CHAPTER-4

RIGHT TO EDUCATION IN VARIOUS STATUTE
RIGHT TO EDUCATION IN VARIOUS STATUTE

A: - CONSTITUTIONAL PROVISIONS

In the constitution of India, there are several provisions of the concept of education. The constitution 86th Amendment Act, enacted on 12 December 2002, made three changes in the Constitution of India. First, a new article, 21 A was inserted in the part on the fundamental rights. Article 21 A of the Constitution reads as: “The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law, determine.” Second, the existing Article 45 of the Constitution in the part on the directive principles of state policy is substituted with a new article. After the 86th Amendment Act, Article 5 of the Constitution reads as: “The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.” Third, Article 51 A of the Constitution in the section on the fundamental duties of a citizen is amended with the insertion of a new clause, (k). With this insertion, Article 51 A of the Constitution reads as: It shall be duty of every citizen of India… (k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years”.

This was significant step in the directions of constitutions of the education. The relevant provisions in the universal declaration of human rights and International Covenant on Economic, Social and Cultural Rights. The constitution is the supreme law of our land. It is made by the people and for the people.

Part III of the constitution of India deals with fundamental rights. There is no such provision in the constitutions of Canada, New Zealand and Britain. Even the constitutions of United States America does make such elaborate
declaration of human rights as has been done in Indian constitution. The right to education is a fundamental right and education is a human right. The Indian constitution several provisions of articles central idea of preamble, important part of the fundamental rights, the direct state principle policy, union list, state list, concurrent list etc.

The educational policy in post-independence India accepted the free and compulsory education envisaged in the constitutional directive as the operational definition of the concept of basic education. The term “elementary education” was used in the national policy on education in order to refer to basic educational. The policy also specified the age of six years as the lower limit of the age group for compulsory (elementary) education, which had been left open in the constitutional directive.

4.1 Preamble

We, The People of India, having solemnly resolved to constitute India into a [Sovereign Socialist Secular democratic Republic] \(^1\) \(\ldots\ldots\ldots\ldots\ldots\) the unity and integrity of the Nation \(^2\) \(\ldots\ldots\ldots\ldots\ldots\) In Our Constituent Assembly this twenty-sixth day of November 1949, do Hereby Adopt, Enact And Give To Ourselves This Constitution. It will accepted by thinkers, philosophers and academicians that I Justice liberty, equality and fraternity, including social, economic and political justice, the golden goals set out in the Preamble of the Constitution, are to be achieved, the Indian polity has to be educated and educated with excellence;

_P.A. Inamdar v. State of Maharashtra\(^3\)_

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\(^1\) *Subs. By the Constitution (Forty-second Amendment) Act, 1976, sec. 2, for Sovereign Democratic Republic* (w.e.f. 3-1-1977).

\(^2\) *Subs. by the Constitution (Forty Second Amendment) Act, 1976, sec 2. for “unity of the Nation”.* (w.e.f. 3-1-1977)

\(^3\) (2005) 6 SCC 537.
4.2 Fundamental Rights

(i) Article 12 - Definition of 'the state':

State aid, control and regulation so impregnating a private activity as to give it the colour of "State Action".

(ii) Article 14 - Equality before law -

The State shall not deny to any person equality before the law or the equal protection of the laws with in the territory of India.

(iii) Article - 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth-

[4] 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 Casts and Scheduled Tribes.¹

[5] Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the state from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions whether aided or unaided by the state, other than the minority educational institutions referred to in clause (1) of article 30.²

¹ Added by the Constitution (first Amendment) Act, 1951, sec.2.
² Ins. by the Constitution (Ninety Third Amendment) Act, 2005 (w.e.f. 20-01-2006)
(IV) Article (19) Protection of Certain Rights regarding freedom of speech, etc.-(1)

All citizens shall have the right –

(a) to freedom of speech and expression;
(b) to assemble peaceably and without arms;
(c) to form associations or unions;
(d) to move freely throughout the territory of India;
(e) to reside and settle in any part of the territory of India.
(g) to practice any profession, or to carry on any occupation, trade or business.

(1) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any to imposes, in the interests of the general public, reasonable restrictions on the exercise of the conferred by the said sub-clause, and in particular, 6 [nothing in the said sub-clause shall affect the operation of any existing law in so far it relates to, or prevent the State from making any law relating to,-

(i) The professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business or

(ii) The carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

(V) Article 21 – Protection of Life and Personal Liberty

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

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## Important Case Laws On Fundamental Rights

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(VI) **21-A Right to education**

The State shall be provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State many, law, determine.  

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\[1\text{Ins. by the Constitution (Eighty Sixth Amendment) Act, 2002, sec. 2.}\]
(VII) Article 28 – Freedom as to attendance at religious instruction or religious worship in certain educational institutions

(i) No religious instruction shall be provided in any educational institution shall be provided in any educational institution wholly maintained out of state funds.

