CHAPTER-9

CONCLUDING OBSERVATIONS
9.1 CONCLUSION

In my view Article-41 of Indian Constitutions directs the state to insure the people within the limit of its Economic capacity and development: (a) Employment (b) Education (c) Public assistance in case of public unemployment, Article 45 required the state to make provision within 10 years for free and compulsory education for all the children until they complete the age of 14 years. The object was to abolish illiteracy from the country. In a landmark judgment in J. P. Unni Krishnan V. state of A.P.\(^1\) the supreme court has held that the right to education up to the age of 14 year 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 flows directly from Right to life and liberty.

The constitution (86\(^{th}\) Amendment) Act 2002 has added a new Article 21 A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. It provides’ the state provide free and compulsory education to all children of the age of 14 years in such manner as the state may, by law, determine”.

The Indian constitution is to provide free education to children in the present scenario the right to education has really been extended by private, N.G.O’s and private institutions up to proper standard the study of the Various countries of the world shows that the private universities are doing the best of all in the fields of the Human life. In our country several steps have been taken to promote the education by autonomous agencies, institutional agencies, various institutions and N.G.O.’s. The privatization of the education has provide a better properties of life.

\(^1\)1993, SCC 645
For the better opportunities of the employment the better knowledge of Science, Art, and Culture by the privatizations has been of the great importance and hence the Government should also promote the privatization.

In the absence of this initiative, it is doubtful that the constitutional mandate to provide free education to all children in order to become able citizens of the country would be successful. Private public schools have become centres for exploitation.

In this Chapter, some issues arising from the foregoing discussions, which should find a way as constitutional or legal provisions into our educational structures, Are discussed. The need for consensus, application of sunset laws to avoid obsolescence, special considerations and structures because of the altruistic nature of the pursuit etc are some of the directions indicated.

Fortunately for us, there is a general consensus about universalisation of elementary education as our credo. This issue has to be beyond politics - in fact, the whole basis for access to educational opportunities at all levels has to be a non-party matter and discussion of its aspects should be beyond party politics an cut across party lines. All major political parties have put it high on their agenda. It is also a positive factor that successive governments have expressed their priority for education. This has now been made an important component of National Human Development Initiative (NNDI) and also the Prime Ministers Special Action Plan (PMSAP). In a situation when the need for strong political commitment is being increasingly felt, these proclaimed intentions of the government are certainly welcome, and help to keep the momentum alive.

When education has had a strong and consistent political commitment in the State, the tangible achievements it can mark, is indeed remarkable. As far back as 1819, the ruler of Travancore in South Kerala called for the State to meet the cost of education. Facilities were provided for everyone to have access to education either free or at a small nominal cost. The State continued
to make progress and Universal Literacy was achieved in 1991. The State continues to top the literacy chart even in the Census 2001. The case is cited to indicate the importance of enlightened leadership with progressive views to achieve goals.

Education is a value in itself and is the bedrock on which any edifice of equality of opportunity can be erected. It opens the road to progress and literacy is a measure of human development. It is easier to plan for sound economic development and a stable political system in an educated society. There is, therefore, every reason to canvass for Right to Education being incorporated as a Fundamental Right.

The learning process is not only complex but also demanding. Aldous Huxley wrote, "There is no substitute for correct knowledge, and in the process of acquiring that knowledge there is no substitute for concentration and prolonged practice. Except for the unusually gifted, learning must ever be hard work. Unfortunately there are many professional educationists who seem to think that children should never be required to work hard. Whenever educational methods are based on this assumption, children will not in fact acquire much knowledge; and if the methods are followed for a generation or two, the society, which tolerates them, will find itself in full decline. We are human because, at a very early historical stage of our species, our ancestors discovered a way of preserving and disseminating the results of experience" Cicero told the unvarnished truth in saying that "those who have no knowledge of what has gone before them must, for ever, remain children". There is no denying the fact the histories of our developments in many fields have to be properly projected. But this should not take "away the requirements of discipline involved in the learning process. What is required is ensuring irreversibility and giving a sense of perspective by not distorting history. Planning the contents of curriculum for the young mind that gets easily swayed by 'what is taught' rather than 'what is desirable to teach' is probably more difficult. The commitment of the various political parties on universalization of
elementary education must also converge into a consensus on content and dissemination.

