CHAPTER 1
INTRODUCTION
Chapter- I

1.1. General Introduction

The importance of learning is to enable the individual to put his potentials to optimal use. Education makes man a right thinker and a correct decision-maker. It achieves this by bringing him knowledge from the external world, teaching him the reason and acquainting him with past history, so that he can be a better judge of the present. With education, a person finds person in a room with all its windows open to the outside world. A well educated man is a more dependable worker, a better citizen, a centre of wholesome influence and pride to his community and honour to his country. A nation is great only in proportion of its advancement in education. Over the years, the demand for children’s education has grown by leaps and bounds. Everybody from the poorest of the poor to the richest of the rich acknowledges the value of education as an input for overall development of a person. Basically, the object of education is threefold i.e. physical, mental and spiritual. A perfect system of education must do full justice to all the three above. Education is the primary vehicle for human, economic and social development, profiting both the individual and society. It is very difficult for individuals to exercise their civil, political, economic and social rights unless they receive the basic education.

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual’s image of the future. Education being a social process, inevitably occurs in a social matrix norms of society should therefore set the aims of education. Education must be sensitive to the demands and wishes of society. Education should concentrate on the individual needs as well as aspirations of society. Many education philosophies have stated the aim of education in terms of the harmonious development of personality that is all round development of human powers and potentialities. The principle of balance symmetry is the ruling conception of this aim. Therefore a balanced education system is needed with adequate educational objectives for imparting knowledge.

India has always been seen as a nation blessed with intellectual brain. It is a nation which has contributed substantially to the world knowledge pool through several notable literatures. It is important to have knowledge, so that one can pass on

knowledge to the next generation. Education is important because it equips us with knowledge that is needed to make an individual dreams come true. Education opens doors of brilliant career opportunities. It fetches better prospects in career and growth. It is a preparation for living in a better way in future with an ability to participate successfully in the modern economy and society. Education is empowerment for socio-economic mobility, an instrument for reducing socio-economic inequalities, and equipment to trigger growth and development. It is through education that knowledge and information is received and spread throughout the world. There has been a paradigm shift in this sphere: from education as a transcendental and value to education to cost recovery system. The feature such as co modification of education, private sector’s dominance in higher education, and market-driven education flowing from world trade law stand juxtaposed to the fact that largest pool of illiterates is in India and high dropouts of students even at primary level here is owing to economic reasons. The linkage of right to education to right to dignified life, equality, and freedom and cultural and minority right has made it highly intricate and the extent of regulations relating to it from different perspectives, quite complex. The right to education originates from the apparent notion that it is obligatory for the state to provide education to its citizens. The core of the right to education relates to its substance, which differs from education itself. Effective and transformative education should be the result of the exercise of the right to education, which is a universal human right. The right is about the entitlement to claim the substance of it; it relates to the possibility of demanding the right to education and making it justifiable. The substance of the right to education is given in broad terms by international legislation but real meaning is given to it as national legislators incorporate it.

The importance of education cannot be neglected by any nation, and in present world, the role of education has become even more vital. It is an absolute necessity for economic and social development of any nation. In the context of a democratic form of the government like Indian, education is an immediate a social and political necessity. Even several decades ago, Indian leaders harped upon universal primary education as a desideration for national progress. The great land of India where knowledge first lit its torch and where the human mind soared to the highest pinnacle of wisdom, the percentage of illiteracy should be appalling. The foremost need to be satisfied by Indian
education system is, therefore, the eradication of illiteracy which persists in a depressing measure.

A true democracy is one where education is universal and the nation and know-how to govern themselves. Education is certainly a human right which has been transformed into a “luxury” instead of a right in many places. Signs of that can be seen through words and images of student journalists who report on the condition of education worldwide for the Education for All consortia and observe that hindrances in education range from lack of schools in Mozambique to issues that affect curricula formulation and not living up to the prestige of a previous era, like in the Russian Federation system. In India the situation is no different as many people were excluded from their right to education for very many years. Education is a primary need of every human being and literacy is an indispensable tool for this purpose. It has been recognized that the aspiration and hopes for the people of Indian countries depend on the provision of appropriate systems of education. The great problem of poverty, ignorance and disease can be addressed effectively only if India succeed in programmes for education and literacy. There is an ancient Chinese said ‘if you are thinking of one year, plant rice, if you are thinking of a decade, plant trees, if you are thinking of a century, educate the people’. Recently in many countries the right to education is considered as a fundamental right, and so it became obligatory on the countries to provide education for all people and so India is no exception for this.

