 2002, Article 45 required the State to make Provision within ten years for free and compulsory education for all children until they complete the age of fourteen years. The object of this Article was to abolish illiteracy from the country.

In a landmark judgment in Unnikrishnan v. State of Andhra Pradesh the Supreme Court held, the “Right to Education” up to the age of 14 years is a fundamental right within the meaning of Article 21 of the Constitution, but thereafter the obligation of the state to provide education is subject to the limit of its economic capacity. “The right to education flows directly from right to life”, the court declared. Fortunately, this judicial verdict has been given a final place in the Constitution by

---

203 Basu 1993, p. 137
204 Newly substituted Article 45 provides for provision for early childhood care and education to childhood below the age of six years.
205 AIR 1993 SC 2178.
Article 46 Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections: The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Under the Constitution, these directive principles are fundamental in the governance of the country, but they cannot be enforced through court of law. However the Supreme Court has interpreted the directive principles in a very liberal manner and have even enforced some of them under appropriate situations.

Article 51A Fundamental Duties:

Among the fundamental duties which are enshrined under the Indian constitution form 51(a) and 51(k) which has been included in 42nd amendment Act. In Article 51(k) it says that who is a parent or guardian, to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. Article 51A (k) imposes a fundamental duty upon every parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years. Article 51A is confined to “citizens” unlike some of the Articles relating to fundamental rights which extent to all “persons”. The courts may look at the fundamental duties while interpreting equivocal statues which admit of two constructions. The unfortunate aspect of fundamental duties is that they cannot be enforced by writs. They can be promoted only by constitutional methods. However, they cannot be used for interpreting ambiguous statues. Where the constitutionality of an Act is challenged, the court may look at Article 51A to uphold it. It would be for the educational institutions to impress on the minds of the taught the significant of these fundamental duties so that later in life they may behave in manner consistent with these duties.

206 Article 37 of Indian Constitution.
207 86th Amendment Act, 2002.
4.3 Educational Right Vis-a-Vis Reservation.

The question of reservation has become a very significant socio-political issue of the day because of keen competition for limited opportunities available in the country. Governments are socially and constitutionally pressurized to indulge in all kinds of groups apart from reservation for scheduled castes, scheduled tribes and backward classes. Reservation means as between two candidates of equal merits the candidates belonging to the reserved quota is preferred to the one having no reserved quota. Many deserving candidates thus feel frustrated because of the reservation for the less deserving person and they seek to challenge the scheme of reservation as unconstitutional. The Constitution requires all to have equal opportunity, including the socially, educationally and economic backward classes. Articles 15 (4) and 16 (4) bring out the position of the backward classes to merit equality. As against the advanced classes, the Constitution transposes into reality the scheme for enforcing equality and eliminating the inherited inequality.

To implement the guarantee in Article 15, 15 (1) and 16 (1) preferential treatment to the backward classes is the only means. The constitution recognizes their claim in express term in Article 335. Preferential treatment by way of reservation necessarily implies preference to relatively less meritorious over the more meritorious. The shorter Oxford Dictionary has defined the word "Reservation", as "the action of fact of receiving (for oneself or other) some right, power, privilege etc. therefore, the word reservation impliedly grants some right or privilege to some person or category of person. The word can also be underlined as special treatment, concession, privilege or preferential treatment". The scholars however, inclined to use to 'protective discrimination or 'compensatory discrimination.

Reservation thus means giving of special treatment to certain persons or classes of persons over other persons or certain classes of persons. It may be in educational institutions, public services and legislative bodies. Such preference may either be by way of help to those who, by reason of historical disabilities, have suffered social injustice thus fail to stand at par with rest of the society. Protective discrimination is considered to be bad and is turned as nepotism or favouritism while the other kind of preference i.e. 'compensatory discrimination' is under certain circumstances considered

not only desirable but essential in the interest of the society as a whole, because the society can not march forward if certain section cannot move along by reason of their weakness.

4.3.1 Objectives of Reservation.

Due to historical factors, the schedule castes, schedule tribes and other backward classes remained in miseries and oppressions from the times immemorial. It has therefore been necessary that government introduced such system whose ultimate aim was to abolish that old scourge of our society known as ‘caste system’ and its adversities. Dr.B.R.Ambedkar once said in the Legislative Council of Bombay: "If at all these communities are to be brought to the level of equality, then one only remedy is to adopt the principle of inequality and to give favoured treatment to those who are below the level"209. The member of those communities, who remained backward ands depressed for centuries, because of the social structure of the Hindu Society, cannot and should not be equated with those, who for the past in numerous generation, have been members of the privileged community. There is an unimaginable difference between the conditions and circumstance of the both in which they have been brought up. On one hand, there are persons who command all the necessary resources for their development and on the other hand, there are persons who are dependent even for their livelihood on the former. The difference between the two and their psychological impulse is, therefore, quite understandable. It is impossible for the depressed classes to achieve anything unless they are made capable of achieving it by giving facilities in all fields whether of education, service or trade or industry. Without giving them any concessions, to expect perfect competition would be just like to ask two persons, one of whom is a lame and the other is runner, to run a race in competition with each other. It is abundantly clear that the lame person cannot run a race with the runner unless the runner is also made capable of running a race. This is for these reasons that various concessions in the form of reservation are granted to the member of schedule castes, schedule tribes and backward classes. By doing so, they are just being provided with the equality of opportunity.