Sunset is one of the most refreshing and significant, legislative concepts borrowed from the American history. The idea of self-retiring government programs embodied in the concept of Sunset has generated widespread among people who have been worrying about the continued growth of government, unending expansion of bureaucracy and insufficient accountability and consequent irresponsibility in government spending. This also serves as an accountability tool. Most of the contemporary proposals for Sunset legislation encompass the principle of economy in government spending, a definite course of action to ensure adherence to that principle and an imagery of the fading away of programs that were useful in the past, but no longer useful or relevant. Against the backdrop of parliamentary control over expenditure in India, the principle of Sunset assumes particular relevance and importance.

However, the principle of Sunset Legislation has a special significance where time targets for some activities have been prescribed. The withdrawal from the statute books of laws and provisions, which have become obsolete or have acquired the nature of anachronisms, is equally important. A proper-sunset legislation will certainly supply the action forcing mechanism to compel the legislature to make an evaluation of programs and give it an unprecedented amount of power to effect changes in specific expenditure items. The concept of sunset legislation, where the sun sets on the law after duration has to be invoked regularly and in full awareness. Our Constitution makers had prescribed time limits for a number of provisions. These time limits have been treated rather lightly or extended to suit the convenience of governance. In matters of education, these sunset laws should be adhered to, and the degree of accountability to the people's forum absolute. Can we say as to whether this holds true for our constitutional provision or for that matter our administrative and legislative fiats in the field of education? Does our Constitution have a provision to analyze such extension of the sunset laws through the means of a
different microscope? Is such a differential treatment caned for?

Once education is considered bedrock as stated above, do we have Constitutional guarantees to ensure that the sanctity for the schemes and the financial outlay is honored? For instance, judiciary is considered such a non-political organ, and we have Constitutional guarantees to ensure its autonomy by way of such provisions as being a charge on the Consolidated Fund, etc. Does education merit such a consideration at some level at least?

If renewal, reform and rethinking are fundamental to the process of education, can the Constitution ensure that these take place and are not subject to the whims and fancies, or become matters of lower priority, because it may involve ruffling of some feathers?

Is it necessary to make certain provisions unambiguous at least in matters of education, as not to be dependent on judicial activism? Today part of the gains in education has to be related to, the widest amplitude given to Art. 21, which had to travel a full circle from the days of Gopalan to Maneka Gandhi, as pointed out in D.D. Basu's commentaries? One amendment has already been brought, for instance. Can we expect a Constitutional amendment to accelerate ‘the demand for accountability in the system of education, particularly from its bureaucracy?’

Are the structural changes required in the field of education hampered by treating educational structures at par with industrial or commercial structures? When profit or commercial gain is not the motive and there could be other partners in the process whose interests are to be protected, can a different yardstick be applied, which is different from the industrial or commercial enterprises which normally follows the principle of what the traffic can bear, when structural changes are necessary? Can there not be other structures specific to educational institutions to protect the interests of other stakeholders, and to ensure a certain degree of autonomy and insulation from political buffeting?
Our constitution represents the aspirations of a society as divers as ours. The fundamental rights in part III together with the directive principles of state policy in para iv constitutes the life blood and the core of the constitution. The most significant of these provisions is article 32, which entrusts the supreme court with the duty of safeguard the fundamental rights assured to citizens or persons, as the case may be can be raised before the Supreme Court under article 32, and all the other legal as well as fundamental rights can be enforced in the high courts under article 226. The constitution is unique in granting even aliens or non-citizens a fundamental right to approach the highest court of the country for seeking relief against any likely infringement of certain vital rights.

Individuals have a fundamental interest in having a decent life and, therefore, have important interests in autonomy and well-being. They have rights that their autonomy and well being be respected and promoted and these interests should be afforded equal protect autonomy and well-being, should be constitutionaized. By ‘constitutionalization’, I mean that they should not be subject to the ordinary process of legislation and that judiciary should protect them. South Africa and France are the only countries where social rights are entrenched in the Constitution and justifiable i.e. they are protected by the courts. My concern in this paper is that since education is necessary for autonomy and well being, it should be constitutionalized in real sense of “fundamental right.”