The Indian education system has although undergone a tremendous transformation from an elite system, nurtured by colonial roots to a mass system, attempt to meet the demand of a vibrant democracy, it is continued to be considered as a social service rather than a trade service. Learning is considered an excellence of wealth that none can destroy and which cannot be attained by chance. It must be sought for with ardour and pursued with diligence. The relation between teachers (Gurus) and the pupils (Shishya) are considered as sacred and teacher has been given a respectable status in the society after mother and father. The education system in India passed through three main era’s i.e Gurukula era, British era and Independence era.

When it comes to Gurukula era the ideal of education has been very grand, noble and high in ancient India. The Gurukula System was an important concept associated with pursuit of studies in ancient India. A gurukula was a place where a teacher or a
guru lived with his family and establishment and trained the students in various subjects. The Gurukulas usually existed in forests. Admission into the gurukula was not an easy process. A student had to convince his guru that he had the desire, the determination and the required intelligence to pursue the studies and had to serve him for years before he was admitted into the school and initiated into the subjects. Students in the Gurukulas were subjected to rigorous discipline. They had to live in a very austere environment and practice yoga and meditation under the supervision of the master. On specific occasions they had to undergo fasting as a necessary means of purification and mastery of the body and mind. Ancient India had a number of universities and centers of education, where not one guru but several lived together and taught to groups of students different subjects. Knowledge was passed on orally from one generation to another in ancient India. Education involved three basic processes, one, which included ‘Sravana’ (stage of acquiring knowledge of ‘Shrutis’ by listening). Two, ‘Manana’ (meaning pupils to think, analyse themselves about what they heard, assimilate the lessons taught by their teacher and make their own inferences,) and three ‘Nidhyasana’ (meaning comprehension of truth and and apply/use it into real life).2

The introduction of modern education in India was primarily motivated by politico-administrative and economic needs of Britain in India. Modern education system was implanted by British rulers. Before the advent of the British in India, education system was a private one. In 1835, Lord Macauley introduced modern education in India. It was the introduction of Wood’s dispatch of 1854, known as Magna Carta of Indian education that laid the foundation of present system of education and changed the scenario. The main purpose of it was to prepare Indian Clerks for running local administration. Under it the means of school educations were vernacular languages, while the higher education was granted in English only. British government started giving funds to indigenous schools in need of help and slowly some of the schools became government aided. Under the British rule in India, education was imparted through the medium of English. It not only deprived the people of the knowledge of their own language and literature, but also wasted the precious time of the youth in cramming the rules of grammar of a foreign language. The pattern of education developed in India during the British rule benefited the Indians but was

2 Jho-Charadhar, 1987, History and Sources of law in ancient India.
unplanned. In 1949 a University Education Commission was appointed under the chairmanship of Dr. S. Radhakrishnan to study the problems of university education and to recommend remedial measures. The Commission did a fine job and submitted a valuable report. According to one of the recommendations of this Commission, the University Grants Commission was set up to look after university education in the country. To study the problems of secondary education in the country and to make recommendations for changes to be introduced therein, a Secondary Education Commission was set up under the Chairmanship of Dr. Lakshman Swami Mudaliar. This Commission submitted its report in 1953 after undertaking a thorough study of the various aspects of secondary education in the country. In the amended form of the Constitution education was inserted as Directive principle of State Policy, in the form of providing 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 obviously it is the Indian judiciary which has taken an Active role in implementing the right to education in India.

The Indian Constitution has recognized the significance of education for social transformation. The constitution is a document committed to social justice. The preamble of the constitution affirms a determination to secure liberty of thought expression, belief, faith and worship and equality of status and opportunity and to promote amongst the people a feeling of fraternity, ensuring the dignity of the individual and the unity of the nation. Education is considered as an integral part of national development. Development in this aspect is not only ‘economic growth’ rather it ‘comprehended opportunities’ to all people for better life with man as end of development and instrument. Education is a human right, the exercise of which is essential for individual development and fulfillment. The capacity of an individual to contribute to societal development is made possible and enhanced by his or her development as an individual. Thus education is considered to be the basic need and so concern for the increase in literacy rate initiated it to form the cornerstone for making the provision of equality of opportunity a reality.

1 M.L. Dhawan, Issues in Indian Education, Laha books, Adarsh Nagar, Delhi-110 033, (2006),
In the year 2002 under Constitution Eighty-Sixth Amendment, right to education was guaranteed fundamental right under the Indian constitution Article 21A. It was only in 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 Indian legislatures who are deemed to be reflecting the wishes of the people. However, right to education has been made by the Constitution (Eighty-Sixth Amendment) Act, 2002 a fundamental right.

The 86th Constitutional Amendment ensures 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 thereby Article 21A was inserted into the Constitution of India. The 86th amendment further inserted Article 51A (k) making it a fundamental duty on part of 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." These fundamental duties 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.

