CHAPTER III

RIGHT TO EDUCATION

Education helps the child to contribute to the development of the state than to his own development\(^1\). Consequent to this notion, any effort on educating children shall be regarded as an investment by the state.

However, the concern of International law towards education of children is much limited. Another point noteworthy is that, the international concern towards the right of children for education co-exists with the right of parents to provide education to children.

The first specific reference in the international sphere, to the right of a child to education was included in principle 7 of the Declaration of the Rights of the child, 1959.

To assist states in attaining improvements in the exercise of individual’s right to education, the General Assembly declared and observed 1990 as International Literacy Year\(^2\). This reflected the recognition of international community, even a decade ago, that the elimination of illiteracy should be a pre-requisite for ensuring the right to education.

Access to Education

International law refers to ‘right to education’ as a right of ‘access to education’. This concept implies that states are under a corresponding duty to provide education at specific levels even where schools do not exist\(^3\). No obligation is cast upon the states as far as pre-school education is concerned. The

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\(^1\) The State of the World’s Children, 1999, UNICEF
\(^2\) Proclaimed on 7 December 1987.
international community refers to only elementary or primary, secondary and higher education. This may be highlighted as an unfortunate omission because the experiences of pre-schooling have been scientifically proved and recognized as important because it plays a vital role in developing child’s attitudes and inspirations.

The duty on the states to provide free education to children varies according to the level of education. The responsibility to provide the education in the primary level is higher when compared to the secondary level\(^4\).

**Hurdles on Exercising Right to Education**

In many of the developing and underdeveloped countries, there are many factors that would prevent the children from having access even to their basic education. Poverty, ignorance of parents, children forced to be the breadwinners of the family, the distance of schools, imposition of school fees, opposition to the education of girl children etc. are some of such factors.

Again, another question arises whether children have the right to participate in decisions concerning the type of education so that education is in conformity with the needs of the child. Presently the children may be left with no remedy, if they have a different choice or disagreement. The international law itself recognizes the legal capacity of parents to intervene between the state and the child to make choices in relation to the exercise of the right to education. But it does not necessarily mean that the child should not have an independent interest than that of his parents. Still the states are not under a legal duty to assure protection to the wishes of children. It is relevant to note in this context that, as distinct from other international treaties, the 1989 Convention does not contain a provision respecting or asserting the parents’ right in this regard.

\(^4\) Art.12, American Declaration (….. at least primary education should be free …..); Art.13 (2) C, ICESCR, “…. Secondary education in its different forms including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means and in particular by the progressive introduction of free education”
In *Brown v. Board of education* the Supreme Court of USA abolished racial segregation in the public schools based on the Equal Protection Clause. In this landmark decision, the US Supreme Court held that even if schools were equal as compared to one another, and students had access to equal facilities, equal protection of the law required that black students would have access to the same schools as white students. Another thing noteworthy is that this decision struck down the infamous ‘separate but equal’ doctrine which had permitted separate educational facilities for black and white children. Segregated schools were held to be ‘inherently unequal’ and thus a violation of the Equal Protection Clause of the 14th Amendment of the US Constitution.

Many times, the question of ‘unequal administration of education’ came before the Federal Supreme Court under the 14th Amendment of the Constitution. In *San Antonio Independent School District v. Rodriguez*, the court asserted the grave significance of education both to the society and to the individual. Though in US, education is not among the rights afforded explicit protection under the constitution, the undisputed importance of education is recognized. The court insisted that education is itself a fundamental personal right because it is essential to the effective exercise of the first Amendment freedoms. The court in the dissenting judgment pointed out that indiscriminate treatment in quality of education and disparities in expenditures between students are unfair.

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5 347 U.S. 483
6 Fourteenth Amendment, 1868 “…. nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.”
7 347 U.S. 483at pp. 492-494: Here the Supreme Court observed that the doctrine of equality would be in peril even if absolute satisfaction of quantifiable indicia of equality exists.”…there are findings below that the negro and white schools involved have been equalised, or are being equalised, with respect to buildings, curricula, qualifications and salaries of teachers and other tangible factors. Our decision, therefore cannot turn on merely a comparison of these tangible factors… We must look instead to the effect of segregation itself on public education…To separate children (in grade and high schools) from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone”.
8 411 US 1: 36 L. Ed. 2d 16 (1973)
9 *Ibid*, Marshal J., with Douglas J., held “…the equal protection clause cannot be offended by substantially unequal treatment of persons who are similarly situated so long as the state provides anyone with some unspecified amount of education…In large measures, the
The Right to Education in U.K

The individual is under certain common law duties to serve the public\textsuperscript{10} which include the parent or guardian’s duty to cause the child to attend school\textsuperscript{11}.

The rights contained in the international human rights documents, to which U.K is a party, are guaranteed; i.e., U.K. is obliged to secure the rights and freedoms in domestic law\textsuperscript{12}.

Nursery Schools

The statutory educational system empowers local education authorities to establish and maintain nursery schools established by them or by a former authority and to assist any such school which is not so established\textsuperscript{13}.

