CHAPTER 1

INTRODUCTION
“The prosperity of a country depends, not on the abundance of its revenues, nor on the strength of its fortifications, nor on the beauty of its public buildings; but it consists in the number of its cultivated citizens, in its men of educations, enlightenment and character; here are to be found its true interest, its chief strength, its real power.”

MARTIN LUTHER

Education is keystone for self-sustaining and livelihoods and the education is life Insurance for all children. The right to education is essential to economic, social and cultural rights. Achieving the right to basic education for all is thus one of the biggest moral challenges of our times. It is crucial that the right to education in its various dimensions is incorporated in the commutations and legislation.

The right to education is a very important part of the developments and the right to education is a basic human right. The importance of education to individual, Community and national development is reflected in its recognition as a human right. Poor people have rights to education and health, to an adequate livelihood including food, water and housing, to Just and favourable conditions of work, to security and freedom from violence.

Right to Life and personal liberty has got a very wide experience it include various rights of the person, by which the development of the personality is being made and the scope of article 21 is very positive which can be extended from life to liberty of individual in the progressive society my intention in this thesis is to bring out the importance of Education with special reference to article 21 of the Indian Constitution, as it is also the bounden duty of the court to satisfy itself that “all the safe guards provided by the law have been scrupulously observed”.
Education is essential for every person to live with basic human dignity. Education liberates man from ignorance, exploitation and oppression. It promotes freedom, progress and equal opportunities for all citizens. Therefore, education has been looked upon as the most precious and meaningful investment for human development. The stage under the constitutional obligation to secure right to education to all citizens, and for its equitable distribution in terms of opportunities:

_Gandhi ji said:_ “Light brings light, not darkness, and nobility done with a noble purpose will be twice rewarded.”

I would like to put forwarded Gandhi’s views regarding basic education. Gandhi’s scheme of basic education would cover the period from 7 to 4 year, along with physical drill, drawing and music, education in handicrafts would also be given. Such education would teach the dignity of labour and combine learning and doing. The quickest development of the mind could be achieved by learning the artisan’s work in scientific manner. To quote Gandhi, “True development of the mind commences immediately the apprentice is taught at every stage while a particular manipulation of the hand or a tool is required.” In Gandhi’s claim, it was not the handicrafts that would supplement general education. The whole education on the other hand, should be imparted through some handicrafts or industry. Thus, the handicrafts would become the center of teaching all subjects. Gandhi also stood for teaching the alphabets at a later stage, "when the pupil has learnt to distinguish wheat from ghaff, when he has somewhat developed his taste." One of the special features of Gandhi’s basic education is that it should be economically self-supporting and the child should be able to earn his own tuition from handicrafts. The running expenses of basic education (Nai Taleem) should come from the educational process itself. Not that basic education must start earning from the first year but taking the entire period of seven years, income and expenditure must balance. If education were to cost much money, it would be difficult to spread education in India at a very fast rate. Basic education should be free and compulsory.
The syllabus of basic education should be completely re-oriented. So as to eliminate narrow, exclusive, competitive nationalism and to emphasize the ideal of a united world. Thus, the syllabus would set Indian History and Indian Geography against a background of World History with special reference to social and cultural development of men, and World Geography with reference to economic geography. The syllabus would also provide for the study of fundamental universal Ethics.

Gandhi's scheme envisaged an important function for the state to perform in regard to education though tuition would be paid for by the pulls themselves. The state, according to him, would have to compel guardians to put their wards into the school. It would be responsible for supervision, recognition and guidance of schools. The state would have to take over manufactures of the schools and find markets for them. Land building and equipment for the school would have to be found by the state.

Politically, this new pattern of education was supposed to be of great significance as the spearhead for the silent social revolution. To Quote Gandhi himself, "It will provide a healthy and moral basis of relationship between the city and the village and thus go a long-way towards eradicating some of the worst evils of the present social insecurity and poisoned relationship between the classes. It will check the progressive decay of our villages and lay the foundation of a just social order in which there is no unnatural division between the haves and have-nots and everybody assured of a living wage and the right of freedom". And all this will be accomplished without the horrors of a bloody class-war or a colossal Capital expenditure, such as would have involved in the mechanization of a vast continent by India. Nor would it entail a helpless dependence of foreign imported machinery or technical skill. Lastly, by obviating the necessity for highly specialized talent, it would place the density of the masses, as it were, in their own hands.