(ii) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowed or trust which requires that religious instruction shall be imparted in such institution.

(iii) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religion instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached there to unless such person or, if such person is a minor, his guardian has given his consent thereto.

(VIII) Article: -29 Protections Of Interests Of Minorities –

(1) Any section of the citizens residing in the territory of India or any part there of having a distinct language script or culture of its own shall have the right to conserve the same.

(2) 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.

Not holding an entrance examination (pre-medical test), in any particular language viz. Hindi or any regional language, does not viotable article 29 (2); Hindi Hitrashak Samiti V. Union of India.¹

¹AIR 1990 SC 851, paragraph 6: (1990) 4 SLR. 4
Although commonly Article 29(1) is assumed to relate to minorities, its scope is not necessarily so confined, as it is available to “any section of citizens resident in the territory of India”. This may well include the majority, as Ray, C.J. pointed out in Ahmedabad 51, St. Xavier College Society Vs. State of Gujrat

(IX) Article: -30. Right of Minorities to Establish and Administer Educational Institutions:

[A] All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

1[A] 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).

2. The state shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Constitutional Provisions – Education In Relation To Minority Rights

In stark contrast to the issue of education per se, education-related rights in the context of minority and cultural rights has been a part of the Constitution right from its inception. Its genesis can also be traced to the Constituent Assembly Debates. In the course of the debate on the draft article 23 (similar in import to the present article 29(1)), ZH Lari pointed out:\textsuperscript{2}.

The first question that arises in this connection [i.e. in the connection of minority and cultural right] is whether it is necessary either in the interests of a minority or of society, that primary education should be imparted through the medium of one’s other tongue. It is a very legitimate question to ask and I propose to give an answer to it.

\textsuperscript{1} AIR 1974 Supreme Court p.1389
\textsuperscript{2} VII Constitutional Assembly Debates, 900
Referring to a resolution of the Government of India accepted and published 14.8.1948, he concluded: Therefore, according to this very Resolution it is accepted that it is essential in the interests of society as well as of the minority that its children should be imparted primary education through the medium of the mother tongue.\(^2\)

Accordingly, given its significance to minority and cultural rights education finds mention, directly or implicitly, in several provisions of the fundamental rights. Article 26, for example, guarantees to every ‘religious denomination’ and sections thereof the right to manage its own religious affairs. As per clause (A), this right includes the right to establish and maintain institutions for religious or charitable purposes’. 198 Article 28(1) bars religious instructions bar religious instructions in educational institutions wholly maintained out of the state funds, Clause (2) Qualifies it by stating that Clause (1) shall not apply to institutions administered by the State. Clause (3) holds that no person shall, in institutions recognized by the State or administered through state funds, be required to receive religious instruction or attend religious worship being conducted there.

Article 29 (1) confers on sections of citizens having a distinct language, shall be denied admission on grounds only or race, caste, religion and so on Article 30 is possibly the most important provision in the present context. It grants religious and linguistic minorities the right to establish and administer educational institutions of their choice.

The question is, do the foregoing provisions refer to the same type of education? Does article 26 (1) pertain to secular to or religion-based

\(^2\) Id. at 901
education? To begin with, the provision confers the right only to ‘religious denominations’. Moreover, article 28 carves out an exception only in respect

Of Institutions wholly maintained by State funds. It would seem that no bar on religious instruction exists in institutions not falling under article 28. Hence, it may be inferred that the freedom conferred by article 26 refers to religious instructions exists in institutions not failing under article 28. Hence it may be inferred that the freedom conferred by article 26 refers to religions-based education.

On the other hand, the same cannot be said of Articles 29 and 30, According to the first, state recognition is contingent to admission being thrown open to all. Furthermore, it is true that by the operation of article 30, religious and linguistic minorities receive additional protection. However, the right to open educational institutions on the basis of language, script and culture can be derived from article 29 (1) too. All this lends credence to the belief that the rights conferred under articles 29 and 30 are somewhat more secular in nature.

This in turn begs a vital question. Religious denominations, cultural and linguistic groups, and linguistic minorities have all been conferred by the constitution the right to set up educational institutions. What about the majority? Should it also not be given some sort of right in the matter?

One possible reason for this rather peculiar manner of treating the subject of education relates to the way the subject has been perceived. Over the years, it has progressed from an essentially charitable and philanthropic activity, to it has progressed from an essentially charitable and philanthropic activity, to a vocation or occupation. Thankfully, it has not yet been organized as a business or trade, but one can only speculate whether this will remain so in the future.
Education can be divided into three broad heads, viz. general education (comprising primary and secondary education), higher education (including university education), and professional and technical education.