209 Dhananjaya Keer, Dr.Ambedkar: Life and Mission. 84 (1971).
In Akhils Bhartiya Shoshit Karamchari Sangh’s Case\textsuperscript{210} the Supreme Court observed: “It is not concession or privilege extended to them, it is in recognition of their undoubted fundamental right to equality of opportunity and in discharge of the constitutional obligation imposed upon the state to secure to all citizens ‘justice-social, economical and political, and equality of status and opportunity’ to assure the dignity of individual among all citizens, to promote with special care the educational and economic interest of the weaker sections of the people, to ensure their participation on an equal basis in the administration of the country and generally to foster the ideal of a “Sovereign, Socialist, Secular, Democratic Republic.” The reservation is thus, given to those communities to compensate their past sufferings and it is not given as charity or concession. In terms of Article 46 of the Constitution, the state is under obligation to see that the educational and economic interest of weaker section of the society and in particular the Schedule Caste and Schedule Tribes are promoted with special are. In T.Devdasan’s Case\textsuperscript{211}, Justice K.Subba Rao observed: “If it stood alone, all backward communities would go to the wall in a society of uneven basic social structure; the said rule equality would remain only a utopian conception unless a practical content was given to it”. Reservation is therefore required to be given to Schedule Caste and Schedule Tribe because they are possessed of less means in comparison to the other communities. They are socially, economically and educationally backward. Their words do not have their disposal as much resource as are available to their counterparts from economically, socially and educationally advanced communities. It is evident from the speech of Dr.B.R.Ambedkar\textsuperscript{212} he said “We must begin by acknowledging first that there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on privilege of graded inequality which means elevation of some and degradation of others. On the economic plane we have a society in which there are some who and have immense wealth as against the many who are living in object poverty. On the 26\textsuperscript{th} January, 1950, we are going to enter into a life of contradictions. In the politics, we will have inequality. In politics we will be recognizing the principle of one man and one vote and one value. In our social and economic structure, continue to deny the principle of one man and one value”.

\textsuperscript{210} Akhil Bhartiya Shoshit Karmachari Sangh v. Union of India, AIR 1981 SC 298.
\textsuperscript{211} T.Devdasan v. Union of India (emphasis added) AIR 1964 SC 179.
\textsuperscript{212} Dr.Ambedkar’s Address to the Constituent Assembly, 25 November (1949) vol.ii at 184-187.
In brief, they are far behind in all respects from those who belong to so called affluent communities. Thus, the prime objective for providing a pedestal for reservation to a country which has been diseased with casteism for over a decade stands for making a coherent nation where reservations could be accepted as a tool for social levelling and curbing the social evil. Discrimination against the backward classes is prohibited by Article 15 of the Indian Constitution. Article 15 says that Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Access to shops, public restaurants, hotels and palaces of public entertainment, The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

"Nothing in this article shall prevent the State from making any special provision for women and children\(^{213}\). Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”. Thus Indian Constitution has given special benefits to the backward classes and women by forming a reservation policy included in the Constitution itself. The Constitution directs in Article 46 that the State shall promote with special care the educational and economic interests of the weaker sections of the people, in particular, of the SCs and STs, and shall protect them from social injustice and all forms of exploitation. Article 16 (4), Article 16 (4A), Article 16 (4B), Article 335, and Article 320 (4) provide explicitly for reservation in educational institutions for the backward classes and the authority of the State to make changes as required.

Article 335 reads as follows: “Claims of Scheduled Castes and Scheduled Tribes to services and posts the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State”. Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Schedule Caste and the Schedule Tribes for realization in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of

\(^{213}\) Article 15 (3) of the Indian Constitution
the Union or of a State. The Backward Classes reportedly constitute an estimated 52 percent of India’s population. Backward Classes include citizens of India who belong to Schedule Castes, Schedule Tribes, and other low-ranking and disadvantaged groups. As of now, the total reservation quota stands at 45 percent in many states of India and this includes the SCs, STs and the OBCs.

The shifting trend in India is to “abolish reservation because merit and efficiency are in danger”. The current policy fails to achieve its purpose of giving equal opportunity to every one account of the following reasons:- Lack of infrastructure in the rural areas of the country, where the proportion of backward classes is significant and when it fails to establish a national standard, which causes disequilibrium in the status of the states also when the other minorities are demanding reserved representation too, which would ultimately lead to a situation where the seats left for the majority would not be proportional with their population.

4.3.2. The Schedule Castes and Scheduled Tribes (SCs/STs)

The schedule castes and schedule tribes (referred as SC/ST) have been considered as the most under privileged class of the Indian society. The Constitution of India, in order to offset and compensate their plight, provided special provisions in their favour. There are special provisions for SC/ST in services and legislative bodies and special favour is given to them for preferential entry into the educational institution. On the contrary, Article 29 (2) read with article 15 (1) prohibits any discrimination on grounds, inter alia, of caste in admission into any educational institution maintained by the state or receiving aid out of state funds. The supreme court of India, in view of the above provisions, set aside reservation in admission to the educational institution on the community basis. In order to do away with the present constitutional hurdle, Article 15 was amended by the Constitution (First Amendment) Act 1951 and Article 15 (4) was introduced to the effect that not with standing the prohibition in Article 15 (1) and 29 (2), the state may make special provision for the advancement of any socially educationally backward classes of citizens or for the SC/ST. It may be pointed out that Article 15 (4) was initially treated as an exception to article 15 (1) and rightly so in the light of scheme of articles under part III of the Constitution of India. But an over generous and liberalized Judicial approach has given it the label of an enabling