Local Education Authority\textsuperscript{14}

The principal duty of the local education authority for every area is to contribute towards the spiritual, moral, mental and physical development of the community by securing that efficient education is available to meet the needs of

\textsuperscript{10} Maitland, Constitutional History of England 1908 at p.501
\textsuperscript{11} See, s.7, Education Act, 1996: “The parent of every child of compulsory school age shall cause him to receive efficient full-time education suitable ; a) to his age, ability, and aptitude, and b) to any special educational needs he may have, either by regular attendance at school or otherwise.”;
\textsuperscript{12} s.33, Education Act 2002; “(1) Once in every school year the governing body of a maintained school shall hold a meeting (an “annual parents’ meeting”) which is open to—
(a) all parents of registered pupils at the school,
(b) the head teacher, and
(c) such other persons as the governing body may invite.
(2) The purpose of the meeting is to provide an opportunity for discussion of the manner in which the school has been, and is to be, conducted, and of any other matters relating to the school raised by parents of registered pupils.”;
\textsuperscript{13} See also, http://www.underhill.nildram.co.uk/law.htm#par (visited on 04-08-2010)
\textsuperscript{14} Halsbury’s Laws of England, 4\textsuperscript{th} Edition Reissue, Butter worth, London, Vol. 8(2) at P.98
\textsuperscript{15} See Supra n.11 Vol.15 at pp. 4 -154 Nursery schools are primary schools which are used mainly for providing education for children who have attained the age of two years but have not attained the age of 5 years.
\textsuperscript{16} See also, Part 7, Education Act 2002
the population of their area. It is the authority’s duty to secure that there are sufficient schools available for their area for providing primary education and secondary education. The schools available for an area are not deemed to be sufficient in number, character and equipped to afford for all pupils opportunities or education offering such variety of instruction and training as may be expected to remain at school, including practical instruction and training appropriate to their respective needs.15

The local education authority is not bound to provide for higher education16.

Parental Duty to Child’s Education

It is the duty of the parent of every child of compulsory school age to cause him to receive efficient full time education suitable to his age, ability and aptitude, and to any special educational needs he may have either by regular attendance at school or otherwise.17

The parental wishes as to the school to be attended by the child and what he is to be taught there are to prevail so far as is compactable with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure.

Vagrants preventing children from receiving compulsory education are liable for punishment on summary conviction18.

15 See, A. v. Head Teachers & Governors of Lord Grey School, [2003] 4 All ER 1317 QBD (Permanent exclusion of child of compulsory school age from school was held breach of right to education under Human Rights Act, 1998. If the cause of the unavailability of alternative efficient education was the action or inaction of the Local Education Authority, on whom duties were imposed by sections 13 and 19 of the Act, it would be the Authority that had caused the infringement.)
16 Id., P.26
17 8(2) Halsbury’s Laws, 4th Edn., para 166
18 Id., p.34
Indian Scenario

Constitution of India

Interpreting Article 21, Bhagwati J, in Bandhua Mukti Morcha v. U.O.I\(^\text{19}\), held.

“…. It must include . . . facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities . . .”

Again, in Mohini Jain v. State of Karnataka\(^\text{20}\) Supreme Court held that although the right to education as such has not been guaranteed as a fundamental right under the Constitution, it becomes clear from the Preamble of the Constitution and its Directive Principles, contained in section IV, that the framers of the Constitution intended the State to provide education for its citizens. The court then reasons that this principle creates a constitutional right to education because education is essential to the fulfillment of the fundamental rights of dignity and life. The court links the right to education to the right to life by reasoning that to sustain life a human being requires the fulfillment of all the enabling rights which create life of dignity. One is only able to obtain a dignified life in India through education, making education fundamental to the right to life. The court also held that accessibility to education should be realized for all people, rich or poor. If the government decides to discharge its obligation through private educational institutions, it has created an agency-relationship, through which it can fulfill its obligations under the Constitution.

In Unnikrishnan v. State A.P.\(^\text{21}\) the Supreme Court has recognized the fundamental right to education under the ‘right to life’ in Article 21\(^\text{22}\), but

\(^{19}\) AIR 1984 SC 802 : (1984) 3SCC 161

\(^{20}\) AIR 1992 SC 1858


minimised the state liability to provide it as a fundamental right up to the age of 14 only, limiting the scope of Mohini Jain.

In tune with this judicial verdict, the Constitution (Eighthly Sixth Amendment) Act, 2002 has inserted Article 21-A which says: “The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”.

By the 86th Amendment of 2002 Article 45 has been substituted as follows:

“45 provision for early childhood care and education to children below the age of six years – The State shall endeavor to provide early childhood care and education for all children until they complete the age of 6 years.”

In Kerala Education Bill Re, 1957, it was held that there is nothing to prevent the State from discharging that solemn obligation through government and aided schools, and Article 45 does not require that obligation to be discharged at the expense of minority communities.

Art. 51 – A (K) asserts the fundamental duty of parents or guardians to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

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23 To see the ambit of Art. 21-A, see, City & Industrial Development Corporation of Maharashtra & Anr. v. Ekta mahila Mandal & Anr., (2007) 7 SCC 701 at p. 704, “…merely because Art.21-A of the Constitution has treated primary education as a fundamental right, that does not confer any right on an encroacher of land to seek regularisation of encroachment on the ground that ultimately some children of the particular age group would be taught in the school.”

24 Earlier Art. 45 read as follows: “45. provision for free and compulsory education for children – The state shall endeavor to provide, within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years”

25 AIR 1958 SC 956: 1959 SCR 995

26 Inserted by Constitution (Eighty Sixth Amendment) Act, 2002
It was held in *Kerala Education Bill Re, 1957*\(^{27}\) by Das C.J., that the provisions of the Bill which required schools belonging to minority communities not to charge any fees in primary classes “would in effect make it impossible for an educational institution established by a minority community being carried on”.

In *State of Madras v.Smt.Champam Dorairajan*\(^{28}\) and again in *Mohd. Haneef Qureshi & Ors. v.State of Bihar*\(^{29}\) it was reiterated that the directive principles of State policy have to conform to and run as subsidiary to the chapter on fundamental rights.