Our courts have had cause to examine education-related questions, particularly from a fundamental rights perspective, almost since the very inception of the Constitution. Initially, both general and higher education commanded the attention of the Courts. Higher education, and especially technical and professional education, was largely funded and controlled by the state. The central issues here related to affirmative discrimination policies intended to uplift the weaker sections of society. Many such policies entailed reserving seats for backward castes in institutions of higher education.

In the 1960's and 1970s, however, non-governmental entities began to make inroads into professional and technical education. This was a consequence of increased demand for such education, and the state's inability to meet it. The last two decades witnessed a sea change in governmental thinking. In contrast to the Nehruvian mindset which envisaged a deep and pervasive state role in most areas, the congress government initiated in 1991.

**State of Madras v Champakam Dorairajan,**

Struck down an order of the Madras Government, which, with the object of helping backward classes, established a community-wise division of seats in state medical colleges. The decision of the court led to the First Amendment to the Constitution. This added clause (4) to article 15, which permitted special provision for socially or educationally backward classes, or for the Scheduled Castes and Scheduled Tribes.

1. Sidhabai Sabhai V. State of Bombay (1963) 3

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A process of liberalization, privatization and globalization (collectively known by the acronym LPG). According to this, the role of the government was not only minimized but also began to be restricted to select key sectors. Such a policy inevitably had an impact on education, particularly higher and professional education. On the hand, the role of the state in providing educational opportunities at reasonable costs to deserving students continued to be acknowledged as valid. On the other hand, however, the state monopoly hither to considered implicit in the foregoing principle came up for challenge. Questions began to be raised whether education could not be also treated as a business or sector for entrepreneurial opportunity or, in any case, whether non-governmental bodies could not play a greater and more autonomous role even on a non-profit basis.

In other words, the development entailed both positive and negative consequences. On the one hand, it reduced pressure on state educational institutions. But on the other hand, it spawned a new malaise, the commercialization of education. Often it was seen that meritocracy was given the short shift, and the students were selected only on their ability to pay. Capitation fees comprised only one manifestation of this.

This trend towards commercialization thus engendered a veritable tug-of-war between private bodies seeking to maximize profits, and the State, which attempted to regulate this trend. Litigation and legislation were rife. Regrettably, students ended up being the worst sufferers.

4.3- Directive Principles Of State Policy

(I) Article 39: - Certain principles of policy to be followed by the State. -
The state shall, in particular, direct its policy towards securing-
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]

11- Substituted by The constitution [Forty second Amendment Act, 1976, Section 7 for cl. (f) (w.e.f 3-01-1977).
(II) 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.

(III) Article 45:- Provision for early childhood care and education to children below the age of six years.

The State shall endeavour to provide early childhood care and education for all children until the complete the age of six years."

Provision for fee and compulsory education for children. The state shall endeavour to provide, within a period of ten years from the commencement of children of this constitution, for free and compulsory education for all children until they complete the age of fourteen years.

In a landmark judgment in Unni Krishnan v State of A.P., the Supreme Court has held that 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 limits of its economic capacity.” The right to education to flows directly from right to life”, the court declared.

(IV) Article 46:- Promotion of educational economic interests of Scheduled Castes, Scheduled Castes and the 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.

12-(1993) 1 SCC 645.
13- Ref. Subs by Constitution (Eighty Six Amendment) Act,2002. for "
4.4 Fundamental Duties:

(i) A Fundamental duties It shall be the duty of every citizen of India-
(k) who is a parent or guardian to provide opportunities for education to
his child or, as the case may be, ward between the age of six and fourteen
years.¹

Notes on 51- A (K)

Fundamental Duties and their enforcement Provisions as to fundamental
duties cannot be enforced by writs. They can be promoted only by
constitutional methods. But they can be used for interpreting ambiguous
statutes. Set under mentioned cases.

(i) Mumbai Kamnagar Sabha v. Abdulbhai²,
(ii) Surya v. Union of India,³
(iii) Head Masters v. Union of India,⁴
(iv) Dasarathi v. State of Andhra Pradesh,⁵
(v) Where the constitutionally of an Act is challenged the court may
look at article 51- A to uphold it; Mohan v. Union of India,⁶

4.5 Legislative Relations

Article 245 – Extent of laws made by Parliament and by the Legislatures of
States-

Article 246 – Subject matters of laws made by parliament and by its
legislatures of States. -

Not with standing anything in clauses (2) and (3), parliament has
exclusive power to make laws with respect to any of the matters enumerated in
List 1 in the Seventh Schedule (in this Constitution referred to as the “Union
List”).

Not with standing anything in clause (3), Parliament and, subject to
clause (1) the Legislature of any State 1[***] also, have power to make laws

¹ Ins by the Constitution (Eighty – Sixth Amendment) Act, 2002, sec.4.
³ AIR 1982 Rajl
⁴ AIR 1983 Cal 448
⁵ AIR 1985 AP 136

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with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the ‘Concurrent List’).