article. The Constitution of India neither defines SC/ST nor lays down any criteria for it. However, under Article 341 and 342 the President of India from time to time has provided by constitutional (Scheduled Castes) and (Schedule Tribes) Order, list of such castes and tribes. In these orders there are list of SC/ST of different states and union territories. Later on parliament, by law, included more groups in schedule. The interesting thing is that the southern state of India has largest number of SC/ST in the respective list to their credit, totalling 304 scheduled caste and 153 scheduled tribes in all. In compliance of the national movement for ensuring rapid educational development of SC/ST and also bringing this section of the Indian population into the mainstream of national life, the University Grants Commission (UGC) in the year 1989 laid down detailed guidelines and percentage of reservation for SC/ST in admission to the educational Institution. And the existing percentage of 15 for SC and 7 for ST has received judicial sanction.\footnote{State of M.P. v. Nivedita Jain AIR 1981 SC.2045.}

Under Article 15 (3) of the Constitution, any special provision may be made for women and children belonging to all social groups transcending caste, religion etc., for their advancement and welfare in all fields. Under Article 15 (4), special provisions may be made for the advancement of any socially and educationally backward class and for the Scheduled Castes and the Scheduled Tribes. The "advancement" meant here is again in any field. This sub-clause (4) of Article 15 was inserted by an amendment in 1951. Article 16 (4) permits the state to make any provision for the reservation of appointments or posts in favour of any backward class, which, in the opinion of the state, is not adequately represented in the services under it. The expression "backward class" in this sub-clause is interpreted by the Supreme Court to mean "socially and educationally backward" as is specifically mentioned in the sub-clause (4) added later to Article 15. Article 46 directs the state to promote with special care the educational and economic interests of the "weaker sections of the people", particularly of the Scheduled Castes and the Scheduled Tribes and also directs the state "to protect them from social injustice and all forms of exploitation". Article 335 states that the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to the services and posts in connection with the affairs of the Union and of a State.
The exceptions made in the Constitution are in favour of four classes for certain stated purposes, with or without conditions —

- Women and children in general, i.e. belonging to all social groups and all the strata of the society regardless of class, caste, race, religion etc. Article 15 (3), obviously for their all-round welfare and development.

- The socially and educationally backward classes and for their advancement, Article 15(4)

- The Scheduled Castes and the Scheduled Tribes

- The 'weaker sections', which, in particular, include the Scheduled Castes and the Scheduled Tribes for promoting with special care their educational and economic interests and to protect them from social injustice and all forms of exploitation, Article 46.

The Andhra Pradesh High Court\textsuperscript{216} took a serious note of the shocking state of affairs in the university where without any guidelines, seats for SCs and STs were so distributed that it almost closed the doors for top-ranking candidates. The court quashed the reservation provision. Raju J. showing his unhappiness and anguish for the total disregarding of merit and causing rank injustice pointed out: “For Academics who are concerned with higher standard of academic excellence and discrimination of knowledge and research, such a result should be shocking. To me as a layman, who has respect and reverence for knowledge and higher academic standard, the result is too shocking. It is a severe blow to the principle of justice as understood by the society at large.”

However, in D.Nellima v. Dean P.G.Studies A.P.Agriculture University\textsuperscript{217} case where the reservation for SCs and STs had been entangled in marital and parental status problems, upsetting the valid claims of the real consumers of compensatory justice. This case include a girl belonging to his castes married a boy of ST community and claimed admission to the reserved seat in the post graduate Home Science Course. The court, turning down the said claim, ruled that such person had not undergone ‘the stresses or strains of suffered environmental disadvantages, the real backward class

\textsuperscript{216} D.Sridevi v.A.P. Agriculture University, AIR 1993 A.P.123.
\textsuperscript{217} AIR 1993 A.P.229, 247.
A year ahead a restrictive approach in interpreting the reservation provision was adopted by the Allahabad High Court in Ram Kumar v. State of U.P.\textsuperscript{218} where it was demanded that the percentage of reservation was applicable to individual specially and not to the total seats. If the plea is accepted than the candidate for the reserved quota would get more benefit. But the court fixed the ratio on the basis of the total number of seats. The court was of the view that any other court construction would be providing a further crutch to them to oust general candidate from getting admission especially. However, the whole schemes of reservation was reviewed and ceiling on it was fixed by the supreme court in its landmark judgement in Indra Sawhney v. Union of India\textsuperscript{219} where the court held the maximum limit of reservation cannot to exceed 50%. However, in extraordinary situation it may be relaxed in favour of people living in far flung and remote areas of country who because of their peculiar conditions and characteristics need a different treatment. But doing so the court said extreme caution is to be exercised and a special Case made out. On this point the majority affirmed the Balaji v. State of Mysore\textsuperscript{220} and Devadasan v. Union of India\textsuperscript{221} cases in which 50% rule was laid down and over ruled the State of Kerala v. N.M.Thomas\textsuperscript{222} and K.C.Vasant Kumar v. State of Karnataka\textsuperscript{223} cases. The court relied on the speech of Dr.Ambedkar, in the Constituent Assembly where he said that 'reservation must be confined to a minority of seats' Article 16 (4) speaks of adequate representation and not proportionate representation. Some other features of the present reservation system may be borne in mind, which is often forgotten by many, in their supercilious approach to the problems of reservation. The existing reservation in state employment under Article 16 (4) is in favour of such backward classes, which, in the opinion of the state, are "not adequately represented" in the services. It is clear from this provision that it is to give the "classes" adequate representation in state administration that reservation has been made.