Despite 60 years of independence there has been no satisfactory change\(^{30}\). "The no. of schools, do not have school buildings or operating in tents or under the trees are more than 63000. About 71000 primary schools have no class rooms; 95000 primary schools have only a single classroom, 8000 primary schools have no teacher; 150000 primary schools have only a single teacher, and 60000 schools have a pupil-teacher ratio of more than 100:1. Only 35% schools had safe drinking water, 13% had urinals, 5% had a lavatory. Children in the rural areas have to walk miles to go their school\(^{31}\)."

Again, the conditions of education for tribal communities and migrant workers shall be taken into account. Tribals are reluctant to send their children to schools, the migrant population travel with their children who ought to be in school.

The realities as revealed in *Sachar Committee Report*\(^{32}\) exposes that the literacy rate for Muslims in 2001 was, far below the national average. The

\(^{27}\) (1959) SCR 629; AIR 1958 SC 73 : 1958 KLT 461

\(^{28}\) 1951 SCR 525 at p.531

\(^{29}\) AIR 1958 SC 731

\(^{30}\) As per the UN Development Report of 2009, out of 179 countries in the world(members of UN), India ranks at number 147 only. See, http://en.wikipedia.org/wiki/list_of_countries_by_literacy_rate


\(^{32}\) 2007
difference between the two rates was greater in urban areas than in rural areas. For women, too, the gap was greater in the urban areas.

When compared to the Scheduled Castes and Scheduled Tribes the growth in literacy for Muslims was lower than for the former. The female urban enrolment in literacy ratio for the SCs/STs was 40 per cent in 1965 that rose to 83 per cent in 2001. The equivalent rate for Muslims—that was considerably higher in 1965 (52 per cent)—recorded a figure of 80 per cent, lower than the figure for the SCs / STs.

According to the Sachar Committee’s findings, 25 per cent of Muslim children in the 6-14 age-groups either never went to school or else dropped out at some stage. In the midst of the widespread discussion about the role of madrasas in the life of Muslims, it is interesting to note that only three per cent of Muslim children go to madrasas.

An important cause for the low level of attainment of Muslims in education is the dearth of facilities for teaching Urdu and other subjects through the medium of Urdu (mother tongue) in lower classes, the Committee points out. It cites the better examples of Karnataka and Maharashtra in this context. These two States are much better equipped with Urdu medium schools at the elementary level. Karnataka has the additional feature of concurrent facilities for English medium as well in a good number of schools, the Committee points out. But this cannot be justified as a reason for non-educating children below 14. Any child below 14, irrespective of the religious linked linguistic barriers, is entitled to have education as a fundamental right and religion shall not be a barrier for enjoying that right.

A uniform system of education may be a solution for all. Regardless of whether one is rich or poor or from a scheduled tribe or caste, irrespective of the

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33 Emphasis added
concern of which religious group he belongs to, every child should have an equal opportunity to read and write and the state has to fulfill this right\textsuperscript{34}.

Reading together, articles 14, 15(1), 21 and 21-A, the state is duty bound to provide education of equitable equal quantity and quality, for all children without any discrimination.

The central government has in the recent years made resources for elementary education in the form of education cess. It is important to note that about three-fourth of the total central government expenditure for elementary education comes from the cess. Most education systems of the world are largely financed out of general tax and non-tax revenues and rarely depend on earmarked taxes like the education cess.

Along with the Part III mandate, art. 46 directs state to “promote with special care the educational and economic interests …. of the scheduled castes and the scheduled Tribes..” Art.39(f) reminds the State to “direct its policy towards securing… that children are given opportunity and facilitates to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The earlier art. 45 could have been interpreted to include (a) early childhood care and pre-primary education (kinder garden, nursery, anganavadi etc.) for children below 6 years of age and (b) elementary education for the 6-14 age group of children.

Now, by the 86\textsuperscript{th} Amendment of the constitution, the 2\textsuperscript{nd} part of the earlier art.45, has been brought under part III (art. 21-A) as fundamental right and the remaining is left in part IV, by inserting the new art.45.

\textsuperscript{34} See for a detailed discussion, Myron Weiner, The Child & the State in India, Oxford University Press New Delhi, 1991.
Nature of the Right to Education in Article 21-A

Right to Education, which art. 21-A seeks to confer, is different from other fundamental rights enshrined in our Constitution; in the sense that the other rights are mostly in the nature of ‘protective’ rights (i.e. which guarantee certain kinds of protection against the state to every citizen) while the right to education mandates certain pro-active action on the part of the state for a specific category vis-à-vis every child of the country who is in the 6-14 years age group. While education has become a fundamental right, other comparable entitlements, e.g. the right to food/nutrition, health, clean drinking water, clean environment, work/employment and social security, are yet to be expressly conferred that status in the Constitution. It also needs to be noted that while the earlier fundamental rights had no or insignificant financial implications for the state, the right to education has major financial implications, and therefore the issue of the state’s economic capacity would need to be borne in mind while fleshing out this right through the legislation envisaged in art. 21A. 35

Hence it is very clear that the persistence of more than half of our children today in the school-going age group of 6-14 years as ‘out-of-school children’ (at least five crores of them being child labourers) 36 constitutes a clear violation of this constitutional right.

