CHAPTER-2

NATURE AND SCOPE OF RIGHT TO EDUCATION


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2.1 The Nature of Education

Indian Independence opened new vistas of economic development, social change and democracy which required skilled and well informed people, and also afforded learning opportunities to those who could participate in the developmental process. Along with the vast infrastructure of formal education at school and college, non-formal avenues of learning from the world of work and the world of culture grew rapidly to supplement the spread of education in cities and villages. Participation in economic development and in the political life of people democracy based upon adult suffrage afforded opportunities to learn and exercise one’s right and duties and acquire larger awareness and appropriate skills for greater productivity.

It is in the nature of education to make people grow in their capacities, performance, expectations and discrimination as human persons, as workers, and as citizens through both the formal, traditional systems and the non-formal ways of learning. Teaching, training and learning take place in both formal and non-formal situations, enriching the nation’s human resources for individual well-being and social progress.

2.2 Meaning of Rights:

Rights are those conditions of social life without which man cannot be at his best or give of his best, or what is needful to the adequate development and expression of his personality.

Various definitions of rights have been given by different scholars.

(i) Prof. Laski has aptly said that “Every State is known by the rights that it maintains”.

(ii) **According to Bosanquet,** “A right is a claim recognized by society and enforced by the State”.

(iii) **E. Barker Opines,** “Rights are the external conditions necessary for the greatest possible development of the capacities of the personality. Right exists within society. If there is no society, there cannot be any rights either. Rights imply duties. Rights are related to certain ends, and are distinct from claim. A claim of an individual is not a right, as to become a right, the claim should have the recognition and acceptance of the society as a whole”

The word right is used in many senses. Mainly the right consists of five elements.¹

1. **Right Holder Subject of Right**

   In the western concept of rural relationship right may be held by individuals and groups a family a company, a State, a country, a region may also have rights.

2. **What is right to object of Right**

   The object of the right to, may be in the nature of claims which may be negative or positive, negative in the sense, the subjects might pursue their own concern without interference, or positive, a claim where the subjects want the bearer of co-relative duties, (such as Government) to do something to advance the interest of subject.

3. **Exercise of Right:**

   Exercise of right may take several forms. It may be claimed, in the sense: That I have and you have to give it or respect it, It may be asserted or demanded, in the sense that the above job is done more confidently. That I have right to X, guaranteed therefore I assert or demand. It may be enjoyed- a relaxed form of exercising. It may be enforced- a more energetic sense of exercising a right, which seeks protection against violation, and demands compensation for wrong done.

4. **Respondents, Bearers of Co-Relative Duty:**

With some exceptions, rights are held against someone or something. The right of lender to the repayment of debt is held against the borrower.

5. **Justification of Rights:**

The grounds or basis as to why one should possess rights, it may be because it appeals to human nature, may appeal to custom, reason, Statute, contract etc.

### 2.3 The Concept of Human Rights:

The great gift of classical and contemporary human thought to culture and civilization is the notion of human rights. The struggle to preserve, protect and promote basic human rights continues in every generation in each society. New rights arise from the womb of the old.² Men everywhere had certain inherent spiritual and material needs and the rights necessary to meet those needs were natural and inalienable.³

Rights are those conditions of life without which no man can be at his best. They are the claims recognized by the state i.e., the claims, which have a wider acceptance and validity with the community. For Hobbies, all law is dependent upon the sanction of the sovereign.⁴

Human beings possess certain basic and inalienable rights by virtue of their very existence as human beings. These rights are collectively known as human rights. These rights being the basic rights, they become operative with their birth and continue forever; even after their death. Human rights, being the birthrights are, therefore, inherent in all the individuals irrespective of caste, creed, religion, sex and nationality.

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³ Sudesh Kumar Sharma, *Human Rights and Police, A perspective*,
These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare.¹

‘Human Rights’ means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International covenants and enforceable by courts.²

The noted Jurist Durga Das Basu, defines human rights as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of human family; irrespective of any other consideration.³

According to Bennet, “Human Rights include those areas of individual or group freedom that are immune from governmental interference or that, because of their basic contribution to human dignity or welfare, are subject to governmental guarantee, protection or promotion.⁴

According to Maurice Cryston it is very difficult to define the expression ‘human rights’ mainly because of differences in cultural background, legal systems, ideology and economic social and political conditions of different states. However, it can be said that the rights that all people have by virtue of humanity are human rights.⁵

Dr. S. K. Kapoor says that Human rights are the rights which are possessed by every human being, irrespective of his or her nationality, race, religion, sex, etc. simple because he or she is a human being.⁶

⁵ Cranston, Maurice; quoted in Macfarlane, L.J. “The theory and Practice of Human Rights, 1985, p. 7
2.4 Education is a Human Right

“Education is a fundamental human right, set forth in the Universal Declaration of Human Rights and the International Human Rights Covenants, which have force of international law. To pursue the aim of education for all is therefore an obligation for States.”

“Education for all is important for three reasons. First, educations is a right. Second, education enhances individual freedom. Third, education yields important development benefits.”

Human Rights are as ancient as civilization of man, as it moved from nomadic existence to that of urbanity. The very basis of healthy community existence is recognition of human rights. In the primitive societies there existed faint notions of individuals rights to live. The notion of inhuman wrongs as such is a testimony to something rotten at the heart of sovereignty and power. The notions of human rights seek to confront this rottenness. But human rights as a democratic society experiences today is the result of the evolution of human consciousness on the basis of the necessary demand for life based on equality, freedom and justice in a civilized society. Hence, human rights are the reflections of a civil society to protect and promote rule of law and human dignity.

Human rights are sometimes called fundamental rights or basic rights or natural rights. As fundamental or basic rights they are those which must not be taken away by any legislature or any act of government and which are often set out in a Constitution. As natural rights they are seen as belonging to men and women by their very nature. Another way to describe them would be to call them common rights for they are rights which all men or women in the world should share, just as the common law in England, for example was the body of rules and customs which, unlike local customs, governed the whole country.

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2. "John Deniel, Assistant Director-General for Education, UNESCO.
2.5 Scope And Dimensions of Education

In this Chapter, a general overview of the need for literacy and education is outlined to justify literacy being a part of Constitutional Provisions. The broader dimensions of literacy in its relationship with Education and Societal Development are also mentioned. Role of literacy as a part of the Human Rights dialogue and also as an integral part of the Human Development index is also discussed.

Having given unto ourselves a written Constitution, the very preamble of which proclaims Equality of opportunity as an express Intent, the concern for literacy as an important parameter is obvious.

2.6 Definition of Literacy

Literacy is the ability to read and write with understanding in any language. A person who can merely read but cannot write is not classified as literate. Any formal education or minimum educational standard is not necessary to be considered literate.

2.7 Illiteracy, National And International Dimensions

The problems of illiteracy are not confined to India, but are also a malady in developed countries too. Daedal us, the journal of the American Academy of Arts and Sciences, devoted the spring 1990 issue to study the problem of Literacy in America. The Journal quotes Joseph Murphy, Chancellor, City University of New York who stated. "There are as many as 60 million illiterate and Semi-literate adults in America today. Because poverty and illiteracy go hand in hand, the poor are disenfranchised, cut off from the democratic process. Any account that does not discuss the political interests served by allowing a large proportion of the American people to remain disenfranchised does not touch the heart of the matter. Before the Civil War in the United States it was illegal to teach slaves to read, for reading was acknowledged, as the tool needed to understand the social, historical, behavioral and physical laws that controls the human condition."
An apprehension of those forces invests human beings with the capacity to alter the conditions of their lives. It is not too far fetched to draw an analogy between slaves in the nineteenth century and illiterate Americans today. While this may be a strong statement, it reflects the concern on the prevailing levels of illiteracy and its consequent effects.

A leading German magazine 'Stern' points out that even in the United Kingdom, "One out of five adults in the land of William Shakespeare and Harry Potter is practically illiterate or has problems counting money in the purse". According to Daniel A. Wagner, Director, Literacy Research Center at the University of Pennsylvania, over one billion individuals worldwide, nearly 25% of today's youth and adults, can't read. Even fewer comprehend innumeracy and far fewer have access to electronic superhighway. "Achieving a literate society in which adults can fully participate in the workplace, community, and family will be a major challenge for the world in the coming millennium."

Illiteracy is one of the major problems faced by the developing world, specially Africa and South East Asia and has been identified as the major cause of socio-economic and ethnic conflicts.

2.8 Need To Go Beyond Rudimentary Literacy

With the limited definition of 'Literacy' being adopted for enumeration purposes, there has been concern on the content of a Mass Literacy Program.

The focus of mass literacy efforts is in terms of basics the mechanics of reading and attention to computation (addition, subtraction, multiplication and division) in mathematics. It is recognized that these basics are not rooted in the goals of higher order thinking conceptualizing, inferring, inventing, testing, hypothesis and thinking critically. It is true that these literacy programs do not have in mind, literacy practice that would promote capacities for independent reasoning, of the kind sought by Third World. A candid analysis of illiteracy's political and cultural consequences throughout the population will necessitate in our seeking to move literacy expectations beyond a rudimentary ability to
read, write and calculate. The recognition that 'literacy' has to be situation ally relevant has given rise to the concept of 'functional literacy'.

The need to go into the broader aspect is for the purpose of determining the structure of the system. In 'devising the system, I educational and psychological philosophies of Adler, Dewey, Wittgenstein, Chomsky and our own Mahatma Gandhi (in his basic education concept) and other experiences will come into play. Indeed, it is probably in recognition of this limited scope of literacy, that our Constitution makes a reference to education and educational opportunities and not to literacy.

2.9 Literacy and Human Rights

Literacy is now part of the Human Rights Dialogue. Now most of the nations of the world have also accepted their obligation to provide at least free elementary education to their citizens.

Article 26 of the Universal Declaration of Human Rights declares: "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 Professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit".

This Right is also repeated in the UN Declaration of the Rights of the Child which seeks to ensure "Right to free and compulsory education at least in the elementary stages and education to promote general culture, abilities, judgment and sense of responsibility to become a useful member of society and opportunity to recreation, and play to attain the same purpose as of education".

India has ratified the above, and these have thus the power of domestic laws. From the Human Rights perspective, constitutional guarantees arise automatically.

2.10 Literacy and Human Development

Investment potential on human capital has now been recognized. Economists had long assumed that the main component of a country's
productive wealth is physical assets "produced assets".

Literacy is now part of the Human Development Index. Government of India has also accepted this position, and one of the important components in the National Human Development initiative announced in the Union Budget 1999-2000 is education, forming also a component in the Prime Ministers 'Special Action Plan'.

By improving people's ability to acquire and use information, education deepens their understanding of themselves and the world, enriches their minds by broadening their experiences, and improves the choices they make as consumers, producers and citizens. Education strengthens their ability to meet their wants and those of their family by increasing their productivity 'and their potential to achieve a higher standard of living. By improving people's Confidence and their ability to create and innovate, it multiplies their opportunities for personal and social achievement. Japan's rapid industrialization after the Meiji Restoration was fuelled by its aggressive accumulation of technical skills, which in turn was based on the already high level of literacy and a strong commitment to education, especially the training of engineers.

In the field of Development Economics, literacy holds an important place as a parameter to measure development. It has been recognized that the "Human Development Index" (HDI) developed by UN is a measure of the overall development of the country.

One of the three components used in the calculation of HDI is "Literacy" as it is a cumulative measure of several factors that contribute to human development. In their book, "Development Reconsidered". Owens and Shaw have stated, "It is self-evident that literacy is a basic element of a nationwide knowledge system. The most important element of a literacy program is not the program itself, but the incentive to become and remain literate." When people are able to believe that they can improve their lives through their own efforts, when they realize that some newly created
opportunity is denied to them by illiteracy, then they will learn how to read, write and count."

Education is thus viewed as an integral part of national development. Development is not only 'economic growth': rather, it 'comprehended opportunities to all people for better life' with 'man as end of development and instrument'. Education and development are linked in a variety of ways. First, education, as stated earlier, is a human right the exercise of which is essential for individual development and fulfillment. The capacity of an individual to contribute to societal development is made possible and enhanced by, his or her development as an individual. In this light, education is also a basic need. It is also a means by which other needs, both collective and individual are realized. Thus, education is the instrument by which the skills and productive capacities are developed and endowed. All these interrelationships of education and development are inseparable from the conception of educational policies.

It is in the second order of 'action' that problems arise. The problems of illiteracy II not solve by itself in the flux of time. Without organized literacy action, illiteracy will continue to stagnate indefinitely along with 'the associated ills of poverty and underdevelopment. Experience has shown that determined 'literacy action is the exception and that more often, literacy campaigns are 'turned off' in line with short term. policy changes. Hence the need for Constitutional guarantees. In the light of the discussions earlier, Literacy and Education have overlapping connotations both as an engine of socio-economic progress as well as for individual growth.

2.11 Aid for Education by State

Concern for literacy arises from the clearly related question as to whether educational expansion has created the conditions for freer individual expression, for a more' active participation in the body politic, for what Particles called "sound judges of policy", and for greater respect for human welfare and dignity. Many feel, as indeed the Constitution makers felt, that education is its own reward- i.e. the more one is educated, the greater is his
possibility of developing these qualities. Thus, they believed that the future and hope of mankind lie in educational advancement and a Welfare State has to make suitable provision for the same. Education is valuable by itself for discovering "the treasure within", as has been mentioned by UNESCO.

As stated in the Constitution, the State has to set for itself a Welfare goal. It should, therefore, take upon itself all activities and steps to move towards this goal.

2.12 Meaning of Education

The Latin word 'Education' means to train. 'E' men as from inside and 'Duco' men as to draw out, to lead out or to bring up. By combining the two, education comes to mean to draw from within. Education is a process, which draws from within. Each child is born with some innate tendencies, capacities and inherent powers. Education draws these powers out and develop them to the full.

Latin words 'Educare' and 'Educare' mean to bring up, to lead out and to develop etc. In this way, the word education means to develop the inborn qualities of a child to the full.

Thus, education is process of development. To understand its nature and rate of progress, one must know the data of education.

2.13 Education In Narrow Sense

In its narrow sense school instruction is called education. In this process, the elders of society strive to attain predetermined aims during specified time by providing pre-structured tidbits of knowledge to children through set methods of teaching. The purpose is to achieve mental development of children entering school.

In this process, the teacher is the most important factor and the child is assigned a subsidiary role. The teacher is expected to instill ready made dozens of knowledge in the child’s mind. By this, the child cannot attain the wholesome development of his personality. Such knowledge strangles the
natural development of the child and hence, is of no use to him for his actual future life.

In spite of this, school education has merits of its own. In the words of John Stuart Mill- “The culture which each generation purposefully gives to those who are to be its successors, in order to qualify them for at least keeping up, and if possible for raising the level of improvement which has been attained.”

Following opinions of some educationists represent the narrow meaning of education:

1. **S.S. Mackenzi,**" - “In narrow sense, education may be taken to mean any consciously directed effort to develop and cultivate our powers.”

2. **Prof. Dreoer, - **“Education is a process in which and by which and by which knowledge, character and behaviour of the young are shaped and moulded.”

3. **G.H. Thompson, - **“The influence of the environment on the individual with a view to producing a permanent change in his habits of behaviour, of thought and attitude”

2.14 **Education In Analytical Sense**

Following are the constituent fields of education:

1. **Not limited to knowledge imparted in schools:** - Education cannot be confined to the processes of giving knowledge to children in schools. Its programme goes on from birth till death. Every one learns something or the other throughout life by various experience and activities. All this is education.

2. **Education as the development of child’s in ate power:** - Education is developing the native endowments of a child rather than something forced into the mind from outside. Addison has rightly remarked, “Education when it works upon noble mind, draws out to view every latent virtue and perfection which without such help are never able to make their appearance.”
3. **Education as a dynamic process:** Education is not a static but a dynamic process which develops the child according to changing situation and times. It is a purposive activity always pursuing some aim of life to which an individual devotes himself fully.

4. **Education a bipolar process**
   
   In his book “Evolution of Educational Theory” Adams has interpreted education as a bipolar process. He analysed education as under:

   (i) “It (Education) is a bipolar process in which one personality acts upon another in order to modify the development of the other.”

   (ii) “The process is not only a conscious one but a deliberate one. The educator has the clearly realized intention of modifying the development of the education.”

   (iii) “The means by which the development of the education and is to be modified are two folds; (a) The direct application of the educator’s personality to the personality of the education and, and (b) The use of knowledge in its various forms.”