Subject to clauses (1) and (2), the legislature of any State1[***] has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the ‘State List’).

Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2 [in a State] notwithstanding that such matter is a matter enumerated in the State List.

Article 254: - Inconsistency between laws made by Parliament and laws made by the Legislatures of States. - (1)

Concurrent list and conclusion of education there under. The Scheme of distribution of legislative powers under the Indian Constitution-such distribution – being a necessary component of a federal political structure raises interesting issues where co-existence of central and state laws in a particular area gives rise to litigation. It is only where the legislation is a matter in the concurrent list that it would be relevant to apply the test of repugnancy.

4.6 Finance, Property, Contracts And Suits

Article: – 280 Finance Commission

Finance Commission can suggest measures to argument. The consolidated Fund to supplement the resource of the Panchyat in the State as also of the Municipalities.

4.7 Special Provisions Relating To Certain Classes: -

Article 337 - Special provision with respect to educational grants for the benefit of Anglo Indian Community: -

During the first three financial years after the commencement of this
Constitution, the same grants, if any, shall be made by each State for the benefit of the Anglo of the Anglo Indian community in respect of education as were made in the financial year ending on the thirty first year:

Provided that at the end of ten years from the commencement of this Constitution, such grant, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided that no educational institution shall be entitled to receive any under this article unless at least forty percent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

4.8 Constitution And Education:

Article - 343 Official Language Of The Union:

Official Language of the Union: It is stated herein that the official language of the Union will be Hindi, in the Devnagri script. For Official purposes, the Union will make use of international numerals.

Article: 344 Commission and Committee of Parliament on Official language

Article: 345 Official language or languages of a State:

Subject to the provision of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State.

Article – 346 Official Language for communication between one State and another or between a State and the Union.

The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:
Article – 347 Special provision relating to language spoken by a section of the population of a State.

On a demand being made in that behalf the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognized by the State, direct that such language shall be also officially recognized throughout that State or any part thereof for such purpose as he may specify.

4.9 Special Directives: -

350- Language to be used in representation for redress of grievances.

350- A -Facilities For Instructions To Mother- Tongue At Primary Stage: -

It shall be the endeavour of every State and of every State and of every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may have issue such directions to any state as he considers necessary or proper for securing the provision of such facilities.

This Chapter sets out to list the provisions contained in the Constitution of India along with a mention of some of the decided cases, which have given wide amplitude to such provisions. The amendments as affect education are mentioned. There are several Articles and other mentions in the Constitution and 4 specific amendments of right to education.

The emerging trends are discussed in this Chapter. The need to go into a learning mode as also conditions for creating, capabilities in the education system to meet the needs of knowledge growth, communication expansion, reinforcement of cultural roots is indicated. Changing needs of Educational Technology and entry of computers and Integration of Information and Communication Technology demand new structures, which the system should be able to assimilate. Renewal of education also calls for provision for regular reviews, which reckons also changing scenarios and developments in emerging technologies.
Article: - 350-B:- Special Officer for linguistic minorities

Article: – 351- Directive for development of the Hindi Languages –

It shall be the duty of the Union to promote the spread of the Hindi Language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure it enrichment by assimilating without interfering with its genius, the forms style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primary on Sanskrit and secondarily an other languages.

4.10:- Seventh Schedule Article-246

THE UNION, STATE AND CONCURRENT LISTS

The Constitution contains three lists, dividing legislative powers between the States and the Union. These are –

List- I : - The Union List – The parliament can enact laws, on the subjects contained in the Union list of 97 subjects. Which Articles 13,25,62,63,64, 65 and 66 pertain to education. The Union may keep these subjects under its own jurisdiction. These subjects are-

1. Participating in international conferences, institutions or other agencies and implementing the decisions taken therein.

2. Maritime shipping and navigation, including shipping and navigation on tidal waters, provision of education and training for the mercantile marine and regulation of such education and training provided by status and other agencies.

1- Bere Act of, India Constitutions
3. Protection and maintenance of the National Library, Indian Museum, Imperial War Museum, Victoria Memorial, India War Museum and any other institution financial aid by the government of India, or any other institution lawfully declared by the Parliament to be of national importance.

4. At the commencement of this Constitution, the maintenance of institutions known by the name of Kashi Hindu University, Aligarh Muslim University, and Delhi University, as well any other institution lawfully declared by parliament to be of national importance.

5. Institution or receiving financial aid from the government of India, either partially or fully, or any institution lawfully declared to be national importance by the parliament, or technical assistance in the study of crime.