It is suggested that the reservation policy must categorically lay down two things: one the SC/ST reservation shall be available only to those SC/ST who have really been disadvantaged and second, the creamy layer, following Mandal's ruling, be

\textsuperscript{218} AIR 1994 All 91.
\textsuperscript{219} AIR 1993 SC 477.
\textsuperscript{220} AIR 1963 SC 649.
\textsuperscript{221} AIR 1964 SC 179.
\textsuperscript{222} AIR 1976 SC 490.
\textsuperscript{223} AIR 1985 SC 1495.
carved out from the SC/ST for protective discrimination. The Backward classes are the next important for the reservations in the matter of admission in the educational institution is ‘Socially and Educationally Backward Classes’ (SEBC). Article 15 (4) authorizes the state to make ‘any special provision’ for the advancement of such class. The Constitution of India no where defines ‘Backward Class’ Article 46 uses another expression ‘the weaker section of the people’ which has been interpreted by Supreme Court to include all section of people rendered weaker due to reasons, including poverty and physical and natural handicaps. Further Article 16 (4) uses a different terminology, Backward Class of citizen. Each one, providing differently, has to be treated separately. The government of India has provided lists of classes which are excluded from SEBC and also detailed lists of SEBC of different states. The numbers of classes have been included from time to time, an avenue for class/caste politics. In this the state governments also did not lag behind. They constituted commissions to identify SEBC who were also given benefit of protective discrimination. The reservation for SEBC attracted the attention of various central and state backward classes’ commissions. The commissions have taken into account factors like profession, poverty, caste, status, education and social background, backward area, etc., to identify members of such classes. The Kaka Saheb Kalelkar and B.P. Mandal commission identified as many as 2399 and 3743 communities belonging to backward classes and group of other backward classes (OBC) respectively. The Mandal Commission adopted three main criteria; social, economic and educational. It may be pointed out that this is one more fertile area for politicking, leading to a number of cases of self-immolation attempted by number of student’s violent incident and riots.

The inclusion of any class or caste has been made as a vote capturing device. There are cases when the part in power on the eve of central or state election included large number of classes in the list of SEBC. It is time that the pressure tactics be avoided otherwise the caste/class strife will put an eclipse on the philosophy of common brotherhood and the egalitarian society provided in the Constitution of India. The Election Commission cannot and should not remain a silent spectator to such unfair means in elections. It must perform its duty to conduct all elections in a fair manner. At the same time the court also has to adopt a careful approach in this matter.

---

224 Indra Sawhney v. Union of India, AIR 1993 SC 447.
Coming to reservation for SEBC in admission to educational institution, it generated large number of litigations. In this area, the question as to who are the eligible SEBC to claim protective discrimination attracted maximum attention of the Supreme Court and various High Courts. In these litigations generally the courts have taken a consistent approach that caste cannot be the sole criteria in determining social and educational backwardness. The important decision in Balaji v. State of Mysore\textsuperscript{226}. The Mysore government issued and ordered under Article 15 (4) reserving seats in the medical and engineering colleges in the state as follows; backward class 28% more backward class 20%, Schedule castes and tribes 18%, thus 68% of the seats available in the college were reserved and only 32% were made available to the merit people. The validity of the order was challenged by candidates who are secured more marks than those admitted under the order. The court held that sub-classification made by the order between backward classes was not justified under Article 15 (4) must be both social and educational and not either social or economical. The court further held that reservation of 68% of seats in technical institutions, such as engineering and medical colleges to the exclusion of all other candidates if the single candidate from the scheduled tribes was available, would amount to fraud upon the Constitution. Clause (4) of Article 15 only enables the state to make special and not exclusive provision for the backward classes. The state would not be justified in ignoring altogether advancement of the rest of the society in its zeal to promote the welfare of backward classes. National interest would suffer if qualified and competent student were excluded from admission in institution of higher education. Speaking generally, the court said, the special provision would be less than 50%\textsuperscript{227} now much less than 50% would depend upon the relevant prevailing circumstances in each case. The constitution also allows compensatory discrimination in favour of the socially and educationally backward classes. The reservation concession to these classes attracted the attention of the Kerala High Court in P. Meenakutty v. State\textsuperscript{228} where annual income below 20,000 was made as the basis to claim reserved seats in favour of the socially and educationally backward communities.

The court put main emphasis on the word regular income to bring home the meaning that income which was actually earned or was likely to be earned. The kerala

\textsuperscript{226} AIR 1963 SC 649.
\textsuperscript{227} Chimraleka v. State of Mysore AIR 1964 SC 1823.
\textsuperscript{228} AIR 1992 Ker 273.
High Court computed the income of the petitioner’s father as Rs.13, 754/- and directed the village officer to issue his income certificate on the above guidelines. This case shows that the court did not adopt a mechanical approach, rather it administered justice. The net result of this judgment was that the doors of the temple of learning which were closed by the authority for petitioner were now opened so that an unequal also go to the medical colleges.

The statistics of population of socially and economically backward classes, the report of the Backward Classes Commission and the affidavit filed in this regard show that a large portion of India’s population consists of the above classes. The reservation for such classes in admission has shown increasing trend from 15 percent to 27 percent or even more. The admission lists of the educational institutes may show that apart from securing all the reserved seats, the SEBC have also occupied open merit seats. Over and above this, a provision is also made for inter-transfer of seats to SEBC quota, thus in mathematical calculation, it would enhance their share\(^{229}\). In admission than the one already prescribed under the admission brochure. In order to get the best talent, it is suggested that educational institution must first fill the reserved seats and finally come to open merit seats. Secondly the inter-transfer rule laid down in the UGC guidelines be done away with any seat of reserved category, remaining unfilled, must go to open/general merit eligible candidate. This will be a step towards building up egalitarian society in India.