   According to Adams, the bipolar education has two poles. At one end is the teacher and at the other is the child. Both are equally important in education. If the teacher instructs, the child follows. If the teacher gives, the child receives.

   Thus, in the process of education there is interaction between the teacher and the child.

   The teacher tries to mould and modify the behavior of the child so that the latter develops his personality to the full. With the active cooperation of the teacher and the child, the process of education goes on smoothly and efficiently.

**2.15 Education In Wider Sense**

In its wider sense, education is not the communication of information by the teacher or the acquisition of knowledge by the child but the total
development of the personality. Education consists of all those experiences, which affect the individual from birth till death.

Thus, education is the process by which an individual freely develops his self according to his nature in a free and uncontrolled environment. It is a life-long process of growth and development. It is not confined to the limits of time, place and individual.

Any person who gives the child a new experience is a teacher and any place where this giving and receiving takes place may be termed as a school.

Thus, education is essentially a process of growth and development, which goes on throughout the whole life. Rousseau developed his philosophy of naturalism keeping this wider concept of education in his viewpoint. Following eminent scholars interpret education in the wider context:

1. **S.S. Mackenzi** - “In the wider sense, it is a process that goes on throughout life, and is promoted by almost every experience in life.”

2. **M.K. Gandhi** - “By education, I mean the all round drawing out of the best in child and man-body, mind and soul.”

3. **Dumville** - “Education in its widest sense includes all the influences which at upon an individual during his passage from cradle to the grave.”

The system of education changes according to time and cultural conditions, therefore, hereunder we first mention Indian concepts of education:

### 2.16 Indian Concept Of Education

Indian approach includes the spiritual aspect as a part of the development by education. In fact, Indian thinkers have placed special emphasis upon this. Yajnavalkya opined that only education, which gives a sterling character to an individual and renders him useful for the world.

Shankaracharya said that education is that which leads to salvation. Even the more recent educationists have stressed the importance of the spiritual aspect.
In the words of A.S. Altekar, “Education has always been regarded in India as source of illumination and power which transforms and ennobles our nature by the progressive and harmonious development of our physical, mental, intellectual and spiritual powers and faculties.”

This spiritual tradition has been carried on by contemporary Indian philosophers of education in their integral approach, synthesis of idealism and pragmatism; rationalism and humanism, diversity in unity and harmony of the individual and society.

It was due to this emphasis on the spiritual meaning of education that Vivekanand said, “Religion is the inner most core of education.”

In the words of Sri Aurobindo, “The child’s education ought to be an outpouring of all that is best, most powerful, most intimate and living in his nature, the mould into which the man’s action and development ought to run is that of his innate quality and power. He must acquire new things but he will acquire them best, most wholly on the basis of his own developed type and inborn force.”

M.K. Gandhi expressed the same idea when he defined education by saying, “By education, I mean an all round drawing out of the best in child and man, body, mind and spirit. Literacy is not the end of education not even the beginning. It is one of the means whereby man and woman can be educated. Literacy in itself is no education.”

2.17 Western Concept of Education

Education thinking, like every other branch of knowledge, started in the philosophical deliberation of the ancient Greek philosophers. Thus, the meaning of education in west is initially available in the works of Plato. It is interesting to note that thousand of years ago, Plato gave a meaning to education, which is even now followed in the West with slight changes here and there.
Plato defined education as a life-long process starting, “from the first years of childhood and lasting to the very end of the life.” He used the term education in a very wide sense, “which makes a man eagerly pursue the ideal perfection of citizenship and teaches him how rightly to rule and how to obey.”

Education not only provides knowledge and skills but also inculcates values, training of instinct values, training of instincts, fostering right attitude and habits.

In, Plato points out that, “true education, whatever that may be, will have the greatest tendency to civilize and humanize them in their relation to one another and to those who are under their protection.” This humanist definition of education propounded by Plato is still the most widely accepted meaning of education in the West.

Education everywhere has been taken as a process of inculcating values. As Plato said, ”Now, I mean by education that training which is given by suitable habits to the first instincts of virtue in children.” These views of Plato have been universally accepted in West as well as in the East.

2.18 Synthesised Concept Of Education

It is clear from the above discussion of the meaning of education in West and India, ancient and modern that it may be synthesized since all these accept some common characteristics of education. The following points concerning the meaning of education emerge from a review of the meaning of education in the West and in India.

1. A Life long process: Education according to most of the philosophers continues from birth to death. As Madam Paul Richard pointed out the education of man “should begin at his very birth and it is to continue the whole length of his life.”

2. Unfolding: Education is a gradual unfolding. In his ‘Allegory of the Cave’, Plato observed that “the power and capacity of learning exists in the soul already, and just as the eye was unable to turn from darkness of
only, by the movement of the whole soul, be turned from the world of the
becoming into that of being and learn by degrees to endure the sight of
being and of the brightest and best of being or in other words of the
good.” It is in the same sense that Sri Aurobindo said, “The chief aim of
education should be to help the growing soul to draw out that in itself
which is best and make it perfect for a noble use.”

3. **Based on child psychology:** Western thinkers unanimously agree that true
education should be based on child psychology. This again has been
accepted by Indian philosophers of education.

   According to Sri Aurobindo, “Nothing can be taught to the mind which
is not already concealed as potential knowledge in the unfolding soul of
creature.”

   Educational theory must be based on sound psychology. As Sri
Aurobindo points out, “The true basis of education is the study of the
human mind, infant, adolescent and adult.”

4. **Individual as well as social:** True education is individual as well as social.
Plato brought out a scheme of education according to each individual’s
capacities to serve the society. Philosophers in the West have everywhere
laid emphasis upon individual as well as social aims of education.

   Contemporary Indian philosophers also exhibit this tendency. **M.K.
Gandhi** said,” I value individual freedom, but you must not forget that man
is essentially a social being. He has risen to his present status by learning to
adjust his individuality to the requirements of social progress.”

5. **Total development:** Thus, education by general agreement is a total
development, physical, mental and spiritual, individual as well as social.
This total development is the meaning of self-realization. This synthesis of
the different aspects of man’s development is characteristic of not only
idealism but also naturalism and realism. It is again the meaning of
perfection, acclaimed as the aim of education by so many thinkers. It is also
what is known as complete education. It is again the humanist meaning of education since man is a complex being several aspects of his personality all of which require full development.

According to Sri Aurobindo, education should help the individual to grow, “into a fullness of physical and vital energy and utmost breadth, depth and height of his emotional, his intellectual and his spiritual being.”

2.19 True Definition Of Education

The different meanings and definitions of education as given in this chapter lead us to the conclusion that education that education should have a comprehensive definition.

Thus, education may be defined as a purposive, conscious or unconscious psychological, sociological, scientific and philosophical process, which brings about the development of the individual to the fullest extent and also the maximum development of society in such a way that both enjoy maximum happiness and prosperity.

In short, education is the development of individual according to his needs and demands of society, of which he is an integral part.

T. Raymond has rightly remarked, “Education is that process of development in which consists the passage of human being from infancy to maturity, the process whereby he adapts himself gradually in various ways to his physical, social and spiritual environment.”

2.20 Modern Concept Of Education

To understand the modern concept of education, one has to make a comparative study of the old and modern concepts. Following are the differences between the old and the new concepts:

1. Meaning of education- Education is derived from the Latin word ‘Education’ which means to draw out, to foster growth and to develop. Hence, the modern concept of education seeks to develop the inherent capacities of a child in the social environment. In the old concept,
education was taken to mean as a process to thrust ready-made tidbits of knowledge into the mind of a child as if it was an empty vessel.

The old concept has exploded under the weight of psychological researches and democratic values. The mind is a dynamic self-adjusting and self-learning force needing proper guidance for wholesome growth and development modern education seeks to develop the mind according to its own inherent capacities in a social environment.

2. **Aims of education** - Ancient education emphasized scholarship and mental development. It kept an indifferent attitude towards other aspects of personality. Acquiring more and more knowledge was regarded as the prime aim.

Old the contrary, modern educationists lay equal stress upon other aspects of development viz., physical, mental, emotional and social. Thus, the aim of modern education is to develop individuality to the full and attain social efficiency and dynamism.

3. **Curriculum** - In the old curriculum only subjects promoting mental development were included and emphasized. Thus, old curriculum got rigid and stratified. It was confined mostly to classroom activities and experiences.

Modern curriculum is flexible, varied and progressive in the sense that it tries to meet the needs of the developing child as well as demands of ever changing modern society.

4. **Methods of teaching** - As the methods emphasized cramming and stimulated rote memorization education was a lifeless, dull and drab process.

Modern methods condemn rote memorization and promote the adoption of lively and effective methods like Play-way, Learning by doing, Learning by experience etc. These methods stimulate motivation, interest and attention.
5. **Discipline** - Old concept of discipline emphasized the use of rode and punishments to enforce obedience and discipline in children. This concept of enforced discipline in children. This concept of enforced discipline through repression has now been given up. The modern concept is self-discipline leading to natural obedience.

6. **Examination** - The old method of essay type examination encouraged cramming and rote memorization. Modern techniques evaluate as well as examine. These include objective tests, progress reports, cumulative records, interviews and practical performances.

7. **Agencies of education** - According to old beliefs, school was the only agency for the education of children. According to modern views all formal and informal agencies are harnessed to the task of education.

8. **Teacher** - Old education put the teacher at the top of the education process. In modern times a teacher is considered as a friend, philosopher and guide.

9. **Child** - According to old concept, the child was a mere passive recipient of whatever the teacher instructed. Modern education is child centred. The entire education process is to cater to his needs and develop him according to his nature. He is to interact actively with the teacher and his class mates to achieve effective learning promoting his own development and the development of the society of which he is an integral part.

10. **School** - According to old concept, school served as a shop for selling knowledge. Everything was Pre-planned in advance. Teachers were concerned with the input and bothered little about output. Modern concept of education regards school as miniature of society laying emphasis more on output in comparison with input.

11. **Education as discipline** - In ancient times, education meant only training of something for some aim. Modern education is a separate discipline of deep study, investigation, and research. It is a very important process of human development in all fields of human activities. It has its own
distinct special features and factors to promote it as a vital formative process.

The following chart clarifies the modern concept of education:

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<td>Formal and informal both.</td>
</tr>
<tr>
<td>8.</td>
<td>Teacher</td>
<td>Instructor</td>
<td>Friend, philosopher and guide.</td>
</tr>
<tr>
<td>10.</td>
<td>School</td>
<td>Teaching shops</td>
<td>Miniature of society.</td>
</tr>
</tbody>
</table>

2.21 Forms Of Education

Education is a comprehensive concept which comprehends the knowledge obtained through various other means, in addition to the formal
education provided in colleges. The average individual interprets the term in the sense of college education, which is obviously different from the education obtained from the other sources. Educationists have distinguished between the various types of education in order to remove this confusion. Briefly, education is of the following kinds:-

1. **General education:** As is evident from the name itself, general education is the minimal education required by an individual to satisfy all his various needs. It aims at developing the general qualities of the child, so that its personality can develop and it can become capable of adjusting to its environment. It also enables him to earn his livelihood and to behave properly, in accordance with his age. It is generally believed that this general education continues upto the eighth class. All modern states make general education compulsory for all children, and in many cases it is provided free of charge.

2. **Specific education:** General education which is outlined above, is a supplement to specific education, which, as is evident trains the child to pursue some specific profession or job. The modern age is period of specialization.

   As long as an individual cannot perform some particular task better than any other person, he will find it difficult to make a place for himself in society. It is for this reason that nowadays individuals are given vocational guidance in order to help them to take up professions for which their abilities are best suited.

   General education is more liberal while specific education is comparatively narrow. It is not so closely connected with the development of the person’s general personality and character. This is the task of general education. Specific education is spread over a long period of time and is often centered in

   Specialized institutions such as medical colleges, engineering colleges, technical institutes, etc.
In each case, the aim is to make the individual proficient in a particular skill, be it curing sick people, designing or repairing machines, growing crops or anything else. Besides, specific education is also often more expensive than general education. Specific education, on the contrary, can be really profitable only if the individual possesses mental and physical qualities commensurate with that profession.

Specific education plays a very important role in a nation’s development, because it provides specially trained personnel in every field who can serve society and enhance the welfare of the nation.

The term education is derived from the Latin word ‘Educare’ which means bringing up a child, both physically and mentally. In this sense, education can be defined in broad sense, denoting a process by which culture is transmitted from one generation to another. Education has both conservative and creative functions to perform. In its conservative function, education transmits the cultural values and socially approved behavior-patterns to the younger generation of the society. However, in modern human societies innovation and change are more prominent than they were in the traditional societies. Modern education inculcates new ideas and thought patterns along with the transmission of established cultural and social values.

Modern education does not make an individual dogmatic, rather it makes him or her a rational human being capable of challenging the past values and creating new ones. A change is thus the creative function of education. However, the two functions are not antithetical to each other, rather they are reconciled in modern education. Education is generally described as “process of socialization, of change and innovation, of preservation and dissemination of societal values and of the total development of an individual from birth to death”.

Thus, education is one of the most important factors, which have a bearing on the thought patterns, and the personality structure of an individual.
It makes a person conscious of his/her right, responsibilities and obligations with respect to himself, his family, society and the state.

Education can be viewed as the transmission of the values and accumulated knowledge of the society. With societies growing more complex and also complexity in the knowledge to be passed on, school/college system has come in. In this process, teaching and learning things out of context has become prevalent. The education experience has become less directly related to daily life. With knowledge explosion, education has been restricted to transmission of specialized knowledge, leaving aside the human values; Education is also a process of human enlightenment and empowerment.

Education aims to help students develop into self-thinking, morally oriented human beings (www.uvsc.edu/ethics/curriculum). There has to be a humanistic approach to the teaching-learning process.

1- Rights-based development

"The overriding goal of poverty reduction is underpinned by a rights-based approach promoting democracy and human rights, equality between women and men, and sustainable development."

"Sida works for democracy and human rights to be reflected and respected in all bilateral Swedish development cooperation. Sweden can contribute through most of its development assistance to Strengthening the condition for peace and democracy, promoting human rights, supporting growth with equity, and preventing the insecurity from arising which leads to armed conflict and war."

2- Education defined as a human right?

"Education is a basic human right and is necessary for sustainable social and economic development."

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"The right to education and rights and democracy in and through education are Sida’s guiding principles."  

3- Commitment to free and compulsory education
In reality, many countries are far from the realization of the right to basic education free of charge...Sida’s position is that non-governmental sources can supplement, but not replace the state financing of basic education.”

Sida’s assessment and follow-up activities, as well as its dialogue and contribution to capacity development, shall, whenever appropriate be guided by the following priority concerns: making basic education compulsory and truly free of charge for all children…”

2.22 Non-discrimination (Race, ethnicity, religion, minority, disability

“The overall policy goal of Sida’s cooperation in the education sector is to enhance the right to relevant education for all-an education that empowers the poor and excluded parts of the population to participate as active and informed citizens in all aspects of development.”

“Sida’s assessment and follow up activities, as well as its dialogue and contribution to capacity development, shall, whenever appropriate, be guided by the following priority concerns:...

Meeting the special needs of children disabilities, ill health or other learning problems through ‘inclusive education’... removing gender, language or ethnic barriers, and enhancing bi- or multilingual learning... enhancing education
for all children, youth, and adults through formal and non-formal education, as well as informal means...

'Sweden will also seek to ensure that the Human rights of indigenous peoples, especially discriminated minorities or other vulnerable groups are given high visibility in programmes with countries where this is a serious problem.'

2.23 Education As A Human Right

Today, education is accepted as a human right. Right may be understood as the power of an individual or group of individuals (community) to possess or do something, by virtue of the individual’s/group’s position in a social situation. The social situation defines what the individual/group is entitled to as a right. An individual may acquire certain rights simply by virtue of being a human being, irrespective of any particular situation in which he/she is. They are generally termed as human rights. There are also rights that an individual acquires by virtue being a citizen of a nation under its Constitution. The are known as the citizen’s or constitutional rights.

Human rights are perceived in relation to the basic needs of human beings. Need or at least the degree of it is relative and is dependent upon the subjective definition of individuals and communities. Food, shelter and clothing are universally accepted as basic needs of human beings for survival. But the quality and quantity of these needs are subject to relative determination in different social situations. Basic human needs may be considered is a requirement for not merely biological survival, but human living (or to live a reasonably human life in one’s socio-economic and political environment). Every human being has the right to the basic needs of human existence.