86th Constitution (Amendment) Act, 2002 by enacting Article 21- A has added nothing new to the ‘Educational Right Jurisprudence’ rather it has circumscribed the judicial activism in the area of education. After Unnikrishnan verdict there was no need of such an amendment. If right to education is to be really made a fundamental right it should have been conceded since birth. In contrast to the (lately accepted) fundamental right to education, none of the expressly given fundamental rights under the Constitution have been conferred after attainment of a particular age. No child below the age of 6 years can claim right to education as fundamental right. This
poses a question as to what does ‘education’ mean. Does it mean only ‘schooling’ or something more? Does it mean something more then it should have given by birth.

Further, whether a person would loose his fundamental right to education as soon as he attains the age of 14 years, is biting question which needs special attention. Would there be no fundamental right in the area of professional or technical education, of course subject to merit, is another haunting question. Is it justice with the people of India for whom the Constitution guaranteed the right to education? Is the symptom of the realization of right to education? In my opinion the answer is no. Privatisation is a good thing because government alone is unable to fulfil the desired all that is suggested by different Commissions but it must be regulated in favour of the fundamental right to education.

The Present study is an enquiry into the Right to Education and Education is a Fundamental al rights in the light of Right to education in the present scenario to day, education is accepted as a human right. Right may be understood as the Power of an individual or group of individuals community and the present time the social situation define education and education is a basic Right. They are generally termed as human rights.

Post- independence India has accepted education as a human right that is a basic need of every individual to live a human life. This is clear from the directive in Article 45 of the constitution of India. Basic education, as a human right, is expected to impart the knowledge and skills that an individual requires in order to lead a really human life of to live with human dignity n her/his socioeconomic and political environment.

Education is a basic human right and is the foundation of a free and fulfilled life. ‘Education for All’ Education is now being visioned as a human right and an instrument of social change. It is the single most vital element in combating poverty, empowering women, safeguarding children from exploitative and hazardous labour, promoting human right and democracy and
protecting the environment. Education is an economic right necessitates the adoption of schooling to facilitating subsequent economic self-sufficiency through employment or self-employment.

Educational development is the essential pre-requisite to the all round development of any society economically socially and culturally. Education has the power to eradicate poverty, eliminate gender and racial discriminations, protect against violation of the rights of the individuals, prevent environmental degradation, hold escalating rates of population growth, resolve health and livelihood problems, ensure tolerance and justice, promote democracy and development and maintain human dignity. Thus, education shapes the destiny of a nation.

There is a growing and welcome realization amongst the developing countries that education is the key to development. Amartya Sen also explores the importance of basic education in economic development. According to him, without compulsory education, no economic development is possible. The dynamic process of education remains one of the most important issues for both developed and developing countries in order to uplift humanity.

After more than half a century of independence, one of the socio-economic rights, which could find place as fundamental rights in Indian Constitution with much effort, is the ‘Right to education. In the present article, an attempt has been made to examine different facets of right to education but more emphasis is on examining the legal position of the right to education in India.

I don’t say that nothing is done towards realization of right to education in India but something more is necessary. Coming of free and Compulsory Education Bill, 2005 is best step at right time but revision is necessary in favour of fundamental right to education otherwise the draft Bill is not able to protect welfare of the people at large. It is pro-commercialization law; it promotes autonomy of private educational institutions. So this would
encourage commercialization of education leading two tiers of educational standards: one for the ‘rich’ and another ‘poor education for the poor.’ It can promote the exploitation of teachers by payment of low salaries. In this way three classes of society is affected. If this Bill would pass in the present form private educational institutions may be converted into the place where infringement of human rights will be in practice instead of realizing them. Unnikrishnan’s decision is appropriate which prohibited the commercialization of education in any manner; we should stick on that decision at least up to achievement of desired literacy.

**Right to Education could be protected by the following right:**

(i) A right that the states give us the educational resources necessary for us to reach functional literacy.