4.3.3. Commission appointed to identify OBC’s

First Backward Classes Commission was set up by a presidential order on January 29, 1953 under the chairmanship of Kaka Kalelkar. The commission submitted its report on March 30, 1955. It had prepared at least of 2,399 backward castes of communities for the entire country and of which 837 had been classified as the ‘most backward’. Some of the most notable recommendations of the commission were\(^{230}\)

- Relating social backwardness of a class to its low position in the traditional caste hierarchy of Indian society.
- Treating all women as a class as ‘backward’.


\(^{230}\) http://nebc.nic.in/annual.pdf. visited on 10-10-2012.
• Reservation of 70% seats in all technical and professional institutions for qualified students of backward classes.

• Reservation of vacancies in all government services and local bodies for other backward classes.

The commission in its final report recommended caste as the criteria to determine backwardness. But this report was not accepted by the government as it feared that backward classes excluded from the caste and communities selected by the commission may be considered and the really needy would be swamped by multitude and would hardly receive special attention.

The Mandal Commission was established in India in 1979 by the Janata Party government under Prime Minister Morarji Desai with a mandate to "identify the socially or educationally backward". It was headed by Indian parliamentarian Bindheshwari Prasad Mandal to consider the question of seat reservations and quotas for people to redress caste discrimination, and used eleven social, economic, and educational indicators to determine backwardness. In 1980, the commission's report affirmed the affirmative action practice under Indian law whereby members of lower castes (known as Other Backward Classes (OBC) and Scheduled Castes and Tribes) were given exclusive access to a certain portion of government jobs and slots in public universities, and recommended changes to these quotas, increasing them by 27% to 49.5%. Mobilization on caste lines had followed the political empowerment of ordinary citizens by the constitution of free India that allowed common people to politically assert themselves through the right to vote.

The Mandal Commission adopted various methods and techniques to collect the necessary data and evidence. The commission adopted 11 criteria which could be grouped under three major headings: social, educational and economic in order to identify OBCs, Castes/classes where the number of children in the age group of 5–15 years who never attended school is at least 25 per cent above the state average, Castes/classes where the rate of student drop-out in the age group of 5–15 years is at least 25 percent above the state average, Castes/classes amongst whom the proportion of matriculates is at least 25 per cent below the state average.

232 Bhattacharya, Amit. "Who are the OBCs ?" Retrieved on 10-10-2-12.
The report of Mandal commission was submitted in December 1990. The recommendations stated in the report are, It may appear the enlistment of Other Backward Classes is part of the larger national problem of the removal of mass poverty. This is only partially correct. The deprivation of OBCs is a very special case of the larger national issue: here the basic question is that of social and educational backwardness and poverty is only a direct consequence of these two crippling caste-based handicaps. As these handicaps are embedded in our social structure, their removal will require far-reaching structural changes. No less important will be changes in the perception of the problems of OBCs by the ruling classes of the country.

One such change in the attitude of the ruling elite pertains to the provisions of reservation in Government services and education institutions for the candidates of Other Backward Classes. It is generally argued that looking to the large population of OBCs (52%), recruitment of a few thousand OBCs every year against reserved vacancies is not going to produce any perceptible impact on their general condition. On the other hand, the induction of a large proportion of employees against reserved vacancies will considerably impair the quality and efficiency of the Government services. It is also stated that the benefits of such reservations will be skimmed off by those sections of OBCs which are already well off and the really backward sections will be left high and dry. Another argument advanced against this approach is that the policy of large scale reservations will cause great hurt burning to those meritorious candidates whose entry into services will be barred as a result thereof. All the above arguments are based on fairly sound reasoning. But these are also the arguments advanced by the ruling elite which are keen on preserving its privileges. Therefore, like all such reasoning, it is based on partisan approach. By the same token, while illuminating some immediate areas of concern it tends to ignore much larger issues of national importance.

It is not at all our contention that by offering a few thousand jobs to OBC candidates it shall be able to make 52% of the Indian population as forward. But it must recognise that as essential part of the battle against social backwardness is to be fought in the minds of the backward people. In India Government service has always been looked upon as a symbol of prestige and power. By increasing the presentation of OBCs in Government services, it give them an immediate feeling of participation in the governance of this country. When a backward class candidate becomes a Collector or a
Superintendent of Police, the material benefits accruing from his position are limited to the members of his family only. But the psychological spin off of this phenomenon is tremendous; the entire community of that backward class candidate feels socially elevated. Even when no tangible benefits flow to the community at large, the feeling that now it has its “own man” in the “corridors of power” acts as a morale booster. In a democratic set-up every individual and community has a legitimate right and aspiration to participate in ruling this country. Any situation which results in a near-denial of this right to nearly 52% of the country’s population needs to be urgently rectified.