Education as a process of acquiring knowledge and skills is considered to be a basic need of human living and, therefore, it is accepted as a human right. It means that without education an individual would not be able to live a really human life. The important question here is about the nature and level of education that is accepted as a basic human need. Is the process of socialization (or informal education) that takes place within the family and community adequate? If yes, the contents of the human right to education would be within the scope of socialization. There is absolutely no doubt that no human living is possible without the minimum learning process of socialization. But when education is treated as a human right today, the reference is to some level of formal education (or learning beyond what is available in socialization) as a basic need of every human being.\(^1\)

The understanding here is that without some level of formal education, an individual would not be able to live a reasonably human life in modern society. Hence today, education is accepted as a human need and finds place as one of the human rights in the “United Nations Declaration of Human Rights”. An important question here is what type and level of education is a basic need of human living and, therefore, a human right. The consensus the world over seems to consider basic education as the minimum need.\(^2\)

It would mean two things. First, in order to live a human life in the social-economic and political environment of modern society, an individual should acquire minimally basic education. Second, the scope of the human right to education does not necessarily include higher education. In view of the specific function of human power production for division of labour performed

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1 With reference to the right to education, Graham Haydon (1998:241) distinguishes between socialization as a level of education, ........... It is the level of education that is too important for a human being to be treated as merely optional.

2 Terms such as elementary and primary education are also used to refer to this minimum level of education. ........... irrespective of any distinction of caste or class, is placed at the very center of basic education” (Bhatt and Aggarwal, 1969:187).
by higher education, modern society requires higher education as a societal level need. But no society is likely to accept higher education as a human right at the individual level because higher education is not considered a basic need for human living. However, where equality is institutionalized as a fundamental value, an individual may have the right to equality (or equal treatment) at all levels of educations. Since equality of all individuals (or uniformity) in the acquisition of higher education is not envisaged, equality in higher education refers to equality of opportunity (or absence of discrimination of any individual in the matter of education at any level) in the strict sense or any variation of it. When the principle of equality is applied to basic education as a human the right (that is, right to equality in basic education), it refers to equality per se in the sense that every individual should actually acquire the minimum basic education. It means education for all in every sense.

One pertinent question in the context of the right to equality in basic education and the right to equality of opportunity in higher education is who bears the cost of education.

There are two broad options in this matter, viz. provision of education as a free service and payment for the service of education by the beneficiaries. Depending upon their nature (particularly of the political economy), individual societies may develop their own systems of characterized by the ideology of the welfare of the welfare state, at least basic education is provided free and higher education as a subsidized service to all the citizens. Further, as a corollary to the acceptance of the right to education, some level of education is made compulsory in most modern societies. It is meant to be a measure to protect the right of all individuals to education.

3. In the words of Haydon (1998:243), higher education is covered under "Education and Social Stratification", for the discussion on equality and equality of opportunity in education.

4. For a detailed discussion on financing of education see Chapter 3, quality and equality do not seem to ensure it. See Chapter 8, "Excellence in Education", for the discussion on equality and equality in education.
In a developing society, wherein all the sections of the society have not yet internalized education as a positive value and accepted it as their right, compulsory schooling may be necessary in order to achieve the goal of education for all.\(^5\)

2.24 Right To Education In India

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.\(^6\) Following this constitutional directive, the nation has been pursuing universalisation of elementary education as a national goal.\(^7\) Most states in India have also enacted legislation on compulsory education that has made schooling of children legally binding on the parents. But no serious attempt has ever been made to enforce the legislation. It has remained a symbol of the concern for elementary education, rather than a means or strategy to pursue it in reality. In 2002, an amendment to the Constitution of India has been effected in order to make elementary education a fundamental right of every child.\(^8\)

This is an explicit recognition of education as a human right, which is already implicit in the constitutional directive. The impact of making elementary education a fundamental right under the Constitution is likely to be any different states in the country in the past. Nor is it likely to change in any significant way the accountability assumed by the state to provide elementary education under the earlier directive principle of the Constitution.

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5. Haydon (1998-247) makes a distinction between the right to education and compulsory schooling. He defends compulsory schooling in the context of the right to education. “Some children may be deprived ……… individuals rights done.”

6. Article 45 to the constitution of India prior to the 86 the amendment Act. “The state shall endeavour to provide ………………… fourteen years”

7. The educational policy in the post- independence India accepted the free and compulsory education envisaged……… Constitutional directive.

8. The constitution 86th amendment Act, enacted. ……… Three changes in the constitution.
Inclusion of the task of providing elementary education to one’s child in the list of the fundamental duties of a citizen is not likely to have an outcome different from that of the compulsory education acts that made schooling of children legally binding on parents. From a theoretical point of view, the status of education in the Constitution may be considered to have changed from being a directive principle to that of a fundamental right. From that perspective, it may be stronger symbol of the nation’s concern for elementary education.

As a child is expected to enter the formal system of education by the age of six years, the constitutional provision for education up to the age of 14 years would imply eight years of schooling. It would also mean that eight years of education is necessary or adequate to impart the minimum knowledge and skills necessary for an individual to live a human life. Thus, elementary education, which is compulsory under the constitutional directive or right, is considered to consist of eight years of schooling in India. Obviously, it is not merely the number of years that is important, but the contents of the education (in terms of knowledge and skills) provided during the eight years. The principle of equality requires that every citizen in the country acquire minimally these contents of knowledge and skills. Thus, the goal of education for all, institutionalized in India, seeks to provide the knowledge-skill contents of elementary education to each and every individual in the country. It can be drawn from the constitutional provision and the efforts in education in the country after the Constitution came into effect that education beyond the elementary level (or higher education) is not part of the right to education in India. It would mean that there is no societal obligation to provide higher education to each and every individual. The knowledge-skill contents of higher education do not fall within the scope of the goal of education for all. However, education any level comes within the scope of the constitutional right to equality of opportunity.\(^9\) right to equality of opportunity in higher education

\(^9\) Article 15 (1) of the constitution. “the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex,........ any of them, Art-29 (2) “ No. citizen shall be denied admission .... Any of them.
would mean that no individual is subjected to any discrimination in the matter of pursuing higher education. Distribution of the resources of higher education (or access to higher education) on the basis of impersonal criteria (as merit) is accepted as non-discriminatory.\textsuperscript{10} Under the Constitution, the state in India is expected to provide elementary education as a free service. Since higher education is not treated as a basic human right, it need not necessarily be provided as free service. However, being a societal resource that has not only individual but also social returns, higher education in India is treated as a service rather than a commodity on sale.\textsuperscript{11}

\textbf{2.25 Education For Empowerment}\textsuperscript{12}

Right to development is the most basic right of every child, duly recognized by the convention on the rights of the child (1989), to which India is a party, and reiterated in the World conference in Vienna (1993). Article 39(f) of the constitution incorporates the right to development as Directive principle of State Policy. Education is the most effective tool and medium for human development. The right to education has been judicially construed to fall within the guarantee of the right to life in Article 21 and now it is being expressly included in Part III of the Constitution as a fundamental right. Freedom of information is the essence of democracy. Education helps to develop that trait.

Thus the right to education of every child is clearly is human right and its proper direction a human rights issue.

Despite the 86\textsuperscript{th} Constitutional Amendment, whereby elementary education has been made fundamental right in the constitution, around 35\% of the population is still tottering in the darkness of illiteracy. About 50 million children are out of school. Even where enrolment is high, the drop out rate is over 50\% by the time the student move over to high school.

\textsuperscript{10} For the debate on the non-discriminatory ..... Sec. Chap-2 stratification and equality in education.”

\textsuperscript{11} See Chap. 3 education and economy “ for the discussion on cast recover in education.

\textsuperscript{12} National Human Right C. 2007
Gender Parity Index is 0.82. It means for every 1000 boys enrolled, there are 820 girls seeking admissions (UNDP 2003).

As the country strives to become a global power and aims to attain higher growth rate, it can’t afford to leave around one third of its people in lurch, as far as education is concerned. Human civilization has long realized that education has long realized that education forms the very basis of development. It is said that the pace of an elephant herd is not gauged from the frontline elephants of the herd, but the last one. So is the case with human societies. The overall development of a nation can be gauged only by the status of the last person on the ladder. To keep pace with the developed societies, we will have to see that no section of the society is left behind the society is to develop both horizontally and vertically. We need to be particularly more vigilant about the poor, the downtrodden, the vulnerable, the children and the women. And the most fundamental thing in the process of their development and mainstreaming is to provide them opportunity, in all its conducive ness, to receive education. After all, it is proven beyond question that investment in education is the best in the interest of a nation.

**(a) Providing Education – a Basic Child Right**

Nearly 59 years after independence, as indicated in National Sample Survey, 55th round data, there are still 30 million children in the age group of 6-11 years in India who are out of schools. Any child not going to school becomes a potential working child. Estimates suggest that there are more than 44 million working children in India. The Government of India has implemented Child Labour Act in 1986 the outlaws child labour in certain hazardous areas including mining, handloom, cigarette manufacturing, glass making and meat processing. A recent amendment in the Act adds that employing children under the age of 14 in households, roadside restaurants, spas and hotels will be illegal thus adding these in to the list of ‘Hazardous’ occupation.
The commission has consistently taken the view that the term “Hazardous” should necessarily be interpreted with reference to what is hazardous for the child. It thus argues that the entire issue of child labour must be viewed through the perspective of the rights of the child.

The 86th amendment providing for ‘free and compulsory education to all children up to the age of 14 year has brought a paradigm shift from the ‘welfare’ to the ‘rights’ perspective to elementary education.

Right to elementary education holds singular relevance in providing opportunities for providing opportunities for children and crucial linkages between working children and education.

If the Millennium Development Goal for universal primary enrolment by 2015 is to be achieved, the need is to accord top priority to education. Unfortunately, government action appears to be for away.

(b) Making Their Dream a Reality

With many legislations in place and many more policies framed children are still made to work denying them the right to enjoy childhood and an opportunity to receive education. Across small towns and big cities one finds here and there children working to earn a livelihood. They pick rags, help run father’s vegetable stall, perform tricks with animals or work as domestic help. All they do only to earn some money to augment family income. Making education compulsory for them without a proper rehabilitation and resettlement plan many become self-defeating. It is not enough to make out strategies-what is needed is action based on realities supported by proper planning and implementation. Gabriel Mistral, the Nobel Laureate said- “We are guilty of many errors and faults, but our worst crime is abandoning the children neglecting the foundation of life; Many of the things we need can wait, the child cannot. Right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer ‘tomorrow’. His name it ‘today’.”
Protecting and preserving children from exploitation and to ensure to them their exploitation and to ensure to them their basic human rights is our obligation. Practical action to prevent, remove and rehabilitate child labour and provide education to all children is needed to be taken in the right earnest.

Every child dreams to become someone in life. It is necessary for all stakeholders to make his this dream a reality.

(c) Special Attention To The Vulnerable Girl Child

The Constitution guarantees equality of opportunity before the law for both girls and boys. Article 15(3) even makes a special provision enabling the State to make affirmative discrimination in favour of women. Ideally, both the sexes should have equal access to education. But the de facto position is that the proportion of out of school children is higher among female children.

Out of every 10 illiterates in India, 6 are girls. Even at the stage of enrolment of girls and boys in school there is a yawning gap of 21.7% points. There is also a high drop out rate among girl students as compared to boys various levels.

The social barriers standing in the way of girls attending schools, poverty, compulsions of older girls in families having to look after the home and siblings, the conception or misconception that girls do not need education and/or that what is taught in schools is irrelevant to them and parents seeing limited economic benefits in educating daughters are some of the factors that inhibit parents from getting their girls enrolled.

The comparatively high drop out rate of girls in school is result of gender discrimination manifested in family, in society and in the community in which we live.

Nonetheless today there is hope, which is reflected in higher number of girl students enrolled in upper primary education. This has been possible because of many policy interventions on behalf of the girl child, which stressed the need for empowering women.
(d) Special Attention To The Vulnerable Visually Impaired Children

According to the Census 2001, there were 21.9 million persons with disabilities in India. Estimates say, nearly 11 million i.e. 51 percent of them have no access to education. Visually impaired students routinely receive their Braille textbooks towards the flag end of the academic session. Worse still, a majority of them do not have access to these books at all.

Many states and UT administrations do not have a single Braille press. The Commission intervened in the matter and sent letters to the Chief Ministers of all the States and Union Territories in April, 2005 emphasising that there is a need to ensure that the printing of books in Braille go simultaneously with the printing of regular books. In order to ensure timely availability of Braille Text Books, the services of high speed computerized Braille presses could be utilized. The availability of Braille textbooks would ensure education in an appropriate environment for blind students. It was also recommended that the State Education Board should work on proper distribution system, at the beginning of each academic session.

Responding positively at least 12 states and UT administrations assured timely availability of the Braille books. Others also are reported to have initiated positive steps and/or have developed the necessary infrastructure for the availability of Braille books. Response from other States and Union Territories administrators were awaited even after 18 months so much for the sensitivity to the rights of the disabled.

(e) Special Attention OT The Vulnerable

(Children infected/affected by HIV/AIDS)

Discrimination against children in education for any reason whatsoever can’t be accepted by any civilized society. There have been reports and complaints about discrimination against children affected/infected by HIV/AIDS, even in terms of as basic a right as education. NHRC came across instances in which children were turned away from schools, clinics and orphanages because their family members were HIV positive. Can they be
made to suffer’. This reflects cruelty. Society needs to change its mindset. The authorities and the civil society alike should create awareness regarding HIV/AIDS that it does not get transmitted through studying in the same climate.

Concerned about the protection of human rights of children infected/affected by HIV/AIDS, particularly with their right to education and health care, the Commission wrote a letter to the Chief Minister of all States/Uts. Recommending the State Governments to enact and enforce legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from attending schools as also to address school fees and related costs-factors that keep children, especially girls, away from school. The States have responded in the matter positively.

(6) Missed Opportunities – Dalit Children

In the background of furore to the reservation policy in higher educational institutional policy in higher educational institutional the need is to focus upon ensuring enrolment and retention of students of dalit communities in the age group of 6 to 14 years by ensuring free, compulsory and quality education. It is a wrong assertion that parents of dalit children have little value for education. A survey by the Delhi School of Economics and Indian Social Institute indicated that 80% saw the importance of education as means for empowerment. In fact, these children have plenty of time on their hands, but non-availability of school, teachers, and basic expenses involved, keep them away from education. Bad infrastructure is another major intimidating factor.

The traditional values of caste and ritual subordination are the primary reasons for the discrimination against the dalits. Add to it the general difficulties, which the poor and the economically disadvantaged have to face. The two reasons combine together to make education virtually inaccessible for the dalits.

The denial of right to education on primary level results in missed opportunities to these children in spite of reservation for higher education. The
need is to have a focused attention to these marginalized groups to ensure access, availability and continuance of education.

(g) On Way to Empowerment

A deliberation at the Beijing Plate form of Action 1995 says “Education is a human right and an essential tool for achieving equality, development and peace.

Though overall progress has been achieved in girls’ enrolment in primary and secondary school levels, girls in many countries still face discrimination “All governments including the Indian government agreed to close gender gap in primary and secondary school education by the year 2000 and to achieve universal education before the year 2015. However in the first ever gender gap study covering fifty-eight nations, the World Economic Forum (WEF) in May 2005, ranked India at a lowly 53rd position. As per census 2001, the female literacy percentage was 54.16% as compared to 78.85% for males. The dropout rate for girls in classes I to V was 42.28% as against 38.67% for boys. The rate increased at higher levels of education.

In is being increasingly realized that lack of education and training are vital shortcomings, which block women’s progress towards empowerment and enjoyment of human rights. The Constitution now guarantees free and compulsory education for all children in the age group of 6 to 14, as a fundamental right. Yet, the policies necessary to realize the constitutional mandate are either not in a place or are inadequate, although it is becoming clear that investing informal and non formal education and training for girls and women is one of the best means of achieving sustainable development and economic growth.

(g) Education and Human Development

Education is one of the important pillars of the human development. Education is a means to fostering the individual’s society’s, and even humanity’s future development and prosperity.
Increasing enrolment to cover the entire school-age population needs to be combined with efforts to increase the quality and relevance of school curriculum to equip students with not only academic knowledge, but also values and life-knowledge. Wisdom is not merely acquiring knowledge but learning how to use it for benefit of mankind.

**Swami Vivekanand** is one of his talks said: “Education is not the amount of information that is put into your brain and runs riot there undigested all your life. We must have life building, man-making, character building, assimilation of ideas”.