Gandhiji was an inveterate critic of, the present university education system. He considered the education in arts as sheer waste, which destroyed the
mental and physical health of the students and led to unemployment. It did not fit people for independence but only enslaved them. In 1944, Gandhiji suggested that the scope of his basic education movement should be extended and it should become "literally, education of life". Thus it should include pre basic, post basic and adult education. It should extend from the moment a child is conceived to the moment of his death. The Gandhian scheme of basic education shows among many other things that he did not always rule out the use of the state as an instrument of bringing about social revolution.\(^1\)

Educational status in India is constantly changing as per the needs and capabilities of the nation. Now a day’s education has transgressed national boundaries and acquired a global dimension. National education systems and policies governing them are constantly changing in an attempt to meet the challenge of globalization.

At the time of framing of the Indian Constitution the right to education could not be guaranteed as a fundamental right but as a directive to state to secure right to education under Article-41. Before 1976, education was exclusively the responsibility of states; the Central Government was only concerned with certain areas like Co-ordination and determination of standards in technical and higher education etc. In 1976, through a constitutional amendment education became a joint responsibility.

Through the 86th Constitution Amendment Act 2002 one of the directives under the Article-45 has been elevated as a fundamental right to education under Article-21A. However, the constitution under Article-46 directed the state to promote with special care the educational interest of weaker sections of people thus, the constitution has made provisions for advancement of educational interest of citizens and for taking special care of the socially and educationally backward classes. Further, the finer points of general education, school education professional education and higher education were not made out clearly, however, the constitution through Article-15 & Article-29(2) ensure equal opportunity for admission in educational

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1- Excerpts from a booklet "Gandhian Thought And Philosophy" By:- R Maheshwari at p. 35 & 36
institutions. Article-15 (3) enables the state to make special provisions for women and Article-15 (4) empowers the state to make provisions for the advancement of socially and educationally backward class. With regard to admissions in education institutions Article-26 (a) extends a fundamental right to every religious denomination or any section thereof the establish and maintain institutions for religious and charitable purpose. The right to establish and administer educational institutions has been guaranteed to the minorities as a fundamental right under Article-30.

The constitutional right of education has to be so exercised as to achieve not only well being of the citizens in their future intellectual, social and economic life, but also to inculcate among them a sense of individual and social consciousness for the contribution for the welfare and prosperity of our secular society, unity and integrity of the nation. The policy of education is to build up fraternity and feeling of brotherhood and not to make it remain as a pious hope. It should not stand as a barrier to the evolution of India as a strong nation. The constitutional goal of promoting fraternity, assuring the dignity of individual and unity of the nation is of paramount importance and is above all the fundamental rights.

Many developments have taken place during the past half-century in the working of the constitution in the sphere of education. The policy of liberalisation, privatisation and globalisation has put an immense impact on education in India. At present the education imparted by the state and the one offered by the private sectors including minority educational institutions are coming into conflict in terms of quality standard, cost and excellence. The encouragement given by the government to the corporate schools, sometimes at the cost of traditional educational institutions has come up for an intensive discussion and debate.

The government appears to be distancing itself from offering higher education and slowly and gradually retaining only a nominal control over it, consequently leaving the entire field open to the private and corporate sector.
A number of issues came up before the judiciary for its consideration like the status of right to education, scope and limits of protective discrimination, identification of socially and educationally backward classes, its scope under various fundamental rights, meaning and content of the expression "minorities" under Article-30, right to establish and administer educational institutions, the scope" of their choice" under Article-30 (1), the power of the state and professional bodies to regulate the private and minority educational institutions imparting general and professional education, power of state to impose regulation for maintaining academic and professional standards and its power of affiliation, recognition and grant-in-aid etc. That apart, constitutional distribution of legislative power in a dual polity where parliament and state legislature, make laws for regulating professional and general education, occasionally gave rise to important and difficult legal controversies.

Educational Status in India is constantly changing as per the needs and capabilities of the nation. Now a days education has transgressed national boundaries and acquired a global dimension. National education systems and policies governing them are constantly changing in an attempt to meet the challenges of globalisation.

One of the most depressing features of development and change in India during the last one century in the persistence of illiteracy in about half the population and the slow pace of educational development.