Background of Right to Free and Compulsory Education Act

The urge to fulfill the constitutional mandate of providing free and compulsory education to children paved way to the formation of a new statute. A Committee of C.A.B.E. was constituted 37 with the following terms of reference:

“(a) To suggest a draft of legislation envisaged in art. 21-A of the Constitution, and

35 Economic Survey 2007 – 08, Ministry of Finance, Govt. of India.
37 vide Order dated 8.9.04 of the Ministry of Human Resource Development
(b) To examine other issues related to elementary education for achieving the objective of free and compulsory basic education.”

**Principles which Guided the Formation of New Act**

In formulating provisions of the said desired legislation, C.A.B.E. has been guided by the following basic considerations:

i. Right to education should imply that every child has a right to be

(a) provided full-time education of satisfactory and equitable quality in a formal school which satisfies at least certain essential norms, and

(b) enabled to complete elementary education.

It may however be pointed out that the National Policy on Education 1986 did envisage the alternative modality of non-formal education also for achieving universal elementary education.

ii. Right to education also implies that it is the State’s obligation to remove whatever obstacles – social, economic, academic, linguistic, cultural, physical, etc. – prevent children from effectively participating in and completing elementary education of satisfactory quality.

iii. Right to education must be seen not merely as a right for its own or the individual child’s sake, but also as an instrument of promoting other constitutional objectives, e.g. equality, justice, democracy, secularism, social cohesion, etc.

iv. Provision of free and compulsory education of satisfactory quality to children from weaker sections is the responsibility not merely of schools run or

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38 C.A.B.E. Committee deliberations of the first meeting of the reconstituted Central Advisory Board of Education (C.A.B.E.) held on 10-11 August, 2004

39 as modified in 1992

40 National Policy on Education, 1986; para 5.8 provides for the Non-formal Education Programme, meant for school dropouts, for children from habitations without schools, working children and girls who cannot attend whole-day schools and provides methodologies by which the system will be strengthened and enlarged"
supported by the state, but also of schools which are not dependent on state funds. Schools of the latter kind also need to provide education to such children at least to the extent of 25% of their intake. This is necessary not merely as part of the social responsibility of such schools, but also as part of the responsibility of their ‘fee-paying’ students to study in a socially more representative and diverse environment, and to develop themselves into socially sensitive citizens.

Other provisions regarding unaided schools would, however, be viewed as introducing a far more regulatory regime than has hitherto been the case, and amounting to undue/excessive regulation of private initiative in education.

v. One major reason why it has not been possible to universalize elementary education all these years is the dysfunctionality of the delivery system. The Committee has therefore attempted to formulate a number of provisions for the proposed legislation, essentially aimed at greater decentralization and accountability, so that the delivery system is able to rise to the challenge.

vi. Although its terms of reference were confined to free and compulsory education for children between the ages of 6-14 years, the Committee has considered the main programme for Early Childhood Care and Education (ECCE), viz., Integrated Child Development Services (ICDS), and proposed convergence to the extent possible. While ECCE will continue to be provided (in the State sector) through Anganwadis under ICDS, the Committee has recommended that additional pre-school facilities be provided to children in the age group of 5-6 years wherever necessary.

But, the Kothari Commission 1964 laid stress on common school system: “... There is thus segregation in education - the minority of private, fee charging, better schools meeting the needs of the upper classes and the vast bulk of free, publicly maintained, but poor schools being utilised by the rest. What is worse, this segregation in increasing and tending to widen the gulf between the classes and the masses ... If these evils are to be eliminated and the educational system is to become a powerful instrument of national development in general, and social and national integration in particular, we must move towards the goal of a common school system of public education which will cover all parts of the country and all stages of education and strive to provide equality of access to all children.”
The Right of Children to Free and Compulsory Education Act, 2009

Based on the above principles, draft of the essential provisions of a “Right to Education Bill,” was prepared and has now been enacted\(^4\) by the Parliament as the Right of Children to Free and Compulsory Education Act, 2009. The Act but has specifically reserved that a child suffering from disability shall have the right to pursue free and compulsory education in accordance with the provisions of the Persons with Disabilities(Equal Opportunities, Protection and Full Participation) Act, 1996\(^4\). One of the major criticisms against the Act is that as against the stipulations of the 11th five year plan which stresses on inclusive education for the disabled, the Act does not provide for the same. Though the 2005 draft of the Right to Education Bill had several specific provisions for disabled children, the current draft has done away with those provisions.

In the new Act, the concept of imparting education shall be based on considering the following\(^4\):

i. conformity with the standards enshrined in the Constitution

ii. all-round education of children

iii. building up child’s knowledge, talent and potentiality

iv. developing of mental and physical abilities to the fullest extent

v. learning through activities, discovery,…in a child friendly atmosphere

vi. medium of instruction in the mother tongue of child

vii. making the child free of fear, trauma and anxiety and helping the child to express views freely

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\(^4\) received the assent of the President on the 26\(^{th}\) August, 2009.

\(^4\) Proviso to section 3(2)

\(^4\) section 29(2), Right of Children to Free and Compulsory Education Act, 2009
viii. comprehensive and continuous evaluation of the child’s understanding and ability to apply the same

Again, the new Act makes free and compulsory education in a neighbourhood school, a ‘right’ for every child between the ages of six to fourteen years. The Act mandates that no child be held back or required to pass an examination until she or he completes an elementary education. It also mandates that all schools, whether public or private, reserve 25 per cent of their seats for children from “disadvantaged” (as well as “economically weaker”) groups. Disability activists allege that the main problem with the Act is that it does not provide for disabled-friendly infrastructure in schools. The Schedule to the Act sets up the “norms and standards” that all schools must compulsorily adhere to minimum infrastructural facilities such as “playgrounds”, “separate toilets for boys and girls”, and “safe drinking water”. But there is no express mention of special facilities for disabled children such as ramps and trained teachers. The framers of the Act, says that the Act provides for ‘barrier-free access,’ meaning(according to them!) that physically challenged children will be able to access their neighbourhood schools. Still, what about visually challenged children? What about hearing impaired? What about those suffering from locomotor difficulties?... Just ‘barrier-free access’ makes little difference to all such children.