A qualitative shift is needed from routine memorization to development of children’s capacity for critical thinking and from methods that emphasize teaching and passive learning to those that foster active interest and the ability of children to learn on their own.

Education is an asset of the Nation and foundation for fertile human resource. Education should, therefore, aim for an integrated development of students’ physical, mental, moral and spiritual. This type of education can be the foundation of National building

Students are the dynamic and progressive component of citizenry and can become instruments for securing social justice and social development.

*(h) Mission of Education*

Education is the most important element for growth and prosperity of a nation. India is in the process of transforming itself into a developed nation by 2020. Yet we have 350 million people who need literacy and many more who have to acquire employable skills to suit the emerging modern India and the globe. Children who belong to weaker sections of our society are undernourished, and only a small percentage of them manage to complete 8 years of satisfactory education.

It is reported that 39% of children drop out from school after studying 5th class and 55% drop out after studying up to 8th class. This situations need
remedial action, especially since assent has been accorded for the 86th Constitution Amendment Act-Right to Education Bill for children between the age group of 5 and 14 years. But an Act alone cannot achieve the goal unless the education is delivered in a manner, which will take into account the socio-economic reality, and perception of people whom it is addressed. Apart from attracting children to schools, the education system should be able to provide nourishment and inject creativity among the children.

Present have an important role in the education of the children and making them enlightened citizens. They must be aware of the need for good education of the child, male or female. Like teachers, parents also should set an example for the child in their overall behaviour and conduct.¹

(i) Education-Essential for Growth

Government attaches the greatest importance to education. We have steeply increased financial outlays to school education. We have expanded the Sarva Shiksha Abhiyan. We have placed particular emphasis on bringing out-of-school children into the classroom. We are also committed to improving the existing infrastructure of regular schools High drop out rates and quality of education are two important areas of concern of Sarva Shiksha Abhiyan. I believe that local community-based monitoring of school performance is very important to ensure that increased outlays translate into better outcomes.

Interventions need to be designed to address the problems of poor student’s achievement and poor classroom transaction. There is an urgent need to initiate reforms in curricula, the examination system and development of textbooks in the states at all levels of school education. There is a special focus on girls’ education under Sarva Shiksha Abhiyan. We are also placing great emphasis on education of SC/ST communities and all minority groups.

Education is a major instrument for economic and social mobility. It is also important that we prevent alienation of youth belonging to disadvantaged

¹(Extracts from the President's address to the nation on the eve of Independence day-2004)
groups. Our youth must have faith in their future and derive hope from our educational system.¹

(i) Education – A Human Right

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift 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. Increasingly, education is recognized as one of the best financial investments States can make. Nevertheless, the importance of education is not just practical. A well educated enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.

Human Rights Education is a requisite part of the right to education and has gained of late larger recognition as a human right in itself. The knowledge of the rights and freedoms, of oneself as much as of the others, is considered as fundamental tool to guarantee the respect of all rights for each and every person. Education is seen as a way to empower people, improve their quality of life and increase their capacity to participate in the decision-making processes leading to social, cultural and economic policies.

2.26 Clinical Legal Education

There is a continuing controversy amongst legal educators in India regarding the Goal of legal education. One section holds it to be strictly concerned with producing legal practitioners who are experts in litigation oriented skills, while another section advocates a wider role in which the lawyers is equipped with divergent skills and perspectives so as to make to him

¹(Extract from Prime Minister’s Address to the National Awardee Teacher on September 4, 2006).
more useful to the society. Indeed, a lawyer is a part of social institution (Bar) hence he has some social responsibilities. A person before entering into legal profession must know his responsibilities towards society. Therefore Legal education should be imparted in such a way that the students may not only be trained technical sense but also be acquainted with social needs and problems. The traditional mode of imparting education is out dated, in fructuous and inappropriate. The classroom teaching fails to give practical learning to law students; therefore they feel somewhat incomplete when they enter into legal profession. The mode of imparting legal education should be chosen while keeping in mind two main questions, firstly, is such education providing complete knowledge? And secondly whether education can produce social workers?

The clinical education fulfils both the conditions. It is novel but must appropriate method of legal education. The knowledge of an engineer without training in workshop is incomplete. A doctor without practical training in hospital or clinic may be harmful to the patients. Similarly, a lawyer without clinical experience may not serve the society to the extend of his social accountability.

Indeed clinical education would supplement the classroom teaching with practical knowledge in social perspectives. The main functions of a law school clinic in the legal aid programs would be to serve as a center for information and advice rather than provide actual litigation assistance.¹

By clinical education is not merely one of the means for earning livelihood, but also an instrument of social engineering; that the problems of poor people can be solved and the poor who are otherwise alienated and disoriented from the legal process, can be brought back within its fold.

The law students who are instructed about poverty laws through legal laid clinic would serve better than traditional lawyers in the perspectives of

social objectives. Students trained through such clinic should be more practical, creative, ambitious and social. They will be potent human resource for the betterment of the poor. They can teach the poor masses for solution of legal problems and for getting benefits out of the economic schemes sponsored by Government through legal process it will not be an exaggeration to say that the law schools can play leading role in implementing legal aid programmes by imparting legal education through clinical method. Moreover, legal aid oriented legal education may be very useful in poverty stricken country like India, so the legal aid clinic as an adjunct of every law school is the necessary stem in the improvement of legal education. Maximum advantage of clinical legal education can be obtained if it is made integral part of curriculum of LL.B. courses. The participation of students in clinics activities will not only help them in their professional carrier but also enable them to understand socio-legal and socio-economic problem of the masses and their by equipping them to handle and solve those problems effectively both at academic as well as at practical levels.3

2.27 Legal Education

The truth is that legal education is a life process that requires a joint effort by the law colleges and universities, the bar and individual and hard work of the law students, with each having primary responsibility for different aspects of the education process. The true aim and objective of legal education is to prepare a proficient lawyer4

2.28 Environmental Education

Environment generally consists of two main aspects natural and manmade or social. The study of interactions between the man, the natural and social environment is called Environmental Education. Environment is the outer biophysical system in which people and organisms exist. In a broad sense

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3 Student Legal Service Clinic and their structure and working, 3 Ku. L.L.J. (1971-73), 130.
4 Aims of legal education, P.L. Mehta P.N. 17.
the word environmental can be used to refer to anything, living or non-living that surrounds and influences living organism.

(a) The concept of environmental education

The area of Environmental Education has been discussed thoroughly at several national and international seminars, workshops and conferences. Most of the people have recognized the urgent need of environmental education, but only some have clear idea and understanding about the concept of Environmental Education that need to be taught to the students of education. Various persons have defined environmental education in different manner. The definition of environmental education in the draft of US environmental education Act is considered to be very authentic and is frequently quoted. It states:

“Environmental Education is an integral process which deals with man’s interrelationship with his natural and man made surrounding, including the rate of population growth, pollution resource allocation and depletion, conservation technology and urban and rural planning to the total human environment. Environmental education is a study of the factory influencing eco systems, mental and physical health, living and working conditions, decaying cities and population pressures. Environmental Education is intended to promote among citizens the awareness and understanding of environment our relation to it and the concern and responsible action necessary to assure our survival and to improve the quality of life”.

Environmental educational is an integral process which deals with man’s interrelationship with his natural and man-made surrounding’s including the relation of population growth, pollution resources allocation and depletion, conservation, technology and urban and rural planning to the total human environment. Environment education is a study of the factors influencing ecosystems, mental and physical health, living and working condition, decaying cities, and population pressures.

Environmental Education is the process of recognizing values and clarifying concepts related to environment and its problems in order to develop
skills and attitudes necessary to understand the environment. It also entails practice in decision making and self-formulating a code of behavior about issues concerning environmental quality.

The education commission 1964-66 referred to the “internal transformation of education so as to relate it to the life, needs and aspirations of the nation”.

The Gandhian approach emphasizes smooth process of renew ability within the ecosystem. Any action, which negatively affects the renew ability involvement in the production process negatively, affects both the resource-population equilibrium and resource renew ability. The Gandhian approach to consumption is made compatible with resource availability.

(b) History Of Environmental Education

The concept of environmental education is about a century old there has been a sudden increase in the activities related to it, during the past quarter century. This is visible in the form of a large amount of literature, variety of school, college and university curricula, plays, films, radio and television programmes, conferences, seminars and many other national and international activities.

In 1899, Patrick Geddes, the Scottish professor of botany, founded a unique educational establishment, ‘The Outlook Tower’ in Edinburgh, England. Its purpose was to improve upon the existing environment and qualities of education were closely interdependent.

It was in 1965, at the University of Keele, Germany, the environmental education was agreed to be an essential part of education for all because of its immense educational potential and importance of understanding the environment. With the organization of conference on ‘Human Environment’ at Stockholm in 1972, Environmental Education became truly international. This conference is popularly known as ‘Stockholm Conference’ and was attended by 113 nations, United Nations agencies and-governmental organizations. The conference established the need of environmental education in view of
generalized environmental problems and show that there is wide interest to solve these problems. As a part of its action plan, the conference recommended that United Nations Environment Programme (UNEP) be established, ‘environment fund’ be launched 5th June be celebrated every year as ‘World Environment Day’.

In 1988, Ministry of Human Resources Development (MHRD) launched the scheme of Environment Orientation of School Education: This scheme is implemented in the states and union territories through education department and the voluntary agencies having expertise and interest in environmental education.

The Tbilisi conference recommended the following guiding principles for Environmental Education:

(c) Status of Environmental Education in India
The importance of environment has been recognized in India since long. This is also reflected in its constitution, wherein it states:
It shall be the duty of every citizen to protect and improve the natural environment, including forests, lakes, rivers and wildlife and to have compassion for living creatures.

**Article 51 A (g)**

The importance of EE is reflected in National Policy on Education (NPE 1986 and 1992) in the following words:

8.15 there is paramount need to create a consciousness of the environment. It must permeate all ages and all sections of the society; beginning with the child environmental consciousness should inform teaching in school and colleges. This aspect be integrated in entire educational process.

**(d) Formal Education**

Environmental Education has percolated to all aspects of education including primary, secondary and tertiary education through formal and informal system of education. This has been schematically shown in figure.

Environmental Education has the target population that includes students, teachers, doctors, engineers, and common man. For this reason one has to use both formal and informal system of education. The objective of Environmental Education include opportunities to acquire the knowledge, values, skills, attitudes, commitment and improve the environment and to create new patterns of behaviour of individual group and society as a whole towards society. It therefore, requires that appropriate action takes place in the behaviour to protect and improve of Environmental Education is not environment itself but concern environmental problems the successful Environmental Education programme includes development of correct values and attitudes towards environment.
2.29: *Education of Women*

The Educational status of women and the physically and mentally handicapped who constitute more than half of the population of our society, is studied in this chapter. So far, we have examined the educational problems and its status among Scheduled Castes and Tribes. The most significant category of our definition of weaker sections is women. The handicapped persons are also considered as weaker sections. The status and the facilities accorded to the physically and mentally handicapped to the physically and mentally handicapped persons in a society reflect the society’s concern for such persons.
Therefore, in this chapter we first study the educational status of women and it will be followed by an analysis on the handicapped persons.

Women in the Hindu society have been treated with the same contempt as that of the Sudras. The conditions of the women belonging to Sudras in that respect is worse than beasts. It is not only Hinduism, but most of the religions that have a major influence in shaping the attitudes and behaviour patterns of human groups treated women as lower than men......Even the reform movements and constitutional safeguards provided to women in India brought only a limited amount of change in the status of women. Therefore, the Committee on the status of Women commented that "we find that reforms in law and educational policy do not always make the desired impact because of the normative and structural unprepared ness of the society to accept their goals and means. In respect of the status that is accorded to women by law and by the constitution we notice that there is a gap between the theoretical possibilities and their actual realization. Religion, family and kinship, roles, and cultural norms delimiting the spheres of women's activities obstruct their full and equal participation in the life of the society and the achievement of their full potential." However, the role of education in bringing out social change and development in the desired goals has been concerned with the upliftment of women in India. Therefore, the reform work of the 19th Century social reformers had necessarily incorporated an element of educational work in their programme.

Margaret L. Cormack- who has made a very exhaustive study of the Indian students and social change, in her book, She Who Rides a peacock, says: The problem for the Indian woman to-day is not that she cannot vote (she can and does), stand for office (she runs), or command respect (she always had it). It is-as with women in most countries that of being herself as she also fulfils traditional roles of wife and mother. When all is said and done most women want to be happy wives and mothers, but the fact is that in modern Indian the idea for happiness is changing. The whole social pattern has changed into a most complicated one, and traditional ideas of womanhood and the modern
Life in India is not as simple as it was in the past. There are many complications and difficulties which face the modern woman. Of these the most prominent seems to be the acquisition of a synthesis between India's traditional past and the inevitable impact of the West; the rejection of what is unsuitable in both the traditions and the acceptance of what is best to the formation of our national character. In his 'A New Deal for Our Universities.

Dr. K.R. Srinivasa lyengar also refers to the same view and says: "With our re-birth as a free Nation, our education too should undergo the baptism of a re-birth in national and unambiguously humane, it should learn to flourish freely and fruitfully on our own soil, drawing ambrosial sustenance from the ample munificence of our racial traditions and our age-long values and varieties, but not rejecting the breath of free air from without, and answering to our own unique human needs and national objectives, but in no humourless mood of arrogant self-satisfaction. It has to be seen as to how far higher education in India can help women to acquire and achieve this balance in life. Education is not just learning the four R's and acquisition of information. In the words of Newman: "implies an action upon our mental nature and the formation of a character; it is something individual and permanent, and is commonly spoken of in connection with religion and virtue when, then we speak of the communication of knowledge as being education, we thereby really imply that the knowledge is a state or condition of mind." It is to the very same idea that Margaret L. Cormack- refers to in her book. She is acutely aware of this problem with regard to Indian students and Higher education and hence she write:

"A New Society cannot develop unless Saraswati dismounts her peacock of academic traditions, looks to India's needs in Higher education, and helps India’s future leaders understand and construct a new way of life."

Education of women is of paramount importance. The movements for improving women's status all over the ....education of women is a powerful factor and the noblest way of righting the serious historical wrong of sex inequality.
However, despite its importance women's education has not received its due attentions. In pre-British India, except for a few exceptions, the mass of women were not given education, the medieval conception assigned to women only domestic duties. British conquest of India, strengthened to some extent the libertarian conceptions by replacing the old ones. Equal rights for men and women in economic, political, social and educational fields were proclaimed. Nineteenth century reformers had seen women's education as an instrument to improve their efficiency to perform their familial roles as wife and mother. The leaders of the women's movements like Annie besant, Ramabai Ranade, Lakshmi Menon, Margaret Cousins, Sarojini Naidu, Kamala Devi, Chattopadhyaya, Durga bai Deshmukh, Violet Alva, etc., under the auspices of the various women's organizations such as the All India Women's Conference, the National Council for women and the women's Indian Association of Madras, etc., saw education as not merely releasing the women from oppressive customs that reduced women's positions within the family, but also as an instrument for achieving equality of opportunity, responsibility and autonomy to choose one's role, to participate in all aspects of social life, particularly in the struggle for freedom and national reconstruction. Education had to be an important instrument for these wider responsibilities and roles, and no longer to remain the limited tool for manufacturing better mothers and wives.

Although the formal education of women made a beginning during the British period, ......The traditional values, which prevented women from receiving education and participating in the activities other than, the household chores were under attack. Over time education sided the out look of men and women and made women's appearance possible in social, economic and political fields.

(i) Education of Women during Pre-Independence Period:

It appears that there is very little evidence to indicate the educational status of women before the 18th Century. Even the first National Committee on women's Education under the presidency of Srimati Durgabai Deshmukh
(1959) had referred to the indigenous education conducted in different parts of the country in 1822 and not prior to that year. The Committee, however, noted that. “a superstitious feeling is alleged to exist in the majority of Hindu families, principally cherished by women and not discouraged by men. that a girl taught to write and read will soon after marriage, become a widow. Under the influence of these fears, there is not only nothing done in a native family to promote female instruction but an anxiety is often evinced to discourage any inclination to acquire the most elementary knowledge.”

