CHAPTER III

EDUCATION: RIGHT OF EVERY CHILD

The previous chapter deals with the historical development of education in India from Vedic period to Modern period. In the present chapter, the researcher will make a thorough discussion on right to education which is a basic human right of every children in the light of International and national legislation.

Education is a human right with immense power to transform. Its foundation is the corner stones of freedom, democracy and sustainable human development. Education is desired for itself as it opens up a vast world of opportunities and ideas to the educated persons. It is also of great instrumental value in the process of economic growth and development.

Education plays a critical role in demographic transition, female education, in particular, is seen to be important in the process of economic growth and development.¹

Right to education of every child is clearly a human right. Education is important as it enables the child.²

- To develop and realize her / his full potential as human being.
- To develop the ability to think, question, and judge independently.
- To develop a sense of self-respect, dignity and self-confidence.
- To develop and internalize a sense of moral value and critical judgment.

²id.
➢ To learn to love and respect fellow human beings and nature.

➢ To develop civic sense, citizenship, and values of participatory democracy.

➢ To enable decision making.

Education also plays a critical role in the process of lowering fertility and mortality. There is a strong correlation between literacy and life expectancy. The returns to education are large and positive. Education empowers and empowerment affects larger social processes.³

It has been very well realized that the progress of a nation in the world today is more than ever before dependent upon the quantity and quality of education received by its people. As a basic human need, it gives mastery of the spoken word which is used by an individual as a medium of communication and socialization.

The acquisition of universal literacy, his mastery of the written word as well enables an individual to capitalize and to acquire elementary and subsequently, secondary education and as a life-long enterprise for earning a better livelihood, for improving his productivity, for performing his duties and responsibilities as a good citizen and for effectively meeting the challenges of the emerging society.⁴

Man does not live on bread alone. It is not merely a Biblical rhetoric, but a very basic fact of life. Food has its predominance over everything. The concern for food is the greatest. In the hungry mood one can never think of a poem. Economic development is the basic need of individuals or of the country as a whole. But, is a potential means of

development, economic, physical, intellectual, social, vocational, aesthetic and spiritual, that does not deal with the present only, but also with the future.\(^5\)

But millions of young people around the world grow up unable to build decent lives for themselves because they are denied their right to education. Basic education consists of a combination of indispensable competencies, knowledge, skills and an attitude that serves as the foundation of any individual’s life long learning.\(^6\)

The international community having been convinced of the need and importance of education for all initiated a number of strategies and efforts for realizing the lofty and laudable objective. In 1990, UNESCO has aptly said that Education as a basic human need, therefore, opens up unlimited possibilities calling for responses that are constructive, creative and challenging.

In the evolution of the modern day human social order, a well-established universally accepted status has been conferred, more specifically to the children at least up to the completion of the primary level of education.

Precisely, in the midst of the 20\(^{th}\) century, immediately after the formation of the United Nations and adoption of charter of the United Nation in 1945, the world community being tired of fighting the wars and under the tremendous fear of annihilation of the millions of years’ long refined human civilization, hurriedly and unanimously adopted the most precious modern day “Magna-Carta” the charter declaring the most basic and valued human rights along with the established socio-legal scientific mechanisms—whether in the global perspective or in the regional prospective,

\(^5\)ibid, p. 15.
\(^6\)Supra note 1, p. 328.
to effectively safeguard at different stages, these precious rights in the true letter and spirit.7

3.1. INTERNATIONAL INSTRUMENTS ON RIGHT TO EDUCATION

The right to education has been recognized as a basic human right in various international instruments and conventions. They are as follows:

3.1.1. United Nations Framework

The Universal Declaration of the Human Rights, adopted on 10th December 1948 provides8 for Universal right to education to everyone, right from the elementary to the tertiary level including technical and professional courses in the higher education but of course on the basis of merit.

However coming back to the mid of the last century, the United Nations adopted a specific declaration of the Rights of the Child at the International Level in the year 1959. By this declaration it focused on children as persons who are entitled to the rights in their own capacity in the two pertinent principles relating to education.9

---

8Article 26 of the Universal Declaration of Human Rights provides :
(i) Everyone has right to Education-Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.
(ii) Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
(iii) Parents have a prior right to choose the kind of education that shall be given to their children.
9(i) The principle 5 states that “the child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his or her particular condition.”
(ii) The principle 7 states that “the child is entitled to receive education, which shall be free, compulsory at least, in the elementary stages. He or she shall be given an education which will promote his or her general culture and enable him or her on a basis of equal opportunity, to develop his or her abilities, his or her individual judgment and his or her sense of moral and social responsibility and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his or her education and guidance that responsibilities lie in
The Declaration on the Elimination of All Forms of Discrimination, embodies a reference to education in its Article 1 which says, “For the purpose of this Convention, the term discrimination includes any distinction, exclusion, limitation or preference which being based on race, colour, sex, language, religion, political or other opinion, natural or social origin, economic conditions or birth has the purpose or effect of nullifying or impairing equality of treatment in education.” ⁰¹⁰

The International Convention on Civil and Political Rights, 1966 ¹¹ and International Convention on Economic, Social and Cultural Rights 1966 ¹² provide inter-

the first place with his or her parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; and society and the public authorities shall endeavour to promote enjoyment of the right.” ¹⁰

¹⁰ The Declaration on the Elimination of All Forms of Discrimination, proclaimed by the General Assembly of the United Nation in 1960.