6. Union agencies and institutions which (a) are meant for vocational, (vartika) or handicraft training, inclusive of institution for the training of police officials, or (b) are meant for the development of special studies or researcher (c) are meant for providing scientific or technical assistance in the study of crime.

7. Determination of standards and bringing of uniformity into higher education research institutions, scientific and technical institutions.

8. Merchant Navy and Navy include tide transportation and other related training and education.

**List ll: - State List** State are authorised to enact legislation on the 66 subjects contained in this list.

1. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

2. This is inclusive of entries 63 to 66 of the Union List and Article 25 of the Concurrent list-while remaining within the constraints of article 25 of education, which also comprehends university education.
3. In entry 12, there are the libraries, museums or other similar institutions financed or managed by the state, and ancient and historical buildings and monuments (those not under the jurisdiction of Parliament or declared by it to be of national importance).

List - III: - Concurrent List: - In this list, there are 47 subjects on which laws can be enacted. Of these, the following two entries related to education.

1. Education, including technical education, medical education and universities, subject to provisions of entries 63, 64, 65 and 66 of List – I; vocational and technical training labour:

2. Legal medical and other professions.

3. Economic and Social Planning.

4. Vocational and Craft training of workers

J.P. Naik has divided these activities into two parts –

1. Preventing Functions: -

These include (1) educational and cultural activation (2) obtaining ideas and information about education, (3) creating coordination between the education activities of status and the Union, and (4) education in the sphere of status.

2) Concurrent Functions: -

These include (1) scientific research, (2) technical training, (3) developing and ensuring the spread of Hindi, (4) Protecting national art and culture, (5) Protection of language, (6) Education of the handicapped, (7) educational research and cooperation, (8) protection of the cultural interests of the minorities, (9) protection of the interests of the scheduled castes and tribes, (10) national unity, (11) providing scholarships to able to able student, (12) higher vocational training, (13) Administrating arrangements for providing free and compulsory education for children upto the age of 14 years.
B- Universal Declaration Of Human Rights 1948

Preamble:

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

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom form fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is it man is not to be compelled to have recourse, as last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between nations.

Whereas the peoples of United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Now, therefore,

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1Bindu Variath Human Rights of Female with Special Ref. To Female Foeticide-A study in India. Appendix-II, p-29-30
The General Assembly,

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

Article-26

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and profession education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious group, and shall further activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children.

¹Bindu Variath “Human Rights of Female with Special Ref. To Female Foeticide- A study in India.” Appendix-II, p-37
4.11. Article 13 Of The CRC

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

   (a) Primary education shall be compulsory and available free to all;
   (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
   (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
   (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
   (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

(i) Aims and objectives of Education

Education is both a human right in itself and an indispensable means of realizing other human rights.\(^1\) Education is the primary vehicle by which economically and socially marginalized adults and children can pull themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. In addition to the ICESCR, the other human rights treaties have similar provisions.\(^2\) The ICESCR devotes two articles to the right to education, namely, Articles 13 and 14. Article 13 contains the longest provision in the ICESCR, is the most wide-ranging and comprehensive article on the right to education in international human rights law.

\(^1\) General Comment No. 13, the Right to Education (Article 13) of 8 December 1999, available at on 29 September 2005.

\(^2\) Article 26 of the UDHR; Articles XII and XXXI of the American Declaration on Rights and Duties; Article 18(4) of the ICCPR; Article 12(4) of American Convention on Human Rights and Article 17(1) of the African Charter on Human Rights and Peoples.
According to Article 13(1) of the ICESCR, States parties agree that all
education, whether public or private, formal or non-formal, shall be directed
towards the aims and objectives identified in Article 13(1). The Committee in
its General comment observed that the States parties are required to ensure that
education conforms to the aims and objectives identified in Article 13(1), as
interpreted in the light of the World Declaration on Education for All
(Jomtien, Thiland, 1990), the Convention on the Rights of the Child, the
Vienna Declaration and Programme of Action, and Plan of Action for the
United Nations Decade for Human Rights Education. While all these texts
closely correspond to Article 13(1) of the ICESCR, they also include elements,
which are not expressly provided for in Article 13(1), such as specific
references to gender equality and respect for the environment. These new
elements are implicit in, and reflect a contemporary interpretation of Article
13(1).

(ii) The Right to Receive an Education

Article 13(2) of the ICESCR, the full realization of this right envisages
compulsory and free primary education for all, accessibility to secondary
general education, including technical and vocational secondary education and
higher education with progressive introduction of free education and liberty for
parents to choose schools for their children. However, the precise and
appropriate application of the terms will depend upon the conditions prevailing
in a particular State party. In her preliminary report to the Commission on
Human Rights, the Special Rapporteur on the right to education sets out “four
essential features that primary schools should exhibit, namely availability,
accessibility, acceptability and adaptability.