The alleged superstition quoted by the Committee seems to be applicable only in the case of the caste Hindus and the twice born castes as literate learning was denied to the lower Sudaras, untouchables and Tribes at that time. Therefore, the women belonging to these sections were automatically denied this privilege and the alleged superstition does not apply to them. However, the conditions seemed to have changed after the Charter Act of 1813 under which the East India Company was compelled to accept the responsibility. But the contribution of social reformers and philanthropists like Miss Mary Carpenter, David Hare and others among Europeans and Raja Ram Mohan Roy, Ishwarchandra Vidyasagar, Kandukuri Veeresalingam and others among the Indians who relentlessly fought against the established culture and provided educational facilities for girls and women in India was more remarkable than the statutory provisions. The initiative given by the great reformers in the 19th Century towards women’s education was made it possible that the literacy rate among them has reached around 1 percent by the end of 19th Century. Similarly, the enrolment of girls and women at different stages of education during the period 1881-82 to 1946-47 was also found to be increasing. In Table 6.1 the progress of education of girls and women in the pre-independence period is given. It can be seen from the table that the growth of the rate of literacy among women is higher during the period 1921-22 to 1946-47 as compared to the earlier period.

However, it is very much lower than the male literacy rate which was in the range of 11 to 12 per cent in 1881-82 to 1901-02 period and 12 to 24 per
cent during the 1921-22 to 1946-47 period. Similarly the enrolment at the primary stage was only 1,24,291 girls in 1881-82 and the amount has been substantially increased to 34,75,165 in 1946-47 a twenty eight times increase over a period of sixty years. The increase in the enrolment of girls at all stages of education was found to be higher during the latter period as compared to the 19th Century. The enrolment of girls and women in all the educational institutions constituted 16.35 per cent of the boys in 1921-22 and the proportion has been increased to 24.71 per cent in 1946-47. The figures suggest that the increase in the enrolment of women at colleges and universities is much higher than the enrolment of girls at school stage during the pre-independence period, though their proportion has remained to be less than one-fourth of total male enrolment.

**Table-6.1**

*Education of Girls and Women in Pre-Independence Period*

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage of literacy</th>
<th>Enrolment in</th>
<th>Others</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Primary</td>
<td>Secondary</td>
<td>Colleges and Universities</td>
</tr>
<tr>
<td>1881-82</td>
<td>3.2</td>
<td>1,24,291</td>
<td>2,054</td>
<td>6</td>
</tr>
<tr>
<td>1901-02</td>
<td>0.7</td>
<td>3,44,712</td>
<td>9,075</td>
<td>256</td>
</tr>
<tr>
<td>1921-22</td>
<td>1.8</td>
<td>11,86,224</td>
<td>26,163</td>
<td>905</td>
</tr>
<tr>
<td>1946-47</td>
<td>6.0</td>
<td>34,75,165</td>
<td>6,02,280</td>
<td>23,207</td>
</tr>
</tbody>
</table>

**Source:** Towards Equality, of. Cit.

**(ii). Progress of Women’s Education in Free India:**

The nineteenth century reformist movements have pressed for a change in the Indian society to cope with and benefit from modernity while emphasizing the greatness of India’s ancient heritage. In this process education was considered as an important tool to help the women to become good wives and mothers. But in the post-independence period, a new dimension for the
acceptance of education for women has also emerged. It is interesting to note in this connection that the committee on the Status of Women come out with the conclusion that the emphasis on equipping women with education to carry out their multiple roles as citizens, housewives, mothers, contributors to the family income and builders of the new society in India is consistent with the international understanding of education’s role in women’s status. Therefore, education of women in the post-independence period has a different function to perform as compared to its traditional role conceived by some of the reformers of the 19th Century. The progress of girls and women’s education in the post-independence period at different stages of education appears to be very encouraging. The enrolment of girls and women at various stages of education during the post-independence period up to 1980-81 as presented in Table 6.2

<table>
<thead>
<tr>
<th>Year</th>
<th>Primary Classes (I-V)</th>
<th>No. of Girls per 100 boys</th>
<th>Middle Classes (VI-VIII)</th>
<th>No. of Girls per 100 boys</th>
<th>Secondary Classes (IX-XI)</th>
<th>No. of Girls per 100 boys</th>
<th>Collegues and Universities</th>
<th>Vocational course school standard</th>
<th>No. of Women per 100 men</th>
<th>No. of Girls per 100 boys</th>
<th>Professional course college standard</th>
<th>No. of Women per 100 men</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950-51</td>
<td>53.85</td>
<td>39</td>
<td>5.34</td>
<td>20</td>
<td>1.63</td>
<td>15</td>
<td>0.40</td>
<td>14</td>
<td>0.41</td>
<td>28</td>
<td>0.05</td>
<td>5</td>
</tr>
<tr>
<td>1955-56</td>
<td>76.39</td>
<td>44</td>
<td>8.67</td>
<td>25</td>
<td>3.20</td>
<td>21</td>
<td>0.84</td>
<td>17</td>
<td>0.66</td>
<td>31</td>
<td>0.09</td>
<td>7</td>
</tr>
<tr>
<td>1960-61</td>
<td>113.47</td>
<td>48</td>
<td>6.70</td>
<td>32</td>
<td>5.41</td>
<td>23</td>
<td>1.50</td>
<td>22</td>
<td>0.86</td>
<td>25</td>
<td>0.26</td>
<td>11</td>
</tr>
<tr>
<td>1965-66</td>
<td>182.93</td>
<td>52</td>
<td>28.46</td>
<td>37</td>
<td>11.72</td>
<td>30</td>
<td>3.24</td>
<td>28</td>
<td>0.87</td>
<td>42</td>
<td>1.04</td>
<td>16</td>
</tr>
<tr>
<td>1970-71</td>
<td>205.95</td>
<td>60</td>
<td>41.76</td>
<td>43</td>
<td>21.33</td>
<td>37</td>
<td>6.14</td>
<td>34</td>
<td>0.76</td>
<td>61</td>
<td>1.34</td>
<td>15</td>
</tr>
<tr>
<td>1975-76</td>
<td>239.85</td>
<td>61</td>
<td>53.84</td>
<td>49</td>
<td>27.53</td>
<td>41</td>
<td>8.73</td>
<td>39</td>
<td>0.85</td>
<td>61</td>
<td>1.92</td>
<td>15</td>
</tr>
<tr>
<td>1980-81</td>
<td>261.18</td>
<td>63</td>
<td>65.68</td>
<td>49</td>
<td>28.42</td>
<td>43</td>
<td>10.48(1)</td>
<td>40(2)</td>
<td>-</td>
<td>-</td>
<td>5.73(3)</td>
<td>24(3)</td>
</tr>
</tbody>
</table>

indicates that the enrolment of girls at the primary stage in relation to boys has increased from 3 girls per 100 boys in 1950-51 to 63 girls in 1980. The growth in the girls enrolment at this stage appears to be faster during the 1960s and has slowed down later in the late 1970s. If perfect equality in the enrolment between boys and girls is to be maintained the enrolment should have been 93 girls per 100 boys because the sex ratio at 6-11 age group in 1981 is 93. In the case of middle school education, there is some consistency in the quinquennial growth rate of girls per 100 boys. However, the gap between boys
and girls is much larger at this stage as compared to primary education and also in comparison to the population of 96 girls per 100 boys at this age group in 1981. There is some inconsistency in the case of secondary education. The number of girls per 100 boys were 15 in 1950-51 and was increased to 21 in 1955-56 and almost remained the same in 1960-61. They were 30 per 100 boys in 1965-66, 37 in 1970-71 and 43 in 1980-81. The gap between boys and girls is almost the same (47) both at middle and secondary stages of education in 1980-81. The enrolment at the University stage was 14 women per 100 men in 1950-51 but it was doubled in a period of 15 years by 1965-66 and the growth was established at the rate of 5 women per 100 men per 100 men at each quinquennial period during 1965-66 to 1975-76. However, the number of women per 100 men at this stage was 61 if the enrolment of P.U.C. is also included in the University enrolment of 1980-81. The increase in the enrolment of women at this stage is substantial during the period under study.

At the professional stream of education, the participation of girls at the school standard is considerable (61 per 100 boys) as compared to the professional education of college standard (15 women per 100 men) in all the years of the period of the study. Women constitute only one-fourth of the men enrolment at the stage of higher professional education.

2.30 Compulsory Education In India

Every country dreams of a fully literate population, even though it has to be ensured through legislative measures. The Indian constitution provides for making elementary education free and compulsory for all children from 6-14 years, specially emphasizing, weaker and backward sections of the body. The present position with regard to free and compulsory education in India.

Article 45 of the education directs that the State shall endeavour to provide, within a period of 10 years from the commencement of the constitution, free and compulsory education for all children until they complete the age of 14 years.
Retiring the Constitutional Directive, the National Policy on Education, 1986, provides that free and compulsory education of satisfactory quality shall be provided to all children up to the age of 14 years before we enter the 21st century. The programme of Action, 1992 outlines various strategies for achieving this goal.

Its judgment in Unni Krishan Vs. State of Andhra Pradesh Supreme Court 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 parameters have to be determined in the light of Articles 45 and 41.”

2.31 Free Education:

All the State Governments have abolished tuition fees in Government schools up to upper primary level Education in Schools run by local bodies and private aided institutions is also mostly free. However, unaided institutions (3.7%) do charge fees. Other costs of education such as textbooks, stationery, school uniforms, transport etc. are borne by States mainly for primary school children belonging to SC/ST categories and girls.

2.32 Compulsory Education Legislation:

15 States and 4 Uts have passed facts making primary education compulsory. These are States: Assam, Andhra Pradesh, Bihar, Goa, Gujarat, Haryana, Jammu & Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Tamil Nadu, Kerala and West Bengal. UTS: Chandigarh, Delhi, Pondicherry and Andaman & Nicobar islands.

1. State governments can notify the areas in which the Act can be implemented
2. Penalties for not sending children to school, including fines and imprisonments.
3. Power in a vested authority to grant exemption from the legislation.

These Acts remain unenforced due to various socioeconomic and cultural factors as well as administrative and financial constraints. There is no central legislation making elementary education compulsory. The Central Government has been of the opinion that compulsion on the State rather than
on parents. It has, therefore, been advocating community involvement, de
centralisation of planning and management of school education to Panchayat Raj Institutions, motivations of children to attend schools regularly, improve men of infrastructure and facilities in schools, development of locally relevant curricula, improvement in quality of text books, teacher training, child-centered learning and adoption of minimum levels of learning.

The central Government has also isolated sponsored schemes of Operation Blackboard, Non – Formal Education and establishment of District Institutes of Education and Training in 987-88 and launched a National Programme of Nutritional Support to Primary Education in 1995-96 for provision of Mid day meals.

2.33 Education And Law

The continuing efforts of the Supreme Court judges to resolve the conflicting issues in the field of professional education bring to one’s mind Ronald Dworkin’s picture of Mr. Justice Hercules, a Philosopher – King in judicial garb, generously endowed with ‘super-human skill, learning, patience and acumen’. The judge must extend his search for solution in hard cases beyond the legal standards in any particular rule to those implicit in the legal system as whole, an enterprise which requires a god-like judge.1 Dworkin has subsequently advanced a thesis that there is a ‘right answer’ or ‘best interpretation’ of past decisions, even in hard cases, and this is based on principle, not policy.2 How far these jurisprudential insights would help us in analyzing the judicial decisions on education from Mohini Jain3 to Inamdar,4 the latest in the never ending chain of decisions, is a

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2 See Dworkin R. Law’s Empire (1986).
fertile line of inquiry to essential aspects of Inamdar, undoubtedly the most important among the cases that are surveyed here.

Commenting on Pai Foundation, the present writer had observed that the decision was partial response to some of the challenges posed by the impact of liberalization, privatization and globalization.

It was further pointed out that the decision raises more questions than it has answered and the principles laid down in Pai Foundation are so broadly formulated that they provide sufficient leeways to subsequent courts in applying these principles. Inamdar opens with a reference to the above observation, adding that the ‘prophecy has come true and while the ink on the opinion in Pai Foundation was yet to dry the High Courts were flooded with writ petitions’. The court the exercise undertaken by the Constitution Bench in Islamic Academy.

The seven judge bench in Inamdar which undertook a further exercise in clarification, does not hide its displeasure not only at the way in which Islamic Academy set out to clarify Pai Foundation, but also at the way in which the ratio in Pai Foundation was formulated. In an epilogue, the court observes.

Certain recitals, certain observations and certain findings in Pai Foundation are contradictory inter se and such conflicts can only be resolved by a Bench of a Coram larger than Pai Foundation.

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11 Id. at 254.
If past experience is any guide, can any sensible person expect a larger bench to resolve the conflicts? The search for the ‘right answer’ and the ‘best interpretation’, as Dworkin puts it, seems to be elusive.

The most remarkable feature of Inamdar is that it does not bewilder a reader with a multiplicity of opinions as Pai Foundation and Islamic Academy had done. All the seven judges have joined together in pronouncing a single judgment. The judicial consensus produces cogency and facilitates a clear analysis of the decision. After explaining the backdrop and the circumstances leading to a reference to a larger bench, the court confined the discussion to the following questions: \(^\text{12}\)

1. To what extent can the State regulate admissions made by unaided (minority or non-minority) education institutions? Can the State enforce its policy of reservation and/or appropriate to itself any quota in admissions to such institutions?

2. Whether unaided (minority and non-minority) educational institutions are free to devise their own admission procedure or whether the direction make in Islamic Academy for compulsorily holding an entrance test by the State or association of institutions and to choose there from the students entitled to admission in such institution, can be sustained in light of the law laid down in Pai Foundation?

3. Whether Islamic Academy could have issued guidelines in the matter of regulating the fee payable by the students to the educational institutions?

4. Can the admission procedure and fee structure be regulated or taken over by the Committees ordered to be constituted by Islamic Academy?

In order to provide a proper theoretical framework to the discussion, the court formulated the following four questions, which embody concepts which ‘flow as under currents in the sea of issues surfacing for resolution in all educational cases’ \(^\text{13}\).

\(^{12}\) Id. at 256.
\(^{13}\) Supra note 4 at 555.
The are:

i) What is “education”? ii) What is the interrelationship of articles 19 (1) (g), 29 and 30 of the Constitution? III) In the context of minority educational institutions, what difference does it make if they are aided or unaided or if they seek recognition or affiliation or do not do so? (iv) Would it make any difference if the instructions imparted in such educational institutions relate to professional or non-professional courses of study?

According to the court, education ‘whether for charity or for profit, is an occupation’. But it ‘does not cease to be service to society’ cannot be equated to a trade or business’. 14 On the inter-relationship between articles 19(1)(g), 29(2) and 30(1), the court reiterated the position in Pai Foundation that the right to establish an educational institution being an occupation, is protected by article 19(1) (g). The right of a minority to establish and administer an educational institution would also be protected by article 19(1) (g). 15 Article 30 was enacted as a guarantee to the minorities that so far as

The religious or linguistic minorities are concerned; educational institutions of their choice will enjoy protection from legislation enacted under clause (6) of article 19. It was stated that once aided, the autonomy conferred by the protection of article 30 (1) on the minority educational institution is diluted as provisions of article 29(2) will be attracted and certain condition in the nature of regulations can legitimately accompany state aid. 16

In the case of minority educational institutions which receive grant from the state or aspires for recognition, the state may grant aid or recognition accompanied by certain restrictions or conditions. 17 Such restrictions or conditions would be similar to those applicable to non-minority institutions. Subject to two overriding considerations, viz., (i) the recognition is not denied solely on the ground of the educational institution being one belonging to the minority, and (ii) the regulation is neither aimed at nor has the effect of depriving the institution of its minority status.

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14 Ibid.
15 Ibid. at 608.
16 Ibid. at 568.
17 Ibid. at 586.
Before answering the questions formulated at the outset the court attempted a re-interpretation of the following passage in Pai Foundation, since the ‘core of the controversy touching the four questions...seems to have originated therefrom.'

It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time; they do not forego or discard the principle of merit. It would, therefore, be permissible for the university or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit based selection while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods.

For instance, a certain percentage of the seats can be reserved for admission by the management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the college concerned for admission, while the rest of agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions viz. graduation and post-graduation non-professional colleges or institutes.