45 But the recommendation of the Kothari Commission as to neighbourhood school is not strictly adopted here. The commission’s vision of neighbourhood school is that each school should be attended by all children in the neighbourhood irrespective of caste, creed, community, religion, economic condition or social status, so that there would be no segregation in schools. In support of the neighbourhood school recommendation, the commission put forth two other suggestions: In the first place, a neighbourhood school will provide ‘good education’ to children because sharing life with common people is an essential ingredient of good education. Secondly, the establishment of such schools will compel the rich, privileged and powerful classes to take interest in the system of public education and thereby bring about its early improvement.

46 section 12

47 Javed Abidi, who heads the National Centre for Promotion of Employment for Disabled People, says that this makes it impossible for the disabled to access such schools. “The right to education will have no meaning for these children,” The Indian Express, dated 12 May 2009
Provision for Pre-School Education

One of the notable provisions in the Act is section 11 whereby the government is required to take steps for providing free pre-school education for children. The compliance with the spirit of Article 45 of the Constitution as well as the socio-medical studies revealing the pertinence of pre-school training, in this section is a welcome measure and governmental action in this direction may be seen by way of setting up more such institutions like anganwadis, and aided nursery school system.

Central v. State Legislation

Education being in the Concurrent List, parliament as well as state Legislatures are competent to legislate in pursuance of art. 21A. Many states already have laws on free and compulsory education, albeit they pre-date the 86th Amendment. Once a central legislation is enacted in pursuance of art. 21A, the position of existing State laws on free and compulsory education would be governed by the provisions of art. 254(1), i.e. their provisions would become void to the extent they are repugnant to the provisions of the central legislation. However, it would be possible to enact State amendments to the Central legislation, or enact fresh State laws on the subject, after following the procedure laid down in art. 254(2).

Besides, sharing of responsibilities in this regard is provided by the Act also.

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48 “11. With a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate government may make necessary arrangement for providing free pre-school education for such children.”

49 Sections 7 & 8
Decentralisation of Education

In differing measures, decentralization or community management of schools is required to achieve this goal as decentralization gains a firmer holding. The Panchayati Raj / Municipal bodies have an important role to play in reconstruction of the education system. It is being realised that there is alienation between the communities in general and educational system and thus efforts towards ensuring larger enrolment, raising retention rate and improving teaching-learning process, have not succeeded substantially.

The establishment of institutions of local self-government may be seen as a significant step in the direction of making the system more effective as well as responsive. The Panchayati Raj/Municipal bodies ought to make responsible for planning, execution and monitoring of various educational programmes at different levels. It may not be out of place to mention that the National Policy on Education and the Programme of Action (1992) emphasise the importance of the decentralisation of planning and management of education at all levels by ensuring greater community participation.

Governmental Initiatives

Between December 12 and 16, 1993, the world's nine most populous countries, including India, unanimously adopted the Delhi Declaration and a frame-work for action, pledging to universalize primary education for all and expand learning opportunities for children, youth and adults by the turn of the century.

But India is struggling against the high tides of poverty, population growth, environmental depletion, widening economic disparities and mounting

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50 Constitution 73rd Amendment, 1992
51 These nine countries - Bangladesh, Brazil, China, Egypt, India, Indonesia, Mexico, Nigeria and Pakistan - are the most important actors in the Education for All movement, born out of the international conference held in Jomtien, Thailand, in March 1990. Together, they account for more than half the world's population and 75 per cent of its illiterates.
debt burdens, which stand as barriers on the way of attaining this goal of free and compulsory education.

Despite differing cultures and historical legacies we have recognized that education is at the heart of sustainable development. Investing in education, and especially primary education, is the key to shaping the future in an increasingly inter-dependent world. It is not only the fulfillment of a basic human right, but also the bridge towards lower population growth, higher economic productivity and a more peaceful, tolerant and democratic society. For Indian society to develop equitably, education has to enter especially the lives of girls and reach the most isolated and marginalized children. Also it needs careful planning and a long-term commitment to enhance the place of education in national development. Again, education is not only a question of access, but also of the qualitative knowledge that is shared. This all-encompassing vision is at the center of the Education for All movement. India’s District Primary Education Programme, launched in 1993, is a concrete application of an education for all strategy.

The Jomtien conference and the World Summit for Children injected an urgent challenge into the educational landscape, and spelt out the movement’s principles and strategies. Since then, India has begun to implement the EFA plans, and the fruits of these efforts are starting to appear.

52 The World Bank Report 1996 gives the following reasons to invest in young children:
(1) to build human resources in a scientifically proven manner,
(2) to generate high economic returns and reduce social costs,
(3) to achieve greater social equality,
(4) to increase efficiency of other investments and
(5) to help mothers, family as well as children

53 The social and geographical factors make schools inaccessible to tribals. The tribal people are usually apprehensive about interventions of outside societies and the kind of treatment that would be meted out to their children by the children of other castes.