Article 21A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words ‘free and 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

4 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.
5 AIR 1993 SC 2178
6 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.”
enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act. A public duty is a correlative to the authority of the State in which the State is authorised to obligate and force the public to send the children to the schools. The role of the Indian Judiciary and the scope of judicial interpretation has expanded remarkably the protection of right to education in recent times, partly because of the tremendous growth of statutory intervention. The judiciary plays an important role in the protection of fundamental rights both to citizen and non-citizens alike.

In the International Scenario the Universal Declaration of Human Rights 1948, proclaimed the international standard of human right and it is the first international document which expressly declared the right to education as an important independent right. It is therefore necessary to look into the Universal Declaration and other international and developments so that the right in Indian country may be raised to the international standard. Education is a fundamental human right and essential for the exercise of all other human rights. It promotes individual freedom and empowerment and yields important development benefits. Yet millions of children and adults remain deprived of educational opportunities, many as a result of poverty. Normative instruments of the United Nations and UNESCO lay down international legal obligations for the right to education. These instruments promote and develop the right of every person to enjoy access to education of good quality, without discrimination or exclusion. These instruments bear witness to the great importance that Member States and the international community attach to normative action for realizing the right to education. It is for governments to fulfil their obligations both legal and political in regard to providing education for all of good quality and to implement and monitor more effectively education strategies. Education is a powerful tool by which economically and socially marginalized adults and children can lift themselves out of poverty and participate fully as citizens. The process of incorporation is more important than the process of adhering to an international treaty because it is this incorporation that entitles people to demand for their right to education in international scenario.

1.2. Significance of the study

In the present century, there is an unprecedented demand for Education as education brings perfection to life which means the growth and development. Education is an integral part of country's development and can result in the promotion
of all round empowerment of masses. Education qualifies a person to fulfil certain economic, political and cultural functions and thereby improving their socio-economic status. It helps to equalize status between individuals who belong to different social strata. Thus Education is the basic need of a person along with food, clothing and shelter. Education has an immense impact on the human society. One can safely assume that a person cannot have overall development unless he is educated. It trains the human mind to think and take the right decision. In other words, man becomes a rational animal when he is educated. It is through education that knowledge and information is received and spread throughout the world. An uneducated person cannot read and write and hence he is closed to all the knowledge and wisdom he can gain through books and other mediums. In other words, he is shut off from the outside world. In contrast, an educated man lives in a room with all its windows open towards outside world. Without education, a man is so circumstanced he knows not how to make best of himself. Therefore, for him the purpose of society is ab-initio frustrated. Education is important because without it, early civilizations would have struggled to survive and thrive as a culture. It is also important that adults trained the young of their society in the knowledge and skills they would need to master and eventually pass on. It is universally accepted that education empowers the people for the full development of human personality, strengthens the respect for human rights, and helps to overcome exploitations and traditional inequalities of caste, class and gender.

These reasons impelled the researcher to undertake this research work as education has always been and continue to be one of the most important needs of mankind. In India the government committed itself the responsibility of providing education to all its citizens. In this process the basic human rights, especially the right to education of the individual is being protected. This work focuses on the importance of education, its guarantee under the Indian Constitution under Article 21A, the enactment of legislations relating to this right, the loop holes in the legislation and the suggestions for improvement of this basic human right, which brings out equality as social reality.

1.3. Objectives of the present study

Education is one of the potent means of reconstructing a society. However the present system is loaded with inherent weaknesses which are undermining the
realisation of democratic ideals. The educational system in the country at present is almost the same as it was during British rule in India. Education which is necessary for a budding Indian democratic setup, the Indian constitution in its unamended form has included the education in directive principles of state policy under Article 45 of the Indian Constitution. Later in the year 2002 it was included as fundamental right under Article 21A which 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 education as a fundamental right has been incorporated under the Indian Constitution with great vision as education is the primary vehicle for human economic and social development profiting both individual and society. The main objectives of the present study are

➢ To trace the origin and development of education as a system in India.
➢ To make a comparative study of education system in other countries like U.S.A. U.K. Canada, and some of the Western and Eastern countries.
➢ To make a brief study about the deliberations & discussions in Universal Declaration of Human Rights, International Covenant of Economic and Social Cultural Rights and other international treaties, declarations, conventions relating to education.
➢ To trace the constitutional provisions dealing with protection of right to education as a fundamental right and directive principles of state policy.
➢ To analyze the role of Judiciary in interpreting the Right to education as a fundamental right and Supreme Court case laws related to this right.
➢ To focus on the inherent weaknesses in Right to Education Act and its implementation regarding private schools.
➢ To highlight the deficiencies in the existing Education Act and to suggest suitable suggestions that may be adopted for its effective implementation.

1.4. Hypothesis

The researcher has taken up the concept to consolidate the importance of right to education in India and to give suggestions for the right to education under the Indian constitution to work out effectively. The researcher has formulated the following hypothesis:

7 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.
Education can play a vital role in promoting tolerance and understanding by developing a rational, secular and human outlook, the principles which are embedded in the constitution and to make equality a social reality.