The court conveniently divided the passage into two parts and held that the second part is only by way of illustration, Tantamounting to just suggestion or observation as to how the state may devise a possible mechanism so as to take care of the poor and backward sections of the society and therefore, ‘cannot be read as law laid down by the Bench.' Based on this interpretation,

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18. Id. at 596
19. Id. at 598
it was held that the scheme evolved in Islamic Islamic Academy, to the extent it allows the state to fix quota for seat sharing between the management and the states on the basis of local needs of each state, in the unaided private educational institutions of both minority and non-minority categories, goes not lay down the correct law and runs counter to Pai Foundation.\textsuperscript{20}

On the question of reservation, the court did not find any institutions. It was categorically held that the state ‘cannot insist on private educational institutions which receive no aid from the state to implement state policy on reservation for granting admission on lesser percentage of marks i.e., on any criterion except merit’.\textsuperscript{21} The court’s concern for merit overrides even the constitutionally permissible policy of protective discrimination; but reaches the vanishing point when the validity of the non-resident Indian (NRI) quota is involved. Here the court permitted a limited reservation of seats not exceeding 15\% in favour of less meritorious students, who can afford to bring more money.\textsuperscript{22}

The next question was regarding admission procedure. The court favours an entrance test held for one group of institutions imparting same or similar education in one state or in more one state. In the alternative, the state may itself or through an agency arrange for holding of such test. The court observed:

It needs to be specifically stated that having regard to the larger interest and welfare of the student community to promote merit, achieve excellence and curb malpractices, it would be permissible to regulate admissions by providing a centralized and single-window procedure. Such a procedure, to a large extent, can secure grant of merit-based admissions on a transparent basis.

In the matter of regulation of fees, one of the most contentious issues, the court in Inamdar upheld the freedom of every unaided educational

\textsuperscript{20} Id at 602
\textsuperscript{21} Id at 601
\textsuperscript{22} Id at 602-03
institution to devise its own fee structure subject to the limitation that there can be no profiteering and no capitation fee can be charged directly or indirectly, or in any form.

The court, showing an awareness of the ground realities of commercialization of education, stated:
If capitation fee and profiteering is to be checked, the method of admission has to be regulated so that the admissions are based on merit and transparency and the students are not exploited. It is permissible to regulate admission and fee structure for achieving the purpose just stated.

In a similar vein, the court again observed: "Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.

...Professional education should be made accessible on the uniform basis. Minorities or non-minorities, in exercise of the their educational rights in the field of professional education have an obligation and a duty to maintain requisite standards of professional education by giving admissions based on merit and making education equally accessible to eligible students through a fair and transparent admission procedure and based on a reasonable fee structure.

While one may wholeheartedly agree with the above observations, which reveal the court’s concern for merit, accessibility and standards of education, the question whether the decision in Inamdar has actually succeeded in advancing these values remains debatable.

The court, fully conscious of its limitations in the field of educational policymaking, ends the judgment urging the government to enact a comprehensive legislation. Indeed, this is a step the central government should have taken long back. However, even after Inamdar there seems to be total apathy on the part of the government. The only response has been the enactment of the Constitution (93rd Amendment) Act in January 2006 providing for reservation of seats in private unaided educational institutions in
favour of scheduled castes, scheduled tribes and socially and educationally backward classes. There seems to be no serious effort for following up the amendment with effective legislation, which is necessary to carry out the objective of the amendment. The demand for a comprehensive legislation to regulate self-financing institutions and to put an end to commercialization of education remains a cry in the wilderness!

The perils of a pro-privatization policy carried to its extreme extent are revealed in Yashpal Vs. State of Chattisgarh.\textsuperscript{29} A refreshing feature of the decision is the readiness of the Supreme Court to intervene effectively and curb a dangerous trend, which would have developed into a cancerous growth in our system of higher education.

The facts of the case show that the Chattisgarh legislature enacted the Chattisgarh Niji Kshetra Vishwa Vidyalaya (Sthapana aur Viniyaman) Adhiniyam, 2002 to establish self financed private universities for higher education.

Under section 5 of the Act, the state has been empowered to incorporate and establish a university by issuing a notification in the gazette. Section 6 permits such university to affiliate any colleges or other institutions to set up more than one campus with the prior approval of the state.\textsuperscript{28} The new sub-cl (5) which the Amendment Act has inserted in art 15 reads: Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar 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. Government. The callous manner in which these statutory powers have been exercised by the state is clearly manifested by the fact that in a short span of one year, as many as 112 universities were established. Some of these universities were functioning in a small room or shop in some congested market area or in a small tenement or an ordinary flat.

\textsuperscript{29}. AIR 2005 SC 2026.
Yash Pal, an eminent scientist and former chairman of the University Grants Commission (UGC) filed a public interest petition for declaring certain provisions of the Act ultra vires and for quashing the notifications issued by the state in the purported exercise of the power under section 5 of the Act for establishing various universities. Since this case raises a number of important questions pertaining to university education in India, it deserves analysis in some detail. The first question was whether the incorporation of universities is within the exclusive domain of the state legislature. After analyzing the concept of a university, the constitutional scheme of distribution of legislative powers and the relevant decisional law, the court rightly came to the following conclusion: 30

The consistent and settled view of this Court, therefore, is that in spite of incorporation of Universities as a legislative head being in the State List, the whole gamut of the University which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State legislature on account of a specific Entry on co-ordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which the Parliament alone is competent. It is the responsibility of the Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.

The court further held that the subject “University” as a legislative head must be interpreted in the same manner as it is generally or commonly understood, namely, with proper facilities for teaching of higher level and continuing research activity. An enactment which simply clothes a proposal submitted by a sponsoring body or the sponsoring body itself with the juristic personality of a university, without any infra-structure or teaching faculty or

30. Id at 2040.
faculty for research is not contemplated by entry 32 of list II or entry 25 of list III. Sections 5 and 6 of the Act were, therefore, held to be wholly ultra vires being fraud on the Constitution.\(^{31}\)

The court also examined the scope of entry 66, list I, which deals with co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions, with particular reference to the role and functions of the UGC. It held that the Chattisgarh Act has the effect of completely stultifying the functioning of the UGC insofar as those universities are concerned.\(^{32}\) Stating that any state legislation which stultifies or sets at naught enactment validly made by Parliament would be wholly ultra vires, the court struck down sections 5 and 6 of the Act.

The court also examined some amendments, subsequently made to the Act in 2004. The amending Act introduced a provisions for the constitution of a regulatory commission and some conditions such as an endowment fund of Rs. 2 crores and possession of a minimum of 15 crores of land, to be fulfilled by the sponsoring body. Universities, which were already established under the Act, were given three months time to comply with these requirements. The court observed that the amending Act does not make any appreciable change in the matter of establishment of a university by issuing a notification. This was found incompatible with regulation 3.1 of the UGC (Establishment of and Maintenance of Standards in Private Universities) Regulation, 2003 which specifically stipulated that a private university can only be established either by a separate Act or by one compendious Act where the legislature specifically provides for establishment of the said university. Further, it was held that the provision in the Chattisgarh Act which enables a university to have an off campus center outside the state was clearly beyond the legislative competence of the state legislature. In a final stroke the court quashed all the notifications issued by the state government in the purported exercise of power under section 5 of the Act notifying the universities. The bold and timely intervention of the

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31. Id. at 2045.
32. Id. at 2046.
court saved the country from a national calamity in the form of state legislation on the lines of the Chattisgarh Act in many states and a proliferation of tenement or pavement universities selling degrees. Yashpal is also an eye opener to those who advocate unregulated privatization in the field of higher education.

Apart from the two decisions analyzed above, there are more than 100 decisions relating to education reported during the year. Most of them are routine cases resulting in orders, which are of interest only to the parties involved in the litigation. Cases, which have some relevance in following the trend of decisions, are surveyed below.

As in the previous years, a number of cases have been reported regarding questions relating to admission. The issues raised include fixation of fee, allotment of seats in professional colleges etc.

*In N.K.P. Salve Institute of Medical Sciences and Research Center v. State of Maharashtra,* the fee structure fixed by the committee appointed by the state government was challenged. The court directed the committee to convene hearings at which managements will be at liberty to place their objections with the assistance of qualified chartered accountants. Service charges fixed were held contrary to the directions of the Supreme Court in *Islamic Academy of Education v. State of Karnataka* and set aside. Court also opined that the income, which the institution receives, must provide reasonable and adequate resources for the growth of the institution and the development of its facilities.

The implications of the order passed by the Supreme Court in Islamic Academy, fixing fees at Rs. 1,13,000/- for MBBS course, as recommended by Justice K.T.Thomas Committee for academic year 2004-05 in State of Kerala, were examined in *Sandeep v. State of Kerala.* In this case the Kerala High Court held that the order passed by the Supreme Court is applicable to all

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33. AIR 2005 Bom 18.
34. AIR 2003 SC 3724
35. AIR 2005 Ker 148.
students of self-financing medical colleges securing admissions under government quota or management quota and even for students admitted for 2003-04 and continuing the course for academic year 2004-05.

Allotment of NRI seats was the issue in another case. The Kerala High Court clarified that the NRI quota of 15% has to be carved out and reckoned only out of the management quota that is 50% of the total sanctioned seats.

Here, section 3(4) of Kerala Self-financing Professional Colleges (Prohibition of Capitation Fees and Procedure for Admission and Fixation of Fees) Act, 2004 was challenged. The court opined that clear statutes have to be interpreted according to the plain language contained therein.

The power of the Medical Council of India to stop admission to medical colleges was questioned in Dr. B.R. Ambedkar Medical College, Bangalore v. Union of India. After a detailed analysis of section 10A(1) of the Medical Council Act, the Karnataka High Court held that the Medical Council of India has no power to stop admission to medical college.

Reservations to educational institutions continue to be a contentious issue. Reservation of admission of three categories was challenged in Md. Abdul Azeez Asad v. State of A.P. The questions raised were, (i) whether the 33.33% reservation for women in admission to PG medical courses have the effect of transgressing the 50% limit of permissible reservation; (ii) whether the 3% reservation for persons with disabilities is horizontal in character; and (iii) whether application of 100 point roster with seat matrix by state government is in excess of reservation of seats in favour of local candidates and is violative of articles 14 and 15 of the Constitution.

The court held that the 33.33% of reservation provided for women in admission to PG medical courses does not fall out of the principle of ceiling in reservation. This was established by a catena of precedents and reiterated in Indra Sawhney.

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36 Sen, P.A. v Co-op Medical College, Kochi, AIR 2005 Ker 245.
37 S.3 (4) reads : “Seats in the management ...... examinations”.
38 AIR 2005 Kant 50.
40 Indra Sawhney v. Union of India, AIR 1993 SC 477.
the provision of 3% reservation for the physically handicapped is horizontal in character and cannot be challenged. Application 100-point roster coupled with seat matrix system has resulted in a short-fall of unreserved seats and in excess reservation of seats in favour of local candidates.

This excess reservation was held to be against the equality principle enshrined in articles 14 and 15 of the Constitution.

In P. Raja Prabhaharan Vs. Secretary to Government, Higher Education Department, Chennai⁴¹ the Madras High Court declared as invalid a provision in the prospectus that candidates with 50% to 70% disability alone are entitled for consideration, since the percentage was above the one prescribed by the Act.

Omission or mistake committed by tahsildar in not mentioning the caste name in the community certificate should not be the basis for denial of admission to a scheduled caste candidate having higher rank⁴².

The Orissa High Court upheld a rule laid down by the school authorities, providing for a minimum of 60% marks for admission to standard XI. on the ground that such a rule would enable the selection of the most meritorious students. The denial of admission of a student scoring 44% marks, was therefore, not arbitrary.⁴³

In some cases courts adhered to the doctrine of fairness. While deciding Bharat Bhushan v. G.B. Pant University of Agriculture and Technology⁴⁴ the court applied the doctrine of fairness and legitimate expectation. It was held that once the candidate was given admission to second year on the basis of report of second semester of 2000-01, then simply on the basis of result of one semester of 2001-02 he cannot be dropped. Once the university authorities have promoted the petitioner on the basis of second semester alone, it cannot be expected from the university authorities to drop him after 1st semester of 2001-2002.

⁴¹ AIR 2005 Mad 346.
⁴³ Maheshwari Mohapatra v. Mahanandi Coal field Ltd., AIR 2005 Kant 276.
⁴⁴ AIR 2005 Utr 12
In Surajit Giri v. State of Asaam\textsuperscript{45} the court was of the opinion that the prohibition against shifting from one discipline to another in midstream was not absolute, and was not arbitrary.

In some cases, students happened to be the victims of harassment from the authorities. In one such case, even after the cancellation of admission the institution compelled the student to pay the entire course fee, and also withheld the mark sheet of his XIIth standard.\textsuperscript{46}

In \textit{Akash Prakash Patel v. Commissioner of Higher Education}\textsuperscript{47} also the institution retained the tuition fee and XIIth standard mark sheet of the student whose admission was already cancelled. The Gujarat High Court criticized the action of the authorities in both these cases. The court expressed the view that retaining the tuition fee even after the cancellation of admission of the students will amount to illegal profiteering.

A number of cases have been reported regarding various issues of examinations in the year under survey. Surprisingly no case relating to malpractices in the examination has been reported. One cannot tell whether this is any indication of the disappearance of or decline in the incidence of malpractice in examinations, or just the absence of litigation.

In decision of the \textit{Patna High Court in Anil Kumar Roy Sharma v. State}\textsuperscript{48} deserves attention. It was held that the right to appear in class VIII board examination is a facet of right to education enshrined under article 21-A. Another important decision was rendered by the Supreme Court in \textit{Mridul Dhar v. Union of India}.\textsuperscript{49} the issue here related to the timely holding of entrance examination. The Supreme Court directed the states, which conduct entrance examination to declare result of 10+2 by June 10. States shall complete the process of first round state level medical or dental admission a week before the starting of second round counseling for all India quota.

\begin{footnotesize}
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\item \textsuperscript{45} AIR 2005 Gau 46.
\item \textsuperscript{46} J.J. Parmar v. S.V. Patel Institute of Technology, AIR 2005 Guj 159.
\item \textsuperscript{47} AIR 2005 Guj 156.
\item \textsuperscript{48} AIR 2005 Pat 38
\item \textsuperscript{49} AIR 2005 SC 666
\end{itemize}
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The court directed the chief secretaries of each state to ensure compliance of the direction. The Supreme Court issued this direction to avoid hardships likely to be suffered by the students and their parents. Whether a candidate is entitled to damages for the delay in the declaration of result was the issue in University of Kerala v. Molly Francis. In this case, the court held that if the result of revaluation is published long after the next examination there is no purpose at all, and so the petitioner was awarded Rs. 10,000/- as damages.

In Miss Debopriaya Ganguly v. State of West Bengal the Calcutta High Court refrained from striking down the regulations which provided that the candidate must pass annual examination held at the end of class XI and test examination held at the end of XII for appearing as regular candidate in final HSE examination. The court was of the opinion that it aims to classify between good and bad students.

Two cases decided by the Patna High Court revolve round the issues of replacing of answer books of the petitioner with ulterior motive and missing of middle portion of the answer book of a student.

In the former, the state intermediate education council was convinced that the answer book of the petitioner was replaced by somebody with ulterior motives. The council decided to award 46 marks for that paper. The court only directed to declare the result and issue mark sheets. In the latter, part answers were found in the answer book of the student. The university and the college were directed to allow the petitioner to appear in the respective subjects.

The decision in Kumar Satya Prakash v. Patna University dismissing the petition filed for awarding grace marks in examination, follows earlier decisions in this regards.

50. AIR 2005 Ker 11.
51. AIR 2005 Cal 76.
53. Alpana Sahay v. State of Bihar, AIR 2005 Pat 159
54. AIR 2005 Pat 156.
55. The grievance of the petitioners was that they have not been given the benefit of grace marks to which they were entitled under the regulation of the University.
In another case, refusal of the state school examination board to publish the result of the petitioners and to issue of mark-sheets to them was set right due to the intervention of the court. Courts have repeatedly emphasized that it is wrong to punish the students for the acts of omission or inaction of the authority, and when there is no material to suggest that the students were guilty of fraud or misrepresentation.

The Patna High Court criticized the action of school examinations board, which cancelled the result of all the private candidates of the school on the ground that they had not appeared at the pre-test examination. in the opinion of the court it happened because of the negligence on the part of the school examinations board. Students could not be allowed to be punished for the mistake attributable to the school.

In G. Senapathy v. Director of Indian Medicine and Homeopathy the Orissa High Court found that employees of the college and the examination board, with an avowed motive of showing favour to the petitioner and others, issued fabricated pass mark sheet. It directed the board to conduct fresh examination of these candidates.

Revaluation of answer sheets, as usual, was an issue in certain cases. Courts showed reluctance to interfere in cases relating to revaluation of answer scripts. In one case, the petitioner sought an order of revaluation of answer sheet because the was awarded wrong marks due to error in computer firm.