54 Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s; “20. The international community, including virtually all the Governments of the world, have undertaken a commitment at the World Conference on Education for All at Jomtien, Thailand, to increase significantly educational opportunity for over 100 million children and nearly 1 billion adults, two thirds of them girls and women, who at present have no access to basic education and literacy. In fulfilment of that commitment, specific measures must be adopted for (a) the expansion of early childhood development activities, (b) universal access to basic education, including completion of primary education
But without participation by all, it will be impossible to achieve education for all. From improving curricula to reaching the broadest number of beneficiaries, EFA calls for a broad alliance between different sectors of society, including students, parents, teachers and the community, along with the media, industry and different levels of government. It also requires enhancing responsibility at the local level for people to feel that education belongs to them. But for this broad alliance to emerge and remain a committed one, education must be perceived as a national priority. Governments have to take the lead in creating the conditions for participation to be energetic and ongoing and lend their support to a varied range of learning approaches. Because it is a long-term commitment, parents have to perceive the benefits of educating their children, especially their daughters. This again underlines the need to give stronger backing to NGOs kind link education with poverty alleviation programmes.

But the main criticism that arose on a close scrutiny of the practical experiences, is that, the provision of non-formal education in the National policy on Education-1986 (NPE), the parallel streams of facilities of varying qualities in the World Bank-sponsored District Primary Education Programme (DPEP) of the 1990s and ongoing Sarva Shiksha Abhiyan (SSA)56 which violate the basic spirit of the Constitution, as these are designed to co-exist with child labour, apart from promoting inequality through education.

or equivalent learning achievement by at least 80 per cent of the relevant school age children with emphasis on reducing the current disparities between boys and girls, (c) the reduction of adult illiteracy by half, with emphasis on female literacy, (d) vocational training and preparation for employment and (e) increased acquisition of knowledge, skills and values through all educational channels, including modern and traditional communication media, to improve the quality of life of children and families.

21. Besides its intrinsic value for human development and improving the quality of life, progress in education and literacy can contribute significantly to improvement in maternal and child health, in protection of the environment and in sustainable development. As such, investment in basic education must be accorded a high priority in national action as well as international co-operation.”

55 Education For All
56 See for details, http://www.education.nic.in/ssa/ssa_1.asp#1.0 (visited on 05-08-2010)
Though the World Bank-UN Jomtien Declaration (1990)\textsuperscript{57} provide for facilities of basic education, it is limited to primary education of 5 or less years. The definition of education by this declaration as “basic learning needs” allows its reduction to literary – numeracy, life skills and behaviorism, and the state’s obligation is substituted by external assistance and partnership with NGOs, religious bodies and the corporate capital. Concept of equality is limited to opportunity to achieve and maintain an acceptable level of learning. The DPEP experience shows, the major damages inflicted by this policy in our educational system. \textsuperscript{58}

**Funding**

Funding education is and will remain a predominantly domestic responsibility. It is determined by a politics of choice that recognizes education as the highest yielding investment for development. It is a choice to make education a national priority by increasing its share as a percentage of the state budget and GNP. It is a tough policy choice to reallocate resources from other sectors of the economy. But the need to increase investments in basic education, stresses the importance of making better use of existing resources: numerous studies show that wastage, chiefly measured by dropout rates, is a feature of educational systems in many countries. In addressing this issue, attention must be devoted to ensuring and improving the quality of teachers, the school and the curriculum. While discussing the mobilization of additional domestic resources, the imperative of building partnerships with industry, the media and NGOs in order for education to become an all encompassing nationwide cause may be utilised. In the field of external assistance, the importance of capacity building and sustaining the recent shifts in favour of basic education shall be highlighted.

\textsuperscript{57} The Jomtien Declaration dominated policy formulation and educational planning in several developing countries, including India, throughout the 1990s.

\textsuperscript{58} DPEP introduced parallel layers to the mainstream formal schools, of relatively inferior quality such as the alternative school, education guarantee centres etc. It dissociated curricular and pedagogic planning of lower primary education from that of the upper primary, secondary and senior secondary education. It again reduced the holistic goals of education to literary-numeracy and questionable life skills.
As per the National Common Minimum Programme of the Government in regard to allocation of resources for Education, the government pledged to raise public spending in Education to at least 6% of GDP with at least half of this amount being spent on primary and secondary sectors\(^{59}\). It was also stated the following:

“India’s greatest resource is its people. The full potential of our human resources has yet to be effectively utilized. High priority will, therefore, be accorded to education. The Government will aim at increasing public spending on education so as to ultimately reach at least 6% of GDP, with half the amount earmarked for primary and secondary education. A cess will be proposed on all central taxes to finance the commitment to universalize access to quality basic education. A National Commission on Education will be set up to allocate resources and monitor programmes.”

The National Policy on Education, 1986, had laid down that the investment on education be gradually increased to reach a level of 6 per cent of the national income as early as possible\(^ {60}\). Since the actual level of investment has remained far short of that target, it is important that greater determination is shown now to find the funds for the programmes laid down in this Policy. While the actual requirements will be computed from time to time on the basis of monitoring and review, the outlay on education will be stepped up to ensure that during the Eighth Five Year Plan and onwards it will uniformly exceed 6 percent of the national income.

In 2003-2004, total government outlay on elementary education was Rs 47,118 crores, which amounted to roughly 2% of GDP. Share of Central and State governments in the total outlay was in the ratio of about 12:88\(^ {61}\). Estimated yield of the 2% Education Cess (imposed in 2004-05) is Rs. 6975 crores in 2005-06, and

\(^{59}\) President’s Address to Parliament on 7.6.04

\(^{60}\) Para 11.4, Part XI (“Resources and Review”), National Policy on Education, 1986 (as revised in 1992)

the consequentially enhanced Central Plan allocation for Elementary Education is Rs 12242 crores, which would represent roughly 20-25 percent of the total government outlay on elementary education in the current financial year (as compared to about 12% in 2003-04).  