Apprehensions regarding drop in the quality of Government services owing to large-scale induction of S.C. / S.T. and O.B.C. candidates against reserved posts may be justified only up to a point. But is it possible to maintain that all candidates selected on merit turn out to be honest, efficient, hard-working and dedicated? At present, top echelons of all the Government services are manned predominantly by open competition candidates and if the performance of our bureaucracy is any indication, it has not exactly covered itself with glory. Of course, this does not imply that candidates selected against reserved posts will do better. Chances are that owing to their social and cultural handicaps they may be generally a shade less competent. But, on the other hand, they will have great advantage of possessing first hand knowledge of the sufferings and problems of the backward sections of society. This is not a small asset for field workers and policy makers even at highest level. It is no doubt true that the major benefits of reservation and other welfare measures for Other Backward Classes will be cornered by the more advanced sections of the backward communities. But is not this a universal phenomenon. All reformists’ remedies have to contend with slow recovery along the hierarchical gradient; there are no quantum jumps in social reform. Moreover, human nature being what it is, a “new class” ultimately does emerge even in classless societies. The chief merit on reservation is not that it will introduce egalitarian amongst OBCs when the rest of the Indian society is seized by all sorts of inequalities. But reservation will certainly erode the hold of higher castes on the services and enable OBCs in general to have a sense of participation in running the affairs of the country.

It is certainly true that reservation for OBCs will cause a lot of heart burning to others. But should the mere fact of this heart burning be allowed to operate as a moral veto against social reform?... When the higher castes constituting less than 20% of the
country's population subjected the rest to all manner of social injustice, it must have caused a lot of heart burning to the lower castes. But now that the lower castes are asking for a modest share of the national cake of power and prestige, a chorus of alarm is being raised on the plea that this will cause heart burning to the ruling elite. Of all the specious arguments advanced against reservations for backward classes, there is none which beats this one about 'heart-burning' in sheer sophistry. In fact the Hindu society has always operated a very rigorous scheme of reservations, which was internalised through caste system. Eklavya lost his thumb and Shambhuk his neck for their breach of caste rules of reservations. The present furore against reservations for OBCs is not aimed at the principle itself, but against the new class of beneficiaries, as they are now clamouring for a share of the opportunities which were all along monopolised by the higher castes.

Non Resident Indian (NRI), The right to education will be available to all persons to whom the right to life and personal liberty is available in article 21 of the Constitution. Now the question is whether the provision of reservation would be extended to Non Resident Indian or foreign students. So far our constitutional provision goes there is no such provision for NRI students. However, the judiciary is extending support to them very leniently. In UnniKrishnan v. State of A.P.233 the Supreme Court modified the scheme laid down in Mohini Jain234 in relation to Non-Resident Indian students and held that out of total seats 5% seats can be filled up by NRI students on the basis of merit to be judged by management of the college concerned and not on the basis of the entrance examination.

Subsequently, the problem pertaining to the submission of foreign student to medical colleges came up before the Madras High Court in Sajitha G. v. Secretary to the Govt. of India, Ministry of External Affairs235. The petitioner was born in Malaysia and even had her schooling at Sahen, Tamil Nadu and she had completed the Higher Secondary at Sahen in March 1988. She was a foreign national and even as on date she is Malaysia citizen, and as such she has to apply to the ministry of foreign affair through Indian High Commission at Malaysia for the MBBS courses. It seems for the academic year 1992-93, the criteria for selecting candidates for medicine is only on the

233 AIR 1993 SC 2178
234 AIR (1992)3 SCC 666.
235 AIR 1994 Mad. 204.
basis of the marks obtained by the candidate, who have submitted their applications. The petitioner was not selected. It is alleged by the petitioner that she secured 82.5% marks, which is higher than the marks obtained by one Pushparani who secured only 72% and had not selected for the reason best known to the respondent since there is no such prescribed norm for selection of students under self financing foreign student’s selection scheme. The court arrived to the conclusion that it is the high time for the government of India to frame guidelines for admitting students in professional colleges merit alone should be the sole criteria for admission for foreign national coming from other countries.

The court directed the respondent to consider the application of the petitioner for M.B.B.S courses under the self financing foreign student’s schemes for the year 1992-93 and select the student on the basis of the marks obtained and allot a seat to the petitioner. However, the question before the Delhi High Court in Parimal Roy v All India Institute of Medical Science236 was whether the constitutional reservation must be made applicable in the category of foreign students. The court was of the view that the constitutional reservation has not been made applicable in the category of foreign students. The justification submitted by AIIMS is that in this category, a large number of foreign students are allotted seats. Since there are no distinction between general category and scheduled caste and scheduled tribe candidates in foreign countries therefore, this contention cannot be made applicable to those candidates. The court found considerable force in the submission of the respondents in not making policy of reservation applicable in this category and consequently the court found no merit in the submission of the petitioner. The above decision is a laudable step in the right direction.

Allotment of NRI seats was the issue in another case237. The Kerala High Court clarified that the NRI quota of 15% has to be curbed out and reckoned only out of the management quota which is 50% of the total sanctioned seats. Here, section 3 (4) of Kerala Self-Financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004 was challenged. The court opined that clear statutes have to be interpreted according to the plain language contained therein. Educational Concessions, Our educational system is restricted in