Because of the absence of specific rule regarding revaluation, the court did not make any direction regarding the result, but it directed the authorities to pay compensation for the negligence.

56. Rashmi Singh v State of Bihar, AIR 2005 Pat 35. The petitioners had appeared in their matriculation examination. The fees, forms etc. were accepted and admit cards were also issued.
59. AIR 2005 Ori 156.
60. D.Suvamkar v. President, Board of Secondary Education, AIR 2005 Ori 182.
In Maha Nand Ghatt v. Uttaranchal Siksha Evam, Parisha Parishad Ramnagar\(^{61}\) the court dismissed the writ petition filed under article 226 for revaluation of answer scripts, on the ground of absence of rule regarding revaluation. However in Sah Alam v. State of Uttaranchal\(^{62}\) the court gave the liberty to petitioner to apply for scrutiny of answer sheets in accordance with the existing state education code. In Nashima Bano v. State of Chattisgarh\(^{63}\) even though the court awarded compensation of Rs. 50,000/- to the student, no direction for revaluation was issue.

Only one case reported during the year is related to teachers. In T. Paveen v. State of Kerala\(^{64}\) the High Court of Kerala examined the applicability of government orders protecting the interest of teachers in aided schools. The court was of the view that the application of teacher student ratio of 1:40 was only for the purpose of retaining the teachers in the schools who would otherwise be rendered surplus if 1:45 ratio was applied, and for all other purposes, 1:45 ratio would continue. It was further held that for the purpose of accommodating the teachers found surplus on applying the 1:45 ratio, every year the ratio 1:40 has to be applied.

As in the previous years, a number of cases have been reported regarding the establishment of institutions and recognition/affiliation by universities, management of educational institutions, nature of powers exercised by authorities, observance of natural justice principles, etc.

The power of the trustee to prepare Electoral College and conduct election was the issue in Olive E. Malaki v. State of Rajastha.\(^{65}\) The impugned provisions were contained in Rajasthan Non-government Educational Institutions Act, 1989 and Rajasthan Non-government Educational

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\(^{61}\) AIR 2005 Uttr 11.

\(^{62}\) AIR 2005 Utr 21.

\(^{63}\) AIR 2005 Chh 10

\(^{64}\) AIR 2005 Ker 29.

\(^{65}\) AIR 2005 raj 296. The Rajasthan high Court held that when the Act and rules are silent with regard to Electoral College, if it is an institution run by trusts, the trustees can exercise the power to prepare electoral college and conduct elections after every three years.
Institution (Recognition, Grants in Aid and Service Condition etc) Rules, 1993. Since the Act and rules are silent with regard to constitution of Electoral College the court held that it is for the trustees to prepare Electoral College and to conduct election after every three years.

The powers of the government vis-à-vis establishment of new colleges were involved in a few cases. In Sree Gram Sarvajanaik Education Trust v. State of Gujarat\textsuperscript{66}

The Rajasthan High Court held that when the Act and rules are silent with regard to Electoral College. The state government’s refusal to give NOC for establishing new B.Ed. colleges was the issue. In the opinion of the court, the state government’s decision was not conclusive or binding and it was to be considered by the regional committee of NCTE. In KRE Trust v. Member Secretary, NCTE, \textsuperscript{67} the court refused to blame the state government for not taking a decision on the application of appellants because they submitted the application belatedly. The Orissa High Court held that in view of the prohibition contained in the state education Act, the state government was not competent, rather prohibited from, granting permission for establishment of or recognize a physical training institute.\textsuperscript{68}

The scope of the power of regional deputy director or education was the issue in Committee of Management, Pandit Jawaharlal Nehru, Inter College Bansgaon v. Deputy Director of Education.\textsuperscript{69}

The full bench held that the deputy director of education must conform to the norms of judicial procedure in exercise of his powers. Statute requires him to act fairly and consistent with the rules of natural justice. The powers exercised by him are not administrative in character. It has all the attributes of a quasi-judicial power. It has been held that the state government has no power to prescribe a higher level of disability than the one prescribed under respective legislation.\textsuperscript{70}

\textsuperscript{66} AIR 2005 Guj 247.
\textsuperscript{67} AIR 2005 SC 2785
\textsuperscript{68} Regional College of Physical Education v Director of Higher Education, AIR 2005 Ori 44.
\textsuperscript{69} AIR 2005 All 101.
\textsuperscript{70} Supra note 41.
The legislative competency of state to decide as to the establishment of an educational institution in a particular area was the issue in Government of A.P. v. J.B. Educational Society. The Supreme Court was of the view that the educational needs of the locality are to be ascertained and determined by the state.

Courts considered the application of natural justice principles in certain cases. Cancellation of permission by the state to register open schools after granting permission, without giving an opportunity of hearing was held as violative of the principles of the principles of natural justice.

Again in Wali Ahmed v. L.N. Mithila University it was held that issuance of order of withdrawal of provisional recognition without giving an opportunity of being heard was liable to be set aside. A decision taken to withdraw privilege of conducting examination by the university without referring the matter to the academic council was held as violative of statutory procedure.

The court reminded that the authorities should exercise their power fairly, while deciding COM Janki Intermediate College v. Lala Radheylal, in which it was held that the order passed by joint director casually and without exercising his power fairly was not proper.

In Dr. Ambedkar Medical College, Bangalore v. Union of India the court held that section 10A(1) of the Medical Council Act does not confer any power on MCI to stop admission to any medical college. It has no power to pass interim orders regarding admission and before passing any order directing

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72 Appeal was against the order of the single judge .... was in the field already occupied by the enactment made by the parliament, i.e. NCTE Act.
74 AIR 2005 Pat 93.
75 Bhasker Tiwari v. Jiwaji University, Gwalior
76 AIR 2005 All 275. There was claim over control of management of the institution by two rival groups.
77 Supra note 38. The questions considered, inter alia, are: (i) whether the Medical Colleges, (ii) Whether it is mandatory that the principles .... stoppage of admission.
78 S 10 A(1) reads as follows : Notwithstanding ..... in force (a) no person shall establish a medical college.
the stoppage of admission, principles of natural justice be followed. When the main section is not conferring any power on MCI, it cannot be said that the explanation, which gives meaning to the phrase used in the section, confers any power.

The Bombay High Court directed the authorities to pay compensation of Rs.15,000 to the student of a school, which in spite of having no permission to start 9th and 10th classes, chose to admit students to those classes. The affiliation has been taken away. In R. Kumar v. The State of Tamil Nadu it was held that no university or deemed university or its graduates could campel or demand any other university to recognize the degree of other university.

The Karnataka High Court criticized the state government, which committed glaring illegalities by awarding four marks as service weightage to contract doctors.

Effect of change in and around Viswabharati University was considered in Sushanta Tagore v. Union of India. The Supreme Court did not allow construction activities in the premises of the university.

In Mukat Lal Mathur v. Jainarayan Vyas University the residential requirement the Rajasthan High Court considered regarding submission of Ph.D thesis. The court was of the view that the residential requirement suggests that the petitioner must carry out his research work within the university or outside the university at the institution approved by the university.

To do research work at any or every place shall not be countable against residential requirement. Time spent on discharging duties of the employer cannot be considered as time spent on research work.

In AICTE v. Satyabhama Institute of Several & Technology, Chennai a letter from the AICTE asking the educational institution for

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79 MBS Prasarak Mandal v State of Maharastra, AIR 2005 Bom 350
80 R. Kumar v State of Tamil Nadu
81 Dr. T. Pratap v. State of Karnataka, AIR 2005 Kant 386.
82 AIR 2005 SC 1975. A PIL was filed, aggrieved ...... and purpose for which Vishwabharati was conceived and founded.
83 AIR 2005 Raj 320.
84 AIR 2005 Mad 463.
certain information and proposing to inspect institute was challenged. The court held that, to obtain a writ it must not only be shown that there was violation of law, but also that by such violation, the petitioner has suffered some prejudice. In the instant case, since the communication only asked for certain information, it did not affect the petitioner’s rights in any manner, and no prejudice was shown or caused. The petition was, therefore, dismissed.

2.34 Fundamental Right To Education Myth Or Reality

Education is a basic human right and is the foundation of a free and fulfilled life. Its need and importance has long been emphasized and in the recent past since when the counties have found a common platform in United Nations numerous Convenants and Treaties have powerfully and unambiguously expressed the relevance of education and have set a goal for them viz. Educational for all ‘Education as an economic right necessities the adoption of schooling to facilitating subsequent economic, social, cultural and political facets of education is facilitate by the indivisibility and interrelations of human rights.¹ Competitiveness – driven reforms of education system imposed by globalization are critical for long-term economic growth and hence sustainable poverty reduction.²

No Country can be said, as yet to have achieved full compliance with all international human rights obligations in education, ³. The current progress in terms of access to and quality of education is not satisfactory. The expansion of this sector must be carefully planned and monitored.⁴ Due to resource constraints, partnership with the private sector must be fostered. But the role of State as a regulator and organizer of the framework for expansion (of education) is a critical.

¹ Annual report of the Special Reporter on the right to education Katarina Tomasevski submitted pursuant to Commission on Human Rights
³ Katerina Tomasevki; Manual on Right-Based Education: Global Human Right Requirements made simple; Bangkok;UNESCO Bangkok 2004 available 03 April, 2005
⁴ Remarks given by Chairman Alan Greenspan, The Critical …..Annual Meeting , Omaha, Nebraska 20 February 2004
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 no examining the legal position of the right to education in India.

The attempt is to find out is it a right in real sense? This paper also traces the evolution of the fundamental right to education in India by referring to international human rights framework as well as Indian constitutional framework. Supreme Court’s role in developing fundamental right to education through constitutional jurisprudence is also under examination.

2.35 Need For Recognition of Right To Education

Need for the right to education is better understood by knowing the aim and importance of education. In the present era the aim of education goes much beyond literacy; now it connotes learning to live together, learning to do.\(^5\) Education broadly serves two purposes; first, it equips people with knowledge and skills of analysis and hellos them attain the freedom to enjoy the life. Second, it prepares them to become economically independent.

Educational development is the essential pre-requisite to the all-round development of any society economically, socially and culturally.\(^6\) 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.\(^7\) Thus, education shapes

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\(^6\) World Conference on Education for all Jometin in 1990 and adoption of World Declaration on Education for all the same Conference and its assessment at Dakar in 2000 have well established the importance of education in the social, economic and political development of the Nation..

\(^7\) Amman Affirmation, 1996 accepts that education is empowerment. It is the key to establishing and reinforcing democracy; to development it is both sustainable and humane and to peace founded upon mutual respect and social justice.
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.

The countries, which have adopted the democratic way of living would be able to achieve their end only through the participation of their citizens who are expected to possess the desired qualities of a democratic citizen and these qualities could be indicated through education. It is the very foundation of good citizenship and is a principal instrument to uplift the society through humanity. Since children are the future citizens and the success of the democracy depends on the future citizens and the success of the democracy are interrelated and interdependent. It also implies that education is the means through which democracy establishes social justice. Thus, right to adequate education is a define feature of democracy and a necessary to trace the concerned international human rights law and the efforts made in India to make right to education a fundamental right.

2.36 Scope of Article- 21

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”.

11. V.C. Pandey, Democracy and Education, Isha Books, Delhi, 2005. He said in the preference of the book “ In a democracy, ………… community”.
The words ‘except according to procedure established by law’ suggest that Art 21 does not apply where a person is detained by a private individual and not by or under authority of the State, no fundamental right is infringed when the detention complained of is by a private individual. Article 32 also cannot be involved in such a case ¹. [But a petition under Art 226 would lie; see point].

2. But the protection of Article extends to all ‘persons’, not merely citizens, ² including even persons under imprisonment (as regards restriction imposed in Jail) ³.

3. It also applies to preventive detention, under Art 22, post.

**Interpretation:** - Art 21 has to be interpreted in conformity with the international with the international law as India is a signatory to the international Covenant on Civil and Political Rights, 1966 ⁴ Consequently, right to development has become part of Arts. 21, 38, 39 and ⁵

**Article 14, 19 and 21:** - It is now settled that the validity of a law coming Art 21 must be tested also with reference to Arts 21 must be tested also with reference to Arts. 14 and 19 ⁶

**‘Deprived’**

1. In Gopalan’s case ⁷ It was held that Art was attracted only in cases of ‘deprivation’ in the sense of ‘total’ loss and that, accordingly, it had no application in case of a restriction upon the right to move freely, which came under Act 19 (1) (d) ⁸

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³ State of Maharashtra v. Prabhakar Pandurang AIR 1966 SC 424
⁴ People’s Union for Civil liberties v. Union of India, AIR 1997 SC 568
⁶ Menka Gandhi v. Union of India, AIR 1978 SC 27
2. The foregoing view has however, been modified by later decisions to the effect that Art 21 would require authority of law even for restrictions on personal liberty, e.g.-

(i) Interference with the freedom of a person at home, e.g. by domiciliary visits by the Police at night. 9.

(ii) Interference with the Right of a prisoner in jail to publish a book outside the jail. 10.

(iii) Any other restriction imposed while in Jail, which is not authorised by law. 11

3. 'Deprived' does not mean that the Court is powerless to interfere with an imminent threat to the freedom of life or personal liberty, and must wait until the person has actually been taken into custody. 12

4. But in order to constitute 'deprivation', there must be some direct, overt and tangible act which threatens the fullness of the life of person or members of the community as distinguished from vague or remote acts threatening quality of life of people at large. 13

Article 21, if read literally, is a colourless article and would be satisfied, the moment it is established by the State there is a law provides a procedure which has been followed by the impugned action. But the expression 'procedure established by law in article 21 has been judicially construed as meaning a procedure, which is reasonable, fair and just. Read with article - 39A, it would further imply legal aid being made available to the indigent accused and a prisoner. The concept of 'fairness, so evolved, has been imported into article at a prison regulation, which arbitrarily deprives a detenu of opportunity to relatives, or friends or a lawyer is invalid. See the under mentioned cases as to the scope of article 21 on above points:

13. Ramsharan Autyaanuprasi v. Union of India, AIR 1989. 32 549
I. Manke Gandhi v. Union of India

II. Gopalachari v. Administrator, State of Kerala

III. Francis Coralie Mullin v. Union Territory of Delhi

IV. Olga Tellis v. Bombay Municipal Corporation

The right to life and the right to personal liberty in India have been guaranteed by a revision, which has received the widest possible interpretation. Under the article 21 of the Constitution, so many rights have found shelter, growth and intelligent citizen would like to be aware of the developments in this regard, ed from judicial decisions.

Article 21 lays down that no person shall be deprived of life or personal liberty, except cedars established by law. Article appears to be negative in its grammatical form, it has, in reality, been effect by judicial interpretation. The right is a fundamental right, enforceable state and judicial decisions have imposed, on the State, several positive example a person who cannot pay for medical expenses must he given free, and that too, without delay. A person should not be hand- cuffed (after- M] charge) save will certain exceptional situations. May perhaps ask a simple but basic question, as to why a constitutional Jed oil the subject. Is the ordinary law not sufficient? Now, it is true that the mode (45 of 1860) (like the Penal Codes in all countries) contains adequate Wish a person who takes away or attempts to take away the life of another the impact of a constitutional provision lies in the fact, that by being elevated a fundamental right, the right is placed beyond the reach of ordinary of by political motives.

Article 21 is not merely the physical act of breathing. This has been recognized by act, as philosophers tell us, life is lived at many levels. The Rig Veda [10.177.21, of the mundane activity of speech.

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2.37 Protection Of Life And Personal Liberty (Article 21)

Munshi’s draft, in its chapter on rights to freedom, had provided:

No person shall be deprived of his life, liberty or property without due process of law.

The other provisions, which in effect elucidated the "due process" clause, had guaranteed to every person the right to be informed, within twenty-four hours of his deprivation of liberty, by what authority and on what grounds the action was being taken. They had laid down further that no person would be subjected to prolonged detention preceding trial, to excessive bail or unreasonable refusal of bail, to inhuman or cruel punishment or to denial of adequate safeguards and proper procedure\(^1\). Ambedkar's draft also had included a provision that the State should not deprive any person of life, liberty or property without the "due process of law"\(^2\).

The Sub-Committee on Fundamental Rights discussed the subject on March 25, 26 and 29, 1947, Munshi draft prescribed that ever and included in its draft report two clauses, 11 and included in its draft report two clauses, 11 and 29: 11, No person shall be deprived of his life, liberty or property without due process of law.

29. No person shall be subjected to prolonged detention preceding trial, to excessive bail, or unreasonable refusal thereof, or to inhuman or cruel punishment\(^3\).