The Education and Empowerment of Girls

It is another important element for achieving ‘free and compulsory education for all’. Educating girls is not only a matter of human dignity, but also the most effective channel for planning families, improving health and increasing economic productivity. In other words, educational policies shall be gender sensitive at all costs. This means making curricula relevant to the lives of girls, bringing schools closer to them in some areas, allowing for flexible timetables, training teachers to be more responsive to girls’ needs, and encouraging access to traditionally male fields of employment, such as science and technology. But women must also participate in this genesis of change. Their empowerment through education is a slow process of gaining awareness. But in this process, it is just as vital for society to change its attitude towards women and overcome deep-rooted social and cultural traditions that prevent the shaping of a more equitable relationship between the sexes. Communication campaigns can play a powerful role in changing the image of women and promoting their advancement in economic, social and political spheres. Such a change starts at birth by providing the same physical and emotional care to sons as to daughters, and by ensuring their equal access to education which is helpful to adopt responsible attitudes toward one another, toward sexuality, the family and the environment. It continues throughout the educational system, crucially through years when attitudes and values are shaped.

Finally, education for all cannot be discussed in a cultural, social, scientific or political vacuum. Because education is about shaping lives, it is imperative to reflect upon the nature of tomorrow's society. In a world characterized by

interdependency and globality, ‘paving the way for a culture of peace’ must be embraced as the foremost mission of education. Peace-building, rather than peacekeeping, must be fostered by imparting values based on non-violence, social justice and equity. Striking a balance between local cultures, national priorities and global imperatives, namely a society increasingly based on individual responsibility and technological proficiency, calls for a long-term commitment to education as the most vital factor in the development equation.

**Role of Teachers**

In recognition of the importance of teachers and their role in developing the nation's human and material resources, the Government of India appointed two National Commissions on Teachers, one for the school stage and the other for higher education (including technical education) in February 1983.

This is by no means the first occasion when there has been national recognition of the role and work of teachers. Every Commission on Education since Independence has emphasized their vital role in national development and the urgent need for according them proper status and improved working conditions in order to enable them to reach higher levels of performance and effectiveness.

Apart from re-stressing the crucial nature of the teacher's role in education and development, the appointment of the two Commissions also serves to underline the essential similarity of educational and teacher-related issues, and the inter-dependence of education at the school and university levels. The basic issues underlining the terms of reference of the two Commissions are three:

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63 *Radha Krishnan Commission Report* (1948-49), Chapter-III-Teaching Staff (pp. 68-82); *Lakshmanaswami Mudaliar Commission Report* (1952-53), Chapter XII- Improvement of the teaching Personnel (pp. 155-176); *Kothari Commission Report* (1964-66), chapter-III, Teacher Status (pp. 46-66) and chapter-IV, Teacher Education (pp. 67-88)
(1) Measures to give to the teacher the status he needs and deserves to help him do his duties at the highest possible level of performance, which implies a suitable salary that, in the prevailing economic conditions, will not only meet his economic needs but be commensurate with his professional status and powerful enough to attract and retain 'talent' in the profession;

(2) The evolution of a system of teacher preparation that would help the teacher develops skills and values so as to make his teaching and efforts at character development effective; and go far; and

(3) To indicate the board parameters of a code of conduct which would motivate and help the teacher gives of his best in the performance of his duties; and to point out other conditions that are necessary for such a code’s effective enforcement.

The need to recognise the inter-dependence of elementary school and higher education can hardly be exaggerated. A common complaint from the university teachers is that the poor quality of higher education derives, in no small measure, from poor preparation at school, and that the situation will not change unless there is a perceptible upgrading of instructional standards in schools. On the other hand, those concerned primarily with the quality and relevance of school education take the view, with some justification, that as most secondary school teachers are drawn from university graduates, it would be unrealistic to expect any measurable improvement in school standards unless there is a substantial improvement in the quality of higher education in the country. As for elementary

64 In Andhra Kesari Education Society v. Director of School Education and Ors, AIR 1989 SC 183 the Supreme Court recognized the importance of education for B.Ed, pointing out that these people have to handle the children of the country and through better training only the teachers could bring out the skill and intellectual activities of the children "...the teacher is a superb instrument in awakening the children to cultural values. He must possess potentiality to deliver enlightened service to the society". In Ram Sukh and Ors. v. St. of Rajasthan and Ors, AIR 1990 SC 592 the supreme court did not permit the untrained teachers to teach the children holding that the children require proper handling by well trained teachers. “The primary school teachers are of much importance in development of a child’s personality in the formative years. They must be able to understand a child’s psychology and attitude. Therefore only well trained teachers could lead children properly”. See also, Dental Council of India v.
education, one has again to recognise that most of the teacher educators, educational administrators and research workers at this level are products of universities, which means that standards of elementary education are also determined, by the standards of higher education. This interdependence of school and university education, notwithstanding, we must accept that the university, being at the apex of the educational system, is expected both by tradition and common consent to provide the system with its academic and moral leadership. If the university fails in this key function, there is little that can be done to save the school system from the deleterious effects of its dysfunctionality.

**General Observations**

Thus the result of this detailed study on the different facets of the right to education for children can be summarized in the following observations:

(1) Wherever we search, we find that the country is still in dire need of a National Education Policy which may fit to the needs of the time, and that in the absence of such a proper policy, the development of the educational services in the country would lack both in purpose and direction; though there are frequent references to the Education Policy of 1968 and of 1986, and there was consensus that efforts had been made towards its determined and purposeful implementation.