The constitution through a Directive Principle of state policy declared that it shall be the endeavors of the state to provides Universal. Free and compulsory education to all children upto the age of 14 years.

The right to education is not one of the rights or freedom mentioned under Article 19 (1) of the Constitution. It is not a Fundamental Right as such, except some educational right of the minorities recognized under Article 30 of the Indian Constitution.
Right to education is expressly mentioned in the Directive Principles of State Policy under Part IV of the Indian Constitution. Article 41 of the Constitution provides *inter alia* “The State shall within the limit of economic capacity and development make effective provision for securing the right to education”, The use of the words ‘right to education’ is, strictly speaking, incorrect because this right in the Directive Principles is not enforceable in Court by the citizen. Although it mentions the right to education, such a right is not recognized as a Fundamental Right under the Indian Constitution.

Again in the Directive Principles, Article 45 of the Constitution provides “The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they for free and compulsory education for all children until they complete the age of 14 years”. Here is an appreciation or recognition of the need for “free and compulsory education” for all children up to the age of 14 years. This has not been carried out although the period of ten years after the Constitution has expired.

Education is a neglected subject and having regard to the magnitude and importance of education in the Indian democracy, the amount of national budget spent on education is disproportionately meager. Apart from this general context, there is in the realm of mind, conscience and thought the large and the crucial question of educational freedom. Educational freedom is another foundation of the liberty of mind, conscience, thought, and belief.

What is educational freedom? On the answer to that question hangs the fundamental problem of human values and emancipation of mankind. Educational freedom means in the first instance the right for every citizen to receive a basic education. What is a basic education and how much it will contain in its curriculum may be a matter for experts and may be debated. What, however, is beyond argument is that some basic education for all citizens irrespective of sex, race, colour creed or caste or status of life must be open to all.
But the concept of educational freedom is not exhausted by a basic education. Freedom of mind and spirit, of intellects and thought, has to be nourished by freed and independent education at all levels—the basic and primary, the secondary, the university, and the higher education.

One major question at the outset is whether the Government should control by the State or education. In the modern world it is a controversial and debatable subject. A wholesome control of education by the State or Government kills intellectual liberty, liberty of mind, conscience and thought. Political parties today control the State and the Government. State and the Government today controlled by political parties. State controlled education, therefore, is bound to be partisan and lopsided. It means exclusion of books on subjects, theories and ideas, which are not consistent with the State or Government policy. This prevents the growth of the individual and the fullness of his status as a man. If the democratic right to education is based on the need of free market for free ideas, where clash of contending opinions is the mainspring, then such a State education is death-knell to democracy.

At the same time there are certain areas where State compulsion in the matter of education is necessary. The quality and the extent of such State control have to be carefully limited. In a democracy no citizen can afford to remain uneducated. There is, therefore, a right to some education for every citizen in a democracy, which is, an obligation upon the State. The basic education, therefore, must be compulsory for every citizen, even if such compulsory education is not free. The basic minimum content of such education like acquaintance with the three rupees of reading, writing and arithmetic, in addition to elementary science, hygiene, the basic history and geography of the country may be insisted upon by the State. Beyond this control in respect of quality and area, it is desirable to reduce State interference in educational freedom to the minimum.

This educational freedom is not confined merely to the curriculum or subject of education but extends fairly reasonably to teaching and educational
administration. State control of teaching or State control of educational administration in schools, colleges, and universities is an undesirable encroachment on educational freedom. Exception no doubt will have to be made where there is any attempt by private sources to make teaching, educational administration, and students’ organization the forum or a field for partisan propaganda and indoctrination. Recent decisions in the American Supreme Court show that danger from this point of view, where attempt has been made to control teachers and professors and educational administration by the State. This danger is gaining ground in India.

In the field of education, the American problem of Negro children has raised the problem of segregation. It was at one time thought that if the school is the same then segregation of the black does not infringe the principles of equality in education because the institution, the teacher, and the curriculum remain the same. This was the American doctrine which was expressed as “separate but equal”. But in 1954 the problem came for a final decision.

In Brown Vs. Board of Education of Topeka, Chief Justice Earl Warren said, “Segregation of white and coloured children in public schools has a detrimental effect upon the coloured children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.” This is a landmark in the law of educational equality.