236 AIR 1996 Del.335.
character, results in a high degree of wastage and is least suite to the requirements of an
over-populated and developing country. It is a legacy of the British rule which was
severely criticized during the Independence struggle and yet, it has not undergone any
structural changes. Though it is least suited to the needs of backward classes, yet, they
are forced to run the rat-race with others as no options are available to them. As "educational reform" was not with in the terms of reference of this Commission, we are
also forced to tread the beaten and suggest only the palliative measure within the
existing framework. Various State governments are giving a number of educational
concessions to Other Backward Class students like the exemption of tuition fees, free
supply of books and clothes, mid day meals, special hostal facilities, stipends, etc.
These concessions are all right as far as they go but they do not go far enough. What is
required is, perhaps, not so much the provision of additional funds as the framing of
integrated schemes for creating the proper environment is incentives for serious and
purposeful studies. It is well known that most backward class children are irregular and
indifferent students and their drop-out rate is very high. There are two main reasons for
this. First, these children are brought up in the climate of extreme social and cultural
depression and, consequently, a proper motivation for schooling is generally lacking.
Secondly, most of these children come from very poor homes and their parents are
forced to press them into doing small chores from a very young age. Upgrading the
cultural environment is a very slow process. Transferring these children to an
artificially upgraded environment is beyond the present resources of the country. In
view of this it is recommended that this problem may be tackled on a limited and
selective basis on two fronts. First, an intensive and time-bound program for adult
education should be launched in selected pockets with high concentration of OBC
population. This is a basic motivational approach, as only properly motivated parents
will take serious interest in educating their children. Secondly residential schools
should be set up in these areas for backward class students to provide a climate
especially conductive to serious studies. All facilities in these schools including board
and lodging will have to be provided free of cost to attract students from poor and
backward homes, separate government hostels for Obis students with the above
facilities will be another step in the right direction.

A beginning on both these fronts will have to be made on a limited scale and
selective basis. But the scope of these Activities should be expanded as fast as the
resources permit. Adult education programs and residential schools started on a selective basis will operate as growing points of consciousness for the entire community and their multiplier effect is bound to be substantial. Whereas several states have extended a number of ad hoc concessions to backward class students, few serious attempts have been made to integrate these facilities into a comprehensive scheme for a qualitative upgradation of educational environment available to OBC students.

After all, education is the best catalyst of change and educating the backward classes is the surest way to improve their self-image and raise their social status. As OBCs cannot afford the high wastage rates of our educational system, it is very important that their education is highly biased in favour of vocational training. After all reservations in services will absorb only a small percentage of the educated backward classes and the rest should be suitably equipped with vocational skills to enable them to get a return on having invested several years in education. It is also obvious that even if all the above facilities are given to OBC students, they will not be able to compete on an equal footing with others in securing admission to technical and professional institutions. In view of this, it is recommended that seats should be reserved for OBC students in all scientific, technical and professional institutions run by the central as well as the state Governments. This reservation will fall under Article 15(4) of the Constitution and the quantum of reservation should be the same as in the government services, i.e., 27%. Those States which have already reserved more than 27% seats for OBC students will remain unaffected by this recommendation while implementing the provision for reservation. It should also be ensured that the Candidates who are admitted against the reserved quota are enabled to derive full benefit of higher studies. It has been generally noticed that these OBC students coming from an impoverished cultural background, are not able to keep abreast with other students. It is, therefore, very essential that special coaching facilities are arranged for all such students in our technical and professional institutions. The concerned authorities should clearly appreciate that their job is not finished once candidates against reserved quota have been admitted to various institutions. In fact the real task starts only after that unless adequate follow-up Action is taken to give special coaching assistance to these students, not only these young people will feel frustrated and humiliated but the country will also be landed with ill-equipped and sub-standard engineers and other professionals.
4.4 The legislation in India related to education

In the constitutional debates the discussion about education was placed while making the provision of free and compulsory education and the state should accept in this country the same responsibility in regard to mass education that the government of most civilized countries are already discharging and that a well considered scheme should be drawn up and adhered to till it is carried out. The well being of millions upon millions of children who are waiting to be brought under the influence education depends upon it...” The above words are part of the resolution which Gopal Krishna Gokhale moved in the Imperial Legislative Council on 18th March, 1910 for seeking provision of ‘Free and Compulsory Primary Education” in India. The following Acts to be taken as the background related to education this initiative must however be seen as part of the following sequence of events:

- 1870: Compulsory Education Act passed in Britain
- 1893: Maharaja of Baroda introduces Compulsory Education for boys in Amreli Taluk.
- 1906: Maharaja of Baroda extends Compulsory Education to rest of the state.
- 1906: Gopal Krishna Gokhale makes a plea to Imperial Legislative Council for Introduction of Free and Compulsory Education
- 1910: Gokhale proposes Private members Bill (Rejected)
- 1917: Vithalbhai Patel is successful in getting the Bill passed - First Law on Compulsory Education passed (Popularly Known as Patel Act)
- 1918: Every Province in British India gets Compulsory Education Act on its 1930 Statute Book

238 [http://righttoeducation.in/faq/category/frequently-asked-questions/history-Act#304n319](http://righttoeducation.in/faq/category/frequently-asked-questions/history-Act#304n319)
In 1949 a University Education Commission was appointed under the chairmanship of Dr. S. Radhakrishnan. In 1946, the Constituent Assembly was constituted to frame a Constitution for free India.

In 1964 the Government of India appointed an Education Commission under the Chairmanship of Dr. D.S. Kothari.

In July 1968 the Government of India declared its National Policy on Education to promote education amongst India's people.