(2) Much anxiety and concern shall be paid by the state about the growing inadequacy of financial allocations for education from Plan to Plan. While in the first Five Year Plan education received 7.2% of the total outlay, in the VI Plan this proportion had come down steeply to 2.6%. This is a reminder that the dominant perception of education in many decision making circles is still in terms of 'consumption' rather than 'investment'. It

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*Subharti KKB Charitable Trust and Anr., AIR 2001 SC 2151 where the apex court explains the importance of better higher education facilities to build the society in the grass root level, meeting the requirements of younger generations. Rohit Singhal and Ors. v. Principal, Jawahar Navodaya Vidyalaya and Ors, (2003) ISCC 687, ‘...teachers in particular, owe a responsibility for taking care of the well being and welfare of the children.’*
is high time to give, stress on the ‘investment’ aspect and spend more from the states’ financial resources for education.

(3) In many places we can see good educational institutions and programmes. Sometimes we come across outstanding work by dedicated teachers under the most difficult and trying conditions. Such experiences, but reveal that many of these outstanding programmes that we see come from the private sector. On the contrary the governmental attempts lack human resources, infrastructure, dedication, management etc. So, in managing the system of education effectively recognition should be given to such institutions and persons also.

(4) On enquiries it is also revealed that utter disillusionment of the public with teacher performance is also a major problem. This was due to two factors:

(i) the pre-occupation of teachers with private tuitions and income-generating activities rather than with efficient classroom teaching, and

(ii) increasing politicisation of educational institutions and teachers' organisations, with teachers politicking and having no qualms in joining hands with the forces of disruption and indiscipline on the campuses.

(5) The more we need is a new policy of 'decentralisation' in educational administration. As for Government institutions we had many occasions to wonder whether something could not be done urgently to rescue them from the stranglehold of quality-deterioration and irresponsibility, by making them answerable to a properly constituted managing committee which includes the representatives of local self government institutions and local parents also.

(6) A major flaw in our educational planning and practice in the past had been that the school, almost by design, was kept away from the community.
One result of such a policy of developing education is utilising the vast human and material resources of the community, which every school could make use of for its proper development. On the other hand, the community has also deprived itself, unnecessarily, of the many educational and education-related services which schools are otherwise in a position to provide. Any new education policy to suit the present and future needs of this country, particularly in the rural and backward regions, must be based on the principle of maximising community participation and involvement.

(7) It is a reminder that right to education for children is not just a right to learn the basics of reading and writing. Our ultimate goal of a brighter and better future for children will never be realised until we place science and technology at the centre of things. We should understand that science and environmental education was woefully inadequate at the elementary stage. In the secondary schools the situation is that science and mathematics teachers were in short supply. While science and technology, by themselves, may not be sufficient to meet all the cultural and educational needs of a modern society, they are absolutely necessary.

(8) The new Act, the Right of Children to Free and Compulsory Education Act, 2009 also need clarification in many of its grey areas:

(a) The extent to which the responsibility for imparting elementary education can be fixed upon ‘an unaided school run by minority groups’ needs further discussion by the legislature.

(b) Except for a mentioning in the proviso to section 3(2) that a child suffering from disability, shall have the right to pursue free and compulsory elementary education in accordance with the provisions of the Persons with Disabilities(Equal Opportunities, Protection and Full Participation) Act, 1996, the plight of a child suffering from disability is disregarded under the Act.

(c) As far as the ‘right to seek transfer to any school’ of a child is concerned, by virtue of section 5(2), ‘specified schools’ like
‘Kendriya Vidyalaya, Navodaya Vidyalaya, Sainik School or any other school having a distinct character which may be specified by notification by the appropriate government’ may be exempted from seeking the enforcement of that right. There is no reason, for exempting such schools from the purview of the Act, especially when any child up to 14 years of age is entitled under the Constitution itself, to exercise his right to pursue free and compulsory elementary education and as a corollary, all the rights entailing the principal right.

(d) It should be made clear whether by virtue of section 7(6)(a) which says that “the Central Government shall develop a framework of national curriculum”, the existing state curricula shall be replaced.

(e) The duty of the parent insisted under section 10 should be entailed with a punishment so as to make the better compliance by the parents effective.

(f) The exemptions permitted to be enjoyed by the specified category schools shall be omitted. But, such schools may be permitted to have selection of students only after the elementary level.

(g) Section 29(2) which lays down the curriculum standards, also omitted the needs of disabled children which should definitely be supplied with by an amendment.

(h) The jurisdiction and nature of powers of Commission for the Protection of Child rights shall be specifically defined, especially when it sits as an appellate body on appeals by persons aggrieved by the decision of the local authority.

(i) The protection of action taken in good faith, in pursuance of the Act, under section 37 is not a good law as it provides a wide sweep to cover the Central Government, State Governments, National Commission for the Protection of Child rights, State Commissions for the Protection of Child rights, Local Authorities, School

Management Committee or any person acting in pursuance of the Act.

(9) And finally, new expectations arising from the constitutional position of 'concurrency' that education now occupies may help attaining the goals effectively, primarily not from the view that concurrency represents a ‘breach into the State governments’ hold over education’, but from a realisation that concurrency offers ‘unlimited opportunities for closer collaboration’ between the Centre and the States. In other words, in tune with the provisions of the central legislations, the state legislatures must enact so that the goal of providing free and compulsory education to all be attained at the earliest.