(ii) A right that the State does not conduct policies that would suddenly deprive us from the possibility to reach such a standard.

(iii) A right that the State should Controls the education provided by the Private Sector.

### 9.2 SUGGESTIONS

Following the recommendations of Saikia Committee, the government has introduced 83rd constitutional Amendment Bill in Parliament in 1997 to make right to education from 6-14 years a fundamental right. The Supreme Court in its judgment in Unnikrishnan’s case (1993) has already held that citizens of India have a fundamental right to education up to 14 years of age. Undeniably this right remains largely unimplemented. There is a debate going on across the states, whether the proposed constitutional amendments is necessary. Some of the positive aspects and issues in implementation of the proposed amendment to the constitution identified by the Saikia Committee are as follows positive Aspects:
1. The constitutional enactment would demonstrate the necessary political will and administrative resolve of the country to achieve universalisation of elementary education and eradication of literacy.

2. Such a measure would send the right signals to the international community and donors regarding India’s commitment to achieve the goal of Education.

3. The legislation would spur the government and non-government sectors to take necessary measures to provide universal access to elementary education and to provide facilities required for universal retention and achievement.

4. The provision for making elementary education a Fundamental Right ought to put required pressure on Central and State Governments to regarding the implementations of it the focus should be on the special needs of undeserved / unserved population and regions.

5. Government’s commitment to provide 6% of GNP for education in the Ninth Plan and to earmark 50% of this for primary education would provide requisite financial back up and support towards constitutional enactment.

6. Revitalisation of Panchyat Raj Institutions in the wake of the 73\textsuperscript{rd} constitutional Amendment provides an opportunity to bring about effective devolution and decentralization of authority for planning and management of elementary education to give effect to the proposed enactment.

7. The proposal is expected to have a positive impact on eradication of child labour.

8. The spread of elementary education through constitutional measures would have a good impact on other social indicators like population growth, health and women’s development as well as enhancement of productivity of the economy and reduction in unemployment.
In order to give meaning and effect to the Fundamental Right of Free and compulsory education for all children up to the age of 14 years, detailed and accurate estimation of administrative, academic and financial requirements to fulfill this obligation would have to be made in consultations with the states. This would inter-alia involve estimates for the following.

a. Establishment of new primary schools within one km of each rural habitation.

b. Provision of upper primary schools within 3kms of each rural habitation;

c. Additional teachers for new primary and upper primary schools in accordance with the approved teacher pupil ratio;

d. Additional teachers for making up existing shortfall of teachers in primary and upper primary schools.

e. Construction of new classrooms to provide for additional enrolments.

f. Provisions of teaching learning material including text-books;

g. Strengthening of administrative machinery for supervision, inspection, monitoring and evaluation.

h. Enforcement machinery for giving effect to provisions for compulsory education.

Estimates of funds required for keeping all children in the age group of 6-14 in school for the complete duration of 7-8 years would also be necessary. The Saikia Committee has estimated financial requirement Rs. 40,000 crores to bring 6.3 crores out of school children into school over a period of five years. However, the expert group constituted by the government on the recommendations of Sakia Committee has estimated that Rs. 1,36,000 crores would be implemented fundamental right to education over a period of ten years.

In case necessary financial provisions are not made. It may difficult to fulfill the expectations resulting from the proposed
constitutional enactment. The non-fulfillment of expectations having statutory sanction is likely to give rise to litigation and administrative difficulties. However, as it would take considerable time and effort for the Center and States to make necessary administrative, academic and financial provisions for implementing the proposal it would be desirable to provide a reasonable time-frame for bringing the proposed Constitutional Amendment into effect. It would appear to be feasible to provide about 5-10 years for this purpose.

Additional Suggestions:-

1. Regarding the syllabus of private and the government sector schools and college new policy framework should be made so as to maintain a uniformity about the educational standards.

2. A statutory body should be set up to control, reform and implementation of these new changes in the educational system whole throughout the country.

3. So as to provided maximum employment preference should be given to privatization of professional courses after elementary education.

4. High subsidy rates should be provided for the higher and professional education and specially some guidelines should be made for undeveloped, rural and backward area’s students so as to maintain equality.