Article 21 of the constitution says that: “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

Prior to Maneka Gandhi’s decision Article 21 guarantee the right to life and personal liberty to citizens only against the arbitrary action of the

\(^1\text{347 U.S. 483,}\)
executive, and not from legislative action. The state could interfere with the liberty of citizens if it could support its action by a valid law. But after Maneka Gandhi’s decision Article 21 now protects the right of life and personal liberty of citizen not only from the executive action but from the Legislative action also. A person can be deprive of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable.

In this century the education has only been an important task of the world. It is the education by which the inequalities, castism and discrimination of the societies can be removed. Not only the governments doing the best but N.G.O. and private persons are living no stone unturned for the improvement of the societies and education. Hon’bel Supreme Court of India in landmark of judgment in Mohini Jain V. State of Karnataka, 1

Popularly Known as the “Captivation Fee case” the Supreme Court has held that the right to education is fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the captivation fee. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

In Unni Krishnan V. State of A.P. 2 The Supreme Court was asked to examination the Correctness of the decision given by the Court in Mohini Jain’s case. The petitioners running Medical and Engineering Colleges in the State of Andhra Pradesh. Karnataka, Maharashtra and Tamil Nadu Contended that if Mohini Jain decision is correct and followed by the respective State Government they will have to close down their colleges. The five judge bench by 3-2 majority partly agreed with the Mohini Jain decision and held that right to education is a fundamental right under Article 21 of the Constitution as ‘it

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1 1992 3 SCC 666.
2 1993 1 SCC 645.
directly flows from right to life. But as regards its content the court partly overruled the Mohini Jain’s case and held that the right to free education is available only to children until they complete the age of 14 years. but the obligation of the State to provide education is subject to the limits of its economic capacity and development. The obligation created by Articles 41, 45 and 46 can be discharged by the State either establishing it sown institutions or by aiding. Recognizing or granting affiliation to private institutions. Private educational institutions are a necessity in the present day context. Mohini Jain’s case was not right in holding that charging of any amount must be described as captivation fee. Saying so amounts to imposing an impossible condition. It is not possible for the private educational institutions to survive if they charge fee prescribed by government institutions. The private sections should be involved and encouraged in the field of education.

In **T.M.A. Pai foundation V. State of Karnataka**, an 11 judge Constitution Bench of the Supreme Court has overruled the Unni Krishnan decision partly. The Court held that the scheme relating to admission and the fixing of fee were not correct and, to that extent, they are overruled.

Right to education now has been made the part of the fundamental rights in Indian constitution. The article 21 of Indian Constitution by the various decisions of the Supreme Court of India and various right court judicial decision of the fundamental right of life and personal liberty. Which can be maintained by all the aspects of life. It is only possible of the person is appointed are all the educational right by the amendment of the constitution, N.G.O. and private schools, new colleges and institutions industrialist minorities and various person have come forward for establishment the educational institutions which are tendering very good education in each and every fields of life. So many private institutions have made the society very progressive by providing technical, medical and social services in private sector.

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1\*A.I.R. 2003 SC 355
Primary education includes both Primary and preschools education, and Secondary education includes all generally and higher secondary schooling. Technical and all technical and vocational training below university level. Under international human rights law the primary and secondary education sectors constitute Compulsory education. Higher education includes all Post-Secondary education, particularly education leading to a university degree or its equivalent, and Sub-degree technical and vocational training. Adult education includes education for adults outside the regular school or university infrastructure-eg day or evening languages classes. This is a cath-all category that includes all other types of education.

The entire research work has been divided into eight chapters.

By making an exhaustive and effective study on human rights, right to education is found as a distinct discipline of recent origin. But the principals of right to education, the concept of certain inalienable rights and respect for education values were present in all children, peoples, civilization from time immemorial. Therefore, the First Chapter of my thesis is devoted for the introduction of topic- the Central Idea, Nut Shell, and the brief, of right to education and its globalized impact with special reference to present scenario.

The Second Chapter of my research work is totally devoted to the Nature of article 21 and nature of education, meaning of right and describe also the concept of education/human rights, fundamental rights; including scope and dimensions of education covered by the National and International illteracy and forward explain about the legal education and Clinical education.