The Supreme Court in 1993 held free education until a child completes the age of 14 to be a right (Unnikrishnan and others Vs State of Andhra Pradesh and others) by stating that: "The citizens of this country have a fundamental right to education, the said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State." It has taken so many years, and half-a-dozen drafts to put in place enabling legislation making the right to education a fundamental right in India. The Lok Sabha, the lower house of the Indian Parliament, has adopted the Right of Children to Free and Compulsory Education Bill 2009, approving it by voice vote on Tuesday, August 4, 2009. The upper house, the Rajya Sabha, passed the Bill on July 20. The year 2010 was a landmark year for education in the country. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, representing the consequential legislation to the Constitutional (86th Amendment) Act, 2002, was enforced with effect from 1st April, 2010. The RTE Act secures the right of children to free and compulsory education till completion of elementary education in a neighbourhood school. The Act lays down the norms and standards relating to pupil teacher ratios, buildings and infrastructure, school working days and teacher working hours.

4.4.1 The Right of Children to Free and Compulsory Education Act, 2009.

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education
(RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), which was passed by the Indian parliament on 4 August 2009, describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution\(^\text{239}\). India became one of 135 countries to make education a fundamental right of every child when the Act came into force on 1 April 2010\(^\text{240}\). The Present Act has its history in the drafting of the Indian constitution at the time of Independence\(^\text{241}\) but are more specifically to the Constitutional Amendment that included the Article 21A in the Indian constitution making Education a fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill.

A rough draft of the bill was composed in the year 2005. It received much opposition due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The sub-committee of the Central Advisory Board of Education which prepared the draft Bill held this provision as a significant prerequisite for creating a democratic and egalitarian society. Indian Law commission had initially proposed 50% reservation for disadvantaged students in private schools.\(^\text{242}\) The bill was approved by the cabinet on 2 July 2009\(^\text{243}\). Rajya Sabha passed the bill on 20 July 2009 and the Lok Sabha on 4 August 2009. It received Presidential assent and was notified as law on 26 August 2009 as The Children’s Right to Free and Compulsory Education Act. The law came into effect in the whole of India except the state of Jammu and Kashmir from 1 April 2010, the first time in the history of India a law was brought into force by a speech by the Prime Minister. In his speech, Man Mohan Singh, Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An

---


\(^{240}\) 1 April 2010. "Education is a fundamental right now". The Hindu.

\(^{241}\) "Universal Education In India: A Century Of Unfulfilled Dreams" Retrieved 10-10-2012.

\(^{242}\) "Centre buries Right to Education Bill – India – The Times of India". The Times of India. Retrieved 10-10-2012.

education enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and Active citizens of India.\textsuperscript{244}

The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25\% of seats to children from poor families (to be reimbursed by the state as part of the public-private partnership plan). It also prohibits all unrecognized schools from practice, and makes provisions for no donation or capitation fees and no interview of the child or parent for admission\textsuperscript{245}. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age. The Right to Education of persons with disabilities until 18 years of age is laid down under a separate legislation-the Persons with Disabilities Act. A number of other provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act. The Act provides for a special organization, the National Commission for the Protection of Child Rights, an autonomous body set up in 2007,\textsuperscript{246} to monitor the implementation of the Act, together with Commissions to be set up by the states. It has been pointed out that the RTE Act is not new. Universal adult franchise in the Act was opposed since most of the population was illiterate. Article 45 in the Constitution of India was incorporated which enshrines that the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. As that deadline was about to be passed many decades ago, the education minister at the time, M C Chagla, memorably said: "Our Constitution fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is expanding... They meant that real education should be given to our children between the ages of 6 and 14"\textsuperscript{247}. In 1990s, the World Bank funded a number of measures to set up schools within easy reach of rural communities. This effort was consolidated in

\textsuperscript{244}"Prime Minister's Address to the Nation on The Fundamental Right of Children to Elementary Education". Pib.nic.in. Retrieved 12-10-2-12.


\textsuperscript{246}"National Commission for Protection of Child Rights". Ncpcr.gov.in.

\textsuperscript{247}http://www.indg.in/primary-education/policiesandschemes/rte_ssa_final_report.pdf
the Sarva Shiksha Abhiyan model in the 1990s. RTE takes the process further, and makes the enrolment of children in schools a state prerogative. RTE has been a part of the directive principles of the State Policy under Article 45 of the Constitution, which is enshrined under part IV of the constitution and are not enforceable. For the first time in the history of India this right was made enforceable by inserting it in Chapter 3 of the Constitution as Article 21A. This entitles children to have the right to education enforced as a fundamental right.

4.4.2 The salient features of the Right of Children for Free and Compulsory Education Act:

After many years of debates RTE was enacted making, Free and compulsory education to all children of India in the six to 14 age groups, No child shall be held back, expelled, or required to pass a board examination until completion of elementary education, 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, Proof of age for admission: 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, A child who completes elementary education shall be awarded a certificate, Calls for a fixed student-teacher ratio it also, Provides for 25 percent reservation for economically disadvantaged communities in admission to Class One in all private schools, Mandates improvement in quality of education, School teachers will need adequate professional degree within five years or else will lose job and regarding school infrastructure where there is problem it has to be include in three years are finally there is measure of sharing financial burden between state and central government.
In brief, the Act provides for neighbourhood schools within reach, with no school refusing admission to any child. It also provides for adequate number of qualified teachers to maintain a ratio of one teacher for every 30 students. The schools have to train all its teachers within 5 years. They have to ensure proper infrastructure, which includes a playground, library, adequate number of classrooms, toilets, barriers free access for physically challenged children and drinking water facilities within three years. 75% members of the school management committees will comprise parents of the students who will monitor the functioning of the schools and utilization of grants. The school management Committees or the local authorities will identify the out of school children and admit them to standards appropriate to their age, after giving them proper training.