3. General Comment No. 13, supra note 112, para. 4.
4. Article 1 of World Declaration of Education.
5. Article 29 (1) of the UN Convention on the Rights of the Child.
7. Para. 2.
8. General Comment NO. 13 supra note 112, para. 4.
10. Progress report of the Special Rapporteur on the Right to Education, Katarina on Human Rights
(a) **Availability**- The availability of the educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. All institutions and programmes are likely to require buildings with adequate facilities of sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials and so on; while some will also require facilities such as a library, computer facilities and information technology.\(^{11}\)

(b) **Accessibility**- The educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination. The educational institution has to within safe physical reach, either by attendance at some reasonably convenient geographic location. Education has to be affordable to all. This dimension of accessibility is subject to the differential wording of Article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education.\(^{12}\)

(c) **Acceptability**- The form and substance of education, including curricula and teaching methods, have to be acceptable to students and, in appropriate cases, parents; this is subject to the educational objectives required by Article 13 (1) and such minimum educational standards as may be approved by the State according to Articles 13(3) and (4).\(^{13}\)

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(d) Adaptability- The education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings.\textsuperscript{14}

It is important for the States Parties, while considering the appropriate application of these “interrelated and essential features” the best interests of the student shall be a primary consideration.\textsuperscript{15}

(iii) The Right to Primary Education

According to Article 13(2) (a) of the ICESCR, primary education shall be compulsory and free to all. Primary education includes the elements of availability, accessibility, acceptability and adaptability, which are common to education in all its forms and at all levels. The Committee took guidance on the proper interpretation of the term “primary education” from the World Declaration on Education for All which states: “the main delivery system for the basic education of children outside the family is primary schooling”.\textsuperscript{16}

Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community.\textsuperscript{17} The Declaration further defines “basic learning needs” as “essential learning tools, such as literacy, oral expression, numeracy, and problem solving and the basic learning content such as knowledge, skills, values, and attitudes required by human being to be able to survive, to develop their full capacities, to live and work in dignity, to

\textsuperscript{14} Ibid, para 6.
\textsuperscript{15} Ibid, para 6.
\textsuperscript{16} Ibid, para 9.
\textsuperscript{17} Article 5 of the world Declaration on Education for All, 1999.
participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning”\textsuperscript{18}

While primary education is not synonymous with basic education, there is a close correspondence between the two. In this regard, the Committee endorses the position taken by United Nations Children’s Fund (UNICEF) “primary education.”\textsuperscript{19} As formulated in Article 13(2)(a), primary education has two distinctive features: it is “compulsory” and “available free to all”. The element of compulsion serves to highlight the fact that neither parents, nor guardians, not the State are entitled to treat as optional the decision as to whether the child should have a access to primary education.\textsuperscript{20} The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the Government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization.\textsuperscript{21}

\textbf{(V) The Right to Secondary Education}

Article 13 (2)(b) applies to secondary education “in its different forms”, thereby recognizing that secondary education demands flexible curricula and varied delivery systems to respond to the needs of students in different social and cultural settings. According to Article 13(2) (b), secondary education “shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education”.

\textsuperscript{18} Article 1 of the World Declaration on Education for All, 1990.

\textsuperscript{19} General Comment NO. 13, supra note 112, para. 9.

\textsuperscript{20} General Comment NO. 11, Plans of action for Primary Education (art.14)

\textsuperscript{21} E/C.12/1999/4, 10 May 1999 para. 6.
The phrase “generally available” signifies, firstly, that secondary education is not dependent on a student’s apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all.\textsuperscript{22} Progressive introduction of free education means that while States must prioritize the provision of free primary education, they also have an obligation to take concrete steps towards achieving free secondary and higher education.\textsuperscript{23}

\textbf{(iv) Technical and Vocational Education}

Technical and vocational education (TVE) forms part of both the right to education and the right to work under Article 6(2) of the ICESCR. Article 13(2)(b) present TVE as part of secondary education, reflecting the particular importance of TVE at this level of education. However, Article 6(2), does not refer to TVE in relation to a specific level of education; it comprehends that TVE has a wider role, helping “to achieve steady economic, social and cultural development and full and productive employment”. Also, according to Article 26(1) of the UDHR “technical and professional education shall be made generally available”. Accordingly, the Committee has the view that TVE forms an integral element of all levels of education.\textsuperscript{24} According to the Article 1(a) of the UNESCO Convention on Technical and Vocational Education (1989), TVE consists of “all forms and levels of the education process involving, in addition to general knowledge, the study of technologies and related science and the acquisition of practical skills, know-how, attitudes and understanding relating to occupation in the various sectors of economic and social life.\textsuperscript{25} This view is also reflected in certain 120 convention.\textsuperscript{26}

The right to TVE includes the following aspects:

\textsuperscript{22} General Comment NO.13, supra note 112, para. 13.
\textsuperscript{23} Ibid., para. 14.
\textsuperscript{24} Ibid., para. 15.
\textsuperscript{25} Ibid para 15 K. Singh ‘Right to Education and pp 483-520.
\textsuperscript{26} A view also reflected in the ....... labour organization
(a) It enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability and enhances the productivity of their families and communities, including the State party’s economic and social development;

(b) It takes account of the educational, cultural and social background of the population concerned; the skills, knowledge and levels of qualification in the various sectors of the economy; and occupational health, safety and welfare;

(c) Provides retraining for adults whose current knowledge and skills have become obsolete owing to technological, economic, employment, social or other changes;

(d) It consists of programmes which give students, especially those from developing countries, the opportunity to receive TVE in other States, with a view to the appropriate transfer and adaptation of technology;

(e) It consists, in the context of the Convenant’s non-discrimination and equality provisions, of programmes which promote the TVE of women, girls out-of-school youth, the children of migrant workers, refugees, persons with disabilities and other disadvantages groups.  

(VII) **The Right to Higher Education**

Article 13(2) (c) is formulated on the same lines as Article 13(2); therefore are three differences between the two provisions. Article 13(2) does not include a reference to either education “in its different forms” or specifically to TVE. These two omissions reflect only a difference of emphasis between Article 13(2) (b) and (c). If higher education is to respond to the needs of students in different social and cultural settings, it must have flexible curricula and varied delivery systems, such as distance learning; in practice, therefore, both secondary and higher education have to be available “in different forms”.

27. Ibid, para-16
28. Ibid., para.18.
The third and most significant difference between Article 13 (2) (b) and (c) is that while secondary education “shall be made generally available and accessible to all, higher education “shall be made equally accessible to all on the basis of capacity”. According to Article 13(2) (c), higher education basis of education is not be “generally available”, but only available “on the basis of capacity”. 29

(VIII) The Right to Fundamental Education:

By virtue of Article 13(2) (d), individuals “who have not received or completed the whole period of their primary education, or basic education as defined in the World Declaration on Education For All. 30 Since everyone has the right to the satisfaction of their “Basic learning needs” as understood by the World Declaration, the right to fundamental education is not confined to those” Who have not received or completed the whole period of their primary education”. 31 The right to fundamental education extends to all those who have not yet satisfied their “basic learning needs”. 32 Fundamental education, therefore, is an integral component of adult education and life-long learning. Because fundamental education is a right of all age groups, curricula and delivery systems must be devised which are suitable for students of all ages.

(IX) A School System; Adequate Fellowship System Shall be Established

The requirement that the “development of a system of schools at all levels shall be actively pursued” means that a State party is obliged to have an overall developmental strategy for its school system. The strategy must encompass schooling at all levels, but the ICESCR requires States parties to prioritize

29. Ibid., para. 19
30. Ibid., para 22.
31. Ibid., para. 23.
32. Ibid., para.23.
primary education. Actively pursued" suggests that the overall strategy should attract a degree of governmental priority and, in any event, must be implemented with vigour. According to the Article 13(2)(e) of the ICESCR that “the material conditions of teaching staff shall be continuously improved”, unfortunately, in practice the general working conditions of teachers have deteriorated, and reached unacceptably low levels, in many States parties in recent years. Not only is this inconsistent with Article 13(2)(e), but it is also a major obstacle to the full realization of students’ right to education. The relationship between Articles 13(2)(e), 2 (2), 3 and 6 to 8 of the ICESCR, including the right of teachers to organize and bargain collectively; draws the attention of States parties to the joint UNESCO-ILO Recommendation Concerning the Status of Teachers (1966) and the UNESCO Recommendation Concerning the Status of Higher-Education Teaching Personnel (1997); and urges States parties to report on measures they are taking to ensure that all teaching staff enjoy the conditions and status commensurate with their role.

(X) The Right to Educational Freedom

Article 13 (3) has two elements, one of which is that States parties undertake to respect the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions. The Committee observed that element of Article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion.

33. Ibid., para.25.
34. Ibid.
35. Ibid., para.27
36. Ibid.
conscience and expression.\textsuperscript{37} It notes that public education that includes instruction in a particular religion or belief is inconsistent with Article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.\textsuperscript{38}

The second element of Article 13 (3) is the liberty of parents and guardians to choose other than public schools for their children, provided the schools conform to “such minimum educational standards as may be laid down or approved by the State”.\textsuperscript{39} This has to be read with the complementary provision, Article 13 (4), which affirms “the liberty of individuals and bodies to establish and direct educational institutions”, provided the institutions conform to the educational objectives set out in Article 13 (1) and certain minimum standards.\textsuperscript{40} These minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13 (1).\textsuperscript{41}