The Third Chapter is devoted about historical background of the topic of thesis and containing evaluation of rights and position of various contents, background of the History of fundamental rights, Indian Education system, Hindu Period, Buddhist Period, Mohammedan Period, British Period,
Historical aspect, Historical approach, History of the growth and development of education in India.

In the Fourth Chapter of my thesis is most important work. The right to education, the right to education in Various Statute. deals preamble is the basic structure of the Constitution. The Preamble says that people are the ultimate authority and the Constitution emerges from them. In fact the Preamble contains with the declaration that “to secure to all citizens justice, social, economic and political, liberty of thought, expression, belief, faith and worship- equality of status and of opportunity. The fundamental rights always remain controversial till date. The fundamental rights area basics and basic freedoms guaranteed to the individual.

Article 12, 14, 19, 21, 21-A, 27,28, 29, 30. deal with the fundamental rights. There are six fundamental rights excluding right to basic education. The fundamental rights are freedoms guaranteed but these freedoms are not absolute, but are justiciable. Justiciable here means “judicially enforceable.” The fundamental rights are different from legal rights. The legal rights are protected and enforced by ordinary law, on the contrary fundamental right is protected and guaranteed by the Constitution. By 86th amendment of constitution in the year 2002, Article 21-A was inserted as “right to education.”

The directive Principles of state Policy. Articles 41, 45, 46, deals with the Directive Principles of State Policy. Mention the some constitutional provisions regarding free and compulsory education to children below the age of 14 years and the provision for the promotion of educational and economic interests of all societies. The others provisions in Indian Constitutions Article – 228, 337 etc.

The other provision of the international covenant on Economic, Social and Cultural Rights (ICESCR) were adopted in 1966. The two articles related
to the right to education. Article – 13 of the ICESCR. Article – 14 of the ICESCR.

It is one of the great achievements of the United Nations that, in the Universal Declaration of Human Rights 1948 (UDHR). Under article – 26 everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.

The Fifth Chapter of this thesis work is devoted to comparative study of education and Indian education, other countries education systems like USA, Russia, England, Afganistan, Australia, China, Malasiya, Singapore, Canada, Japan, Netherlands, Norway, Sweden etc.

The Sixth Chapter of my thesis i.e. backbone of the research work of the above said title the judicial decisions, National and International Perspectives, the actual realization of right to education are discussed. The Supreme Court and various high courts have made remarkable advances in the field of right to education through some important landmark judgments.

1. Mohini Jain V State of Karnatka

   Popularly known as the captitation fee case the Supreme Court held the right to education is a fundamental rights under Article – 21 of the constitution.

2. Unni Krishnan V State of A.P. has held that.

   “The Citizens of the country have a fundamental right to education. The said right flows from Article 21 of the Constitution. This right is, however, not an absolute right. Its contents and parameter as have to be determined in the light of Articles 45 and 41”.


   Supreme Court has over ruled the Unni Krishnan decision partly. The Court held that the Scheme relating to admission and the fixing of fee were not correct and to that extent they are overruled.

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2. (1993) 1 SCC 645
3. AIR 2003 S.C. 355
4. O. Dnohgue vs The Minister for Education and Others

A case relating to “an education” the definition of education where education was define as essentially the teaching and training of a child to make the best possible use of his inherent potential capacities, physical, mental and moral.

*The Chapter Seventh* is a very important part of my thesis the trend of education and present Scenerio. I explained the education, Elementary Education in India, Environmental Education, Women Education, Right to Education in India, Research Methodology, deals with the objectives, universe, sample and sampling techniques, collection of data, tools for the collection of data, observational study, interpretation of data, and some tables regarding the showing the population of district Jhansi and the age of six to fourteen year child on going to school private and government schools.

The *Chapter Eight* is the devoted to research methodology and response of the students concerning the teaching and implementation of right to education. The researcher has sought the response of 100 students by administering the interview schedule following the social sciences research technique.

The *Chapter Nine* is the summary of inferences drawn out of the present research work conclusion and some suggestions made by the researcher to eliminate this problem from the society.

The work would be a success; if it can contribute at least a little as a source of information in the fight against this educational problem. Finally I dedicate this work to the millions of children, peoples who have been the helpless, poor persons and finally the research has recorded his findings relating to concerned problem under study incorporating the way of improvement of children’s educational growth and development.