Commenting on the draft report, B.N. Rau pointed out that clause 11 had been adapted from the Fifth and Fourteenth Amendments of the Constitution of the United States, while clause 29 was based on article 1 of Lauterpacht's "An International Bill of the Rights of Man" as also on the Sixth

\(^1\) Munshi’s draft, articles v (1) (e) and v (4) and article XII (3), Selected Documents II, 4(ii) (b), pp. 75, 79.

\(^2\) " Ambedkar’s Draft article II (1)2, select Document II, 4 (ii) (d), p. 86.

\(^3\) Minutes and draft report of the sub committee, Annexure, clauses 11 and 29. Select Documents II, ... “due Process of Law” Provision – Clause"
and Eighth Amendments of the Constitution of the United States. Forty per cent of the total litigation in the United States Supreme Court during the preceding half-century, he said had, centered round the interpretation of the expression “due process” of which it had been said that in the last analysis it meant exactly what the courts said it meant in any particular case. No other definition was possible. The result of borrowing such a clause and giving it retrospective effect, making it applicable even to pre-constitution laws, was likely to be a vast flood of litigation. Tenancy laws. Laws to relating to money lending Laws relieve debt, laws to prescribe minimum wages., laws to prescribe maximum hours of work, would all be liable to be challenged. To get over the difficulty, B.N. Rau suggested an additional clause empowering the State to delimit by law the guarantees for

4. (iii) and (iv). 119-20, 122, 132, 139, 141. The provision regarding the right to be informed of the authority and grounds of deprivation of regarding the right to be informed of the authority and grounds of deprivation of one’s liberty with twenty-four hours was omitted in view of the ‘due process of law’ provision. Clause II

5. In the Fifth Amendment to the Constitution of the United States, it is declared that no person shall be deprived of life, liberty or properly without due process of law; and in the Fourteenth Amendment, there is a similar declaration applying to the states: “nor shall any state deprive any person of life, liberty or property without due process of law.” A vast volume of case law has gathered round this “due process” clause of which it has been said that it is “the most important single basis of judicial review today”. At first it was regarded only as limitation on procedure and not on the substance of legislation; but it has now has now been settled that it applies to matters of substantive law as well. In fact, the phrase “without due process of law” appears to have become synonymous with “without just cause” the court being the judge of what is “just cause”; and since the object of most legislation is to promote the public welfare by restraining and regulating individual rights of liberty and property the court can be invited under this clause to review almost any law. The court has upheld laws providing for compulsory vaccination (1905); for compulsory sterilization of mental defectives (1927); for commitment of persons with a “psychopathic personality” (1940); but not a law forbidding the use of shoddy in the manufacture of mattresses of (1926), nor one requiring every pharmacy to be owned by a licensed pharmacist (1928) the usual even to pre-constitution laws, was likely to be a vast flood of litigation. Tenancy laws. Laws relating to money-lending. Law to relieve dept, laws to prescribe minimum wages, laws to prescribe maximum hours of work, would all be liable to be challenged. To get over the difficulty, B.N. Rau suggested an additional clause empowering the state to delimit by law the guarantees for private property with a view to reconciling their exercise with the exigencies of the common good.

When the sub-committee met on April 14 and 15, 1947, to consider the draft report in the light of the comments received it reaffirmed its recommendation for incorporating both clauses 11 and 29 in the Constitution. The final report of the sub-committee accordingly reproduced them as clause 12 and
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28 with any modification except that the “legal equality” provision was also combined with the former.

When the clauses came up for consideration before the advisory committee on April 2 and 22, 1947, clause 28 was deleted with out any discussion presumably because the committee felt that the expression “due process of law” in clause 12 was wide enough to cover within its scope the contents of clause 28.

Commenting on clause 12, Alladi Krishnaswami Ayyar explained the uncertainties of interpretation to which the phrase “due process of law” would probably give rise. The expression was taken from American law where it had a chequered history. Originally it was confined to matters of procedure. Later it was extended to substantive rights and when judges changed they gave different interpretations to the phrase. He said that in President Roosevelt’s New Deal legislation one set of judges in particular cases gave one interpretation and another set of judges gave another interpretation some in the direction of social utility and some others in the direction of individual property. He added that since the American court issue in such cases is whether what is called the “police” of the State other words, the inherent power of every state to prescribe regulations promote the health peace, morals education and good order of the people justifies the particular law under consideration. Since there is no certain criterion in these matters, the court’s verdict may vary from time to time (B.N. Rao Constitutional Precedents. Third Series, 1947, p. 17.) Select Document II, 2(1) pp. 2930.

7. The “legal equality” provision continued to be coupled with the “protection life and liberty” provision through various stages thereafter until, at the revising stage of the constitution. The drafting committee separated and renumbered it an independent article (article 14 of the constitution), see under “Right to Equality article 14.
When the clauses came up for consideration before the Advisory Committee on April 21 and 22, 1947, clause 28 was deleted without any discussion presumably because the committee felt that the expression “due process of law” in clause 12 was wide enough to cover within its scope the contents of clause 28.

Commenting on clause 12, Alladi Krishnaswami Ayyar explained the uncertainties of interpretation to which the phrase “due process of law would probably give rise. The expression was taken from American law where it had a chequered history. Originally it was confined to matters of procedure9. Later it was extended to substantive rights and when judge changed they gave different interpretations to the phrase. He said that in President Roosevelt’s New Deal legislation one set of judges in particular cases gave one interpretation and another set of judges gave another interpretation, some in the direction of social utility and some others in the direction of individual property. He added that since the American court had not given a unanimous interpretation of the phrase- at one time confining it to procedure, at another stage extending it to rights, and at a third stage saying that it would be subject to public utility-the sub-committee had assumed that Indian courts would “follow the expression”. But all the same, he cautioned against the danger of its standing in the way of what might be called expropriatory legislation; if there was a set of judges who were conservative in regard to property, they might put a more liberal interpretation. He concluded his explanation with the remark that he himself was not against the inclusion of the phrase; but he wanted the committee to be alive to its implications10.

This view evoked strong opposition to the use of the phrase “process of law” from Govind Ballabh Pant who said that the expression should be avoided as it was ambiguous and capable of divergent interpretations; its retention might mean that the future of the country was to be determined by the

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10. Advisory Committee Proceedings, April 21 and 22, 1947, select documents II,
collective wisdom of the representatives of the people but by the whims and vagaries of lawyers elevated to the judiciary. It was necessary not to fetter the power of the Legislatures to pass laws empowering the executive to detain, for short periods, persons who created trouble leading to disruption of communal harmony and law and order.

He was particularly concerned with the effect of the words on social legislation. It was necessary, he said, that the Legislatures should retain the power of passing tenancy laws and measures for the acquisition of private property for public purposes without being obliged to pay compensation at marked rates. In the United Provinces, he explained, they were contemplating the abolition of zamindari (a feudal system of land tenure) and it was possible that there might be a law to the effect that the more wealthy zamindars might be paid compensation at the rate of ten times their annual value and the smaller zamindars at forty times. These zamindars might go to the court and say that payment must be made on the basis of the market rate; and the law might hang on for years for the Supreme Court to give a decision. “We do not want such a thing to happen”, he said.

Pant’s view in regard to limiting the right to liberty did not find many sympathizers, the feeling of the members, in Ambedkar’s words, being that there was no case for giving a carte blanche to the Government to arrest, except in a grave emergency, any person without “due process of law”. There was however considerable support for the arguments advanced by Pant regarding legislation dealing with property and tenancy. Ambedkar agreed that these matters could be covered by a specific proviso, although, in his opinion, the “due process” clause could not prevent the Legislature from passing tenancy legislation, and a separate clause\(^\text{11}\) already existed for legislation for the acquisition of property\(^\text{12}\).

\(\text{11. Clause 26: see under “Right to Property”, article 31, infra.}\)
\(\text{12. Advisory Committee Proceedings April 21 and 22, 1947 select Documents II, 6 (iv), pp, 243-5.}\)
At this stage, as a possible way out of the practical difficulties created by coupling the “life and liberty” provision with the “property” provision, K.M. Panikkar suggested the omission of the latter from the text. Drawing a distinction between the “right to life and liberty” on the one hand and the “right to property” on the other, he said that while the former should be regarded as “absolutely sacred”, not subject to any other restriction except that of public order and tranquility, the latter should be guaranteed only subject to legislation. Though Pant remained unconvinced, this compromise suggestion generally appealed to the members and, with Munshi, Ambedkar and Rajagopalachari supporting it, the suggestion was finally adopted by the committee and the “due process” provision, after the omission of the word “property”, was incorporated in clause 9 of the report submitted to the Constituent Assembly.\(^\text{13}\)

Taken up for consideration in the Assembly on April 30, 1947, the provision was adopted without any amendment being moved.\(^\text{14}\) The Constitutional Adviser in reproducing it in clause 16 of his Draft Constitution of October 1947, restricted the scope of the expression “liberty” by adding the word “personal” before it. He justified the change on the ground that the word “personal”; for example, even price control might be regarded as interference with liberty of contract between buyer and seller.\(^\text{15}\) The change had the approval of the Drafting Committee which accepted it at its meeting on October 31, 1947, despite Munshi’s opposition.\(^\text{16}\)

Meanwhile, during his visit to the United States of America and other countries, B.N. Rau had discussions with Justice Frankfurter of the United States Supreme Court who was of the opinion that the power of review implied in the “due process” clause was not only undemocratic (because it gave a few judges the power of vetoing legislation enacted by the representatives of the

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nation) but also threw an unfair burden on the judiciary. This view was communicated by B.N. Rao to the Drafting Committee which introduced a far-reaching change in the clause by replacing the expression “without due process of law” by in the expression “except according to procedure established by law”.

The latter expression, which the committee considered more specific in its import, was borrowed from article 31 of the Japanese Constitution. The text of the provision, thus recast by the committee, was incorporated in article 15 of the Draft Constitution.

No person shall be deprived of his life or personal liberty except according to procedure established by law nor shall any person be denied equality before the law or the equal protection of the law within the territory of India.

Draft article 15 evoked a keen controversy regarding the respective merits of the expressions “due process of law” and “procedure established by law”. When it came up for consideration in the Assembly on December 6, 1948, there were about twenty amendments, most of them seeking to replace the latter by the former or a similar expression. Almost the entire debate hinged on this controversy, with all the speakers, including Munshi, favouring the restoration of the expression “due process of law”. Syed Karimuddin and Mehboob Ali Beg pointed out that the use of the phrase “procedure established by law” stripped a court of the power to go into the merits and demerits of the grounds on which a person was deprived of his life or liberty.

A court could not look into the injustice of any law or of a capricious provision in any law since its function would cease the moment it was satisfied that the “procedure established by law” had been complied with Thakurdas Bhargave, explaining the import of the use of the words “without due process

18. Draft Constitution February 1948, article 15, see f.n. to the select documents III, 6, 523.
of law” pointed out that if this phrase was used the courts could go into the question of substantive as well as procedural law in other words, the courts would have the right to go into the question whether a particular law enacted by Parliament was just or not, whether it protected the good or not, and whether or not, as a matter of fact, it protected the liberties of the people; and if the Supreme Court came to the conclusion that any law was unconstitutional unreasonable or unjust, such a law would cease to have effect. **Z. H. Lari** expressed the opinion that the essence of the “due process of law” provision was two-fold. There would first be an enquiry before a man was condemned, and then there would be a judgment after trial. On the other hand, if the words “procedure established by law” were adopted, it would mean that the Legislature was all-powerful. He said;

Men as well as assemblies or any mass of people are subject to passing emotions... and in the present state of things, particularly keeping in view the constitution that we are going to have name parliamentary government, the legislature is controlled by a cabinet, which means by the executive.**

**K.M. Munshi** emphasized that with the omission of the word “property” and the word “liberty” qualified by the word “personal” the “due process of law” provision had become unexceptionable and no longer value able to the difficulties of interpretation to which its counterpart in the United States was subject; the difficulties of interpretation of the “due process” clause in the United States had been in regard to its application to the “property” provision, and similarly, the word “liberty” was construed widely so as to cover liberty of contract etc., simply because it had not been qualified by the word “personal”.

Referring to the fear that legislative majorities would be more anxious to establish social control than to serve individual liberty and might pass legislation in a hurry to give sweeping powers to the executive and to the

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20. Ibid., p. 846.
police, he said it was necessary that a proper balance should be struck between individual liberty and social control. Thus could be done only if the governments had go to the courts of law to justify a particular measure being passed infringing the personal liberty of an individual.\textsuperscript{22}

Raising his lone voice in support of the retention of the expression “procedure established by law” as against the “due process” provision. \textbf{Alladi Krishnaswami Ayer} argued that the verdict of three or five gentlemen sitting as a court of law on what exactly was the “due process” according to them in a particular case could not be regarded as more democratic than the expressed wishes of the Legislature or the action of an executive responsible to the Legislature. In the United States even the minimum wage law or a restraint on employment had, in certain cases, been regarded as an invasion of personal liberty. He again referred to the absence of the United states in the interpretation of the phrase in the decisions of the United States in the interpretation of the phrase in the decisions of the United to suit Indian conditions and the progress and well-being of the country. He feared that the clause might prove to be a great handicap for all social legislation, for the ultimate relationship between employer and labour, for the protection of children and for the protection of women. In the earlier stages of American history lawyers ranged themselves on the side of the great trusts and combines and in favour of corporation which were in a position to pay heavy fees, sometimes in the name of personal liberty, sometimes in the name of property. He added:

I trust that the House will take into account the various aspects of this question, the future progress of India, the well-being and security of the State, the necessity of maintaining a minimum of liberty, the need for coordinating social control and personal liberty, before coming to a decision\textsuperscript{23}.

\textsuperscript{22} Ibid., pp. 851-2.
In view of the trend of opinion in the Assembly, Ambedkar suggested postponement of further consideration of the draft article. The suggestion was accepted. After a week, on December 13, 1948, when the article was again taken up, Ambedkar succinctly placed before the Assembly the two sharply divergent points of view and the difficulties inherent in each of them: one view was that the Legislature could be trusted not to make any law which would abrogate the fundamental rights applicable to every individual. The other view was that it was not possible to trust the Legislature; the Legislature was likely to err, to be led away by passion, by party prejudice or considerations, and might make a law abrogating a fundamental right of a citizen. Ambedkar added:

For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws, which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where man has to sail between Charybdis and Seylla and I therefore would not say anything.

All the amendments for replacing the words “procedure established by law” by the words “due process of law” or other similar expressions were negative and article 15, as recommended by the Drafting Committee, was adopted without any change²⁴.

The vote of the Assembly did not finally set the controversy at rest. A large part of the Assembly, as also Ambedkar himself, was greatly dissatisfied with the wording of the article. Even outside the Assembly, the feeling in

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²⁴. Ibid pp 1000-1.
favour of incorporating in the Constitution the “due process of law” provision in some form or other was so deep that the vote of the Assembly against it evoked a great deal of public criticism. It was felt that draft article 15 gave to Parliament a carte blanche to provide for the arrest of any person under any circumstances it deemed fit. A new article 15-A was therefore drafted:

[1] No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice.

[2] Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

[3] Nothing in this article shall apply-

[a] To any person who for the time being is an enemy alien; or

[b] To any person who is arrested under any law providing for preventive detention:

Provided that nothing in sub-clause (b) of clause (3) of this article shall permit the determination of a person for a longer period than three months unless-

[a] An Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention, or

[b] Such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article.

[4] Parliament may by law prescribe the circumstances under which and the

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class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained.

[1] Introducing this article in the Assembly on September 15, 1949. Ambedkar observed that they were “making, if I may say so, compensation for what was done in passing article 15. While it might not satisfy those who believed in the absolute personal freedom of the individual, he claimed that it did contain the substance of the law of “due process”. The first two clauses of the article embodied two of the most fundamental principles of justice recognized by every civilized country and which were already contained in the Criminal Procedure Code. The article only sought to raise these principles to the status of constitutional guarantees so as to restrict the power principles to the status of constitutional guarantees so as to restrict the power of Parliament and the State Legislatures to abrogate them by legislation. Ambedkar was satisfied that the draft article provided adequate protection against arbitrary of illegal arrests, and that the inclusion of further safeguards against inroads by the executive and the Legislature upon the personal liberty of the individual, urged by some members, was unnecessary.

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26. ‘See sections 60, 61, 81 and 167 of the Criminal Procedure Code, 1898.