The central government has so far been practicing the method of good will and co-operation in taking along with it the various state governments in matters educational with the basic motive that in a democratic country like India, education is a social and political necessity as the roots of successful democracy can be traced from right to information.

The fundamental right to education under the Indian Constitution has to be implemented through rights based model of legislation i.e. it should develop capacity building strategies for not only right holders to claim their rights but also for duty bearers to fulfill their obligations.

The right to education springs up from right to life under Article 21 of the Constitution as this right cannot fully be appreciated without the enjoyment of right to education and so it ended in inserting Article 21A to the Constitution.

The legislation relating to this right has to be strictly enforced in present scenario where education is converted as business to make profits.

The interventions of the Judiciary from time to time upholding the responsibilities of the states in all important educational endeavours have been positive in providing directions to the state to make this right a reality.

1.5. Methodology

Law is distinct from other social sciences because of its normative character. To achieve the desirable goals, social and ethical values, the law not only regulates human conduct and relationship but also provides for stability and continuity of legal system.

So the researcher in his work titled ‘Right to Education under the Indian Constitution—A socio-legal perspective’ feels that the research can be fruitfully carried out by the traditional or doctrinaire method. In general, ‘Doctrinal Research’ is concerned with analysis of case law, arranging, ordering, and systematizing legal propositions and to study the legal institutions. Hence, the main research is analytical, descriptive and doctrinaire study and not based on any empirical data and no field studies etc were conducted.
The research on ‘Right to Education under the Indian Constitution – A socio-legal perspective’ is based on primary, secondary and tertiary sources. As a primary source for the presentation and analysis of information, the relevant original texts of legislations, judgments, national and international conventions, policy documents and committee reports have been examined from legal and non-legal sources. Books, journals, periodicals, reports and data related to education and others have been used as secondary source materials. Further, the news items from various news papers and news magazines has also been utilized as secondary source. The tertiary sources in the form of websites have been browsed extensively to get information and literature on the topic of the study both at the international and national level by using recent technology. The researcher also visited several libraries to collect related matter of right to education. In the Judicial perspective the researcher has limited his work to case laws decided by the Indian Supreme Court and some of the landmark cases decided by various High Courts.

1.6. Review of Literature

Literature in connection with the present problem is reviewed from the earlier studies; published books are the main sources which are covered for the purpose to ascertain the views and conclusion of earlier works regarding the study of Right to Education as a fundamental right and right to education under the Indian constitution.

- R.Thapar, ‘A History of India’, Penguin Books, 1966, Vol- 1 in this book the history of education has been discussed and explanation regarding the education system in the ancient period has been revised.
- M.L.Dhawan ‘Issues in Indian Education’ Published in 2006, by Isha books, Adarsh Nagar, Delhi-110 033. Deals with the constitutional provisions related to education and the issues in the Indian education were discussed.
- B.Shiva Rao, ‘Framing of India’s Constitution’, a select document, 1968 Vol.1, discussed about the Constituent Assembly debates behind the right and how this concept of education has come out as directive principle of state policy in the unamended form of the constitution.

T.N. Siqueria, 'The Education of India', Oxford University press. 1952, discussed about the education system that prevailed in India immediately after independence.


Tilak J.B.G, in his work 'Privatization of education', (educational society and development, NIEPA, 2003) highlights that education promotes social and economic development by building human and technical capabilities of society.

Agarwal and Sharma's, 'Higher Education in the Developing World' (West fort Publications 2002) contains a wide-ranging discussion on educational issues in developing and transitional economies.

The National Educational Policy (2009) of Government of India is also discussed in relevant chapters.

M.P. Jain, 'Indian Constitutional law (6th edition, 2010), has devoted his energies in explaining the legal interpretation of various provisions of the Indian Constitution regarding right to education.


1.7. Scheme of Study

The entire study is divided into six chapters.

Chapter I deals with General Introduction, Significance of the study, Objectives of the study, Hypothesis formulated, Methodology followed, Review of Literature and Scheme of study.

Chapter II covers Origin, Growth, Development of the concept of education, meaning of education and the Education system prevailing in other countries.

Chapter III highlights how concept of Education is discussed in various International Instruments that played an important role for the protection of this right and to make it a universal right.

Chapter IV discusses Right to Education under the Indian Constitution, the constituent debates regarding this provision, the insertion of Article 21A as a fundamental right and the exclusive law relating to it.

Chapter V deals with the right to education and analyses of cases decided by Supreme Court, and also landmark cases decided by various High Courts in India for implementation of this right.

Chapter VI gives out the conclusion to the work and the role of Government, the parents and all the stake holders involved in implementing this right. Further it lists out various suggestions to make this basic human right implementable and enforceable.