Under Article 13 (4), everyone, including non-nationals, has the liberty to establish and direct educational institutions. The liberty also extends to “bodies”, i.e. legal persons or entities.\textsuperscript{42} It includes the right to establish and direct all types of educational institutions, including nurseries, universities and institutions for adult education.\textsuperscript{43} Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in Article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.\textsuperscript{44}

\textsuperscript{37} Ibid., para.28.
\textsuperscript{38} Ibid.
\textsuperscript{39} Ibid., para.29.
\textsuperscript{40} Ibid.
\textsuperscript{41} Ibid
\textsuperscript{42} Ibid, para.30.
\textsuperscript{43} Ibid.
\textsuperscript{44} Ibid.
The ICESCR provides for progressive realization and acknowledges the constraints due to the limits of available resources; it also imposes on States parties various obligations, which are of immediate effect. States parties have immediate obligations in relation to the right to education, such as the “guarantee” that the right “will be exercised without discrimination of any kind” (Article 2 (2)) and the obligation “to take steps” (Article 2 (1)) towards the full realization of Article 13. Such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education.\(^{50}\)

Progressive realization means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of Article 13. States parties must closely monitor education including all relevant policies, institutions, programmes, spending patterns and other practices so as to identify and take measures to redress any de facto discrimination.

4.12 Article 14 of The ICESCR

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adapt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

(i) Principle of Compulsory Education Free of Charge for All

Article 14 of the ICESCR requires each State party which has not been able to secure compulsory primary education, free of charge, to undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of

\[^{50}\text{Ibid., para.43}\]
compulsory primary education free of charge for all. In spite of the obligations undertaken in accordance with Article 14, a number of States parties have neither drafted nor implemented a plan of action for free and compulsory primary education.\textsuperscript{51} This obligation is a continuing one and States parties to which the provision is relevant by virtue of the prevailing situation are not absolved from the obligation as a result of their past failure to act within the two-year limit. The plan must cover all of the actions, which are necessary in order to secure each of the requisite component parts of the right, and must be sufficiently detailed so as to ensure the comprehensive realization of the right. The right to education, recognized in Articles 13 and 14 of the ICESCR, as well as in a variety of other international treaties, such as the Convention on the Rights of the Child (CRC)\textsuperscript{52} and the Convention on the Elimination of All Forms Discrimination against Women (CEDAW),\textsuperscript{53} is of vital importance.

Plans of action prepared by States parties to the ICESCR in accordance with Article 14 are especially important as the work of the Committee has shown that the lack of educational opportunities for children often reinforces their subjection to various other human rights violations.\textsuperscript{54} For instance these children, who may live in abject poverty and not lead healthy lives, are particularly vulnerable to forced labour and other forms of exploitation.\textsuperscript{55}

Article 14 contains a number of elements, which warrant some elaboration in the light of the Committee’s extensive experience in examining State party reports. The element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the States are entitled to treat as optional the decision as to whether the child should have access to primary education. Similarly, the prohibition of gender discrimination in access to education, required also by Articles 2 and 3 of the ICESCR, is further underlined by

\textsuperscript{51} General Comment NO. 11, supra note, 131, para.1

\textsuperscript{52} Article 28 and 29 of the CRC. See for the text Sinha, supra note 1, pp. 218-237.

\textsuperscript{53} Article 10 of CEDAW, Ibid, pp. 190-20.

\textsuperscript{54} General Comment No. 111, supra note, 131, para.4.

\textsuperscript{55} Ibid.
this requirement. It should be emphasized, however, that the education offered
must be adequate in quality, relevant to the child and must promote the
realization of the child’s other rights. The nature of this requirement is
unequivocal. The right is expressly formulated so as to ensure the availability
of primary education without charge to the child, parents or guardians or the
school, and other direct costs, constitute disincentives to the enjoyment of the
right and may jeopardize its realization.

A State party cannot escape the unequivocal obligation to adopt a plan
of action on the grounds that the necessary resources are not available. The
reference to “international assistance and cooperation” under Article 2 (1) and
to “international action” in Article 23 of the ICESCR are of particular
relevance for the States which are not able to submit plan of action because of
lack of financial resources can seek assistance from the international
community. The plan of action must be aimed at securing the progressive
implementation of the right to compulsory primary education, free of charge,
under Article 14. The Committee requested every State party to which Article
14 is relevant to ensure that its terms are fully complied with and that the
resulting plan of action is submitted to the Committee as an integral part of the
reports required under the ICESCR. In of the relevant international agencies,
including the ILO, the UNDP, the UNESCO, the UNICEF, the IMF and the
World Bank, in relation both to the preparation of plans of action under Article
14 their subsequent implementation.

62. Ibid., para.6.
63. Ibid., para.7.
64. Ibid., para.11.