¹¹ Article 24 provides:
(i) Every child have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property of birth, the right to such measures of protection as required by his status as a minor, on the part of the family, society and the state.
(ii) Every child shall be registered immediately after birth and shall have a name.
(iii) Every child has a right to acquire a nationality.

¹² Article 13 and 14 provides as under:
Article 13
(i) The State Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
(ii) The State Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
   a. Primary education shall be compulsory and available free to all;
   b. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
   c. Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
   d. Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
   e. The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.
(iii) The State parties to the present covenant undertake to have respect for the liberty of parents and when applicable, legal guardian to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.
alia, for the protection of the status of a minor. It was made binding on the States Parties
to recognize the rights to education to everyone and maintains that primary education
shall be compulsory and available free to all. They agree that education shall be directed
to the full development of the human personality and sense of its dignity, and shall
strengthen the respect for human rights and fundamental freedom.

In the year 1979, the adoption of the Convention on Elimination of All Forms of
Discrimination against Women (CEDAW) which addressed the issue of gender
discrimination includes some provisions dealing with the situation of girl children. 13

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

Article 14

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

13 Article 10 of the CEDAW :

State Parties shall take all appropriate measures to eliminate discrimination against women in order to
ensure them equal rights with men in the field of education and in particular to ensure, on a basis of
equality of men and women :

(a) The same conditions for career and vocational guidance, for access to studies and for the
achievement of diplomas in educational establishment of all categories in rural as well as urban
areas; this equality shall be ensured in pre-school, general technical, professional and higher
technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the
same standard and school premises and equipment of the same quality.

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all
forms of education by encouraging co-education and other types of education which will help to
achieve this aim and in particular, by the revision of text books and school programmes and the
adaptation of teaching methods;

(d) The same opportunities to benefit from scholarship and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and
functional literacy programme, particularly those aimed at reducing at the earliest possible time,
any gap in education existing between men and women.

(f) The reduction of female student drop-out rates and the organization of programmes for girls and
women who have left school prematurely.

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific education information to help ensure the health and well-being of families,
including information and advice on family planning.
After about ten years from the passing of U.N. Declaration of Rights of the child, 1959, the U.N. has adopted another Convention on the Rights of the child in 1989. It took three decades to finalize the Convention on Rights of the Child (CRC).

The preamble to the Convention gave much emphasis, in accordance with the principles proclaimed in the charter of the United Nations inter-alia, for the full and harmonious development of the personality of the child, in an atmosphere of happiness, love and understanding.

It is also mentioned, in terms of the Declaration of the Rights of the Child that the child, by reasons of its physical and mental immaturity, needs special safeguards and care including appropriate legal protection, before and after his or her birth. It also took due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child.

It is mandated in the Convention\textsuperscript{14} that State Parties shall undertake appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. The State Parties are bound to recognize the inherent right to life of every child ensuring the survival and development of the child.\textsuperscript{15}

The Convention entrusts upon the State Parties the responsibilities to take appropriate legislative, administrative, social and education measures for protection of the child from all forms of physical and mental violence, injury or abuse, neglected or negligent treatment, maltreatment, or exploitation including sexual abuse, while in the case of parents, legal guardians or any other person having the care of the child.

\textsuperscript{14}Article 4 of CRC
\textsuperscript{15}Article 6 of CRC
It also provided for appropriate protective measures through the establishment of social programmes to provide necessary support for the child.\textsuperscript{16} The most important responsibilities fixed upon the State Parties is to recognize the right of the child to education and in particular to provide free and compulsory education to all.\textsuperscript{17}

It also directs to encourage the development of different forms of education introducing general and vocational education and making them available and accessible to every child. The state Parties are also responsible for making higher education accessible to all phase wise. The most important condition imposed upon the State Parties is that, they have to take all appropriate measures to ensure that school discipline is administered in a manner consisting with child’s human dignity and is conformity with the present convention.\textsuperscript{18}

As had been agreed by the State Parties\textsuperscript{19}, the education of the child shall be directed forward -

Firstly, the development of child’s personality, talents and mental and physical abilities to their fullest potential;

Secondly, to generate respect for human rights and fundamental freedom and also for the principles of the Charter of the United Nations;

Thirdly, generating respects for the child’s parents, the cultural identity, language and values, nations value of the country of the child and for civilization different from his or her own;

\textsuperscript{16}Article 19 of CRC  
\textsuperscript{17}Article 28(1)  
\textsuperscript{18}Article 28(2)  
\textsuperscript{19}Article 29
Fourthly, preparing the child for responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes and friendship, inter-alia, among all people; and

Fifthly engendering respect for natural environment.

3.1.2. UNESCO Framework

Convention against Discrimination in Education in a multilateral treaty adopted by UNESCO on 14 December 1960 in Paris and came into effect on 22 May 1962, which aims to combat discrimination and racial segregation in the field of education. The convention also ensures the free choice of religious education and private school requires States to eliminate and prevent discrimination, right to use or

---

20 Article 1 provides -
1. For the purpose of this convention, the term ‘discrimination’ includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular:
   a. of depriving any person or group of persons of access to education of any type or at any level;
   b. of limiting any person or group of persons to education of an inferior standard;
   c. Subject to the provisions of Article 2 of this Convention, of establishing or maintaining educational systems or institutions for persons or groups of persons; or
   d. Of inflicting on any person or group of persons conditions which are in-compatible with the dignity of man.
2. For the purposes of this Convention, the term ‘education’ refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given.

21 Article 2 provides -
When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of Article 1 of the Convention:
(a) The establishment or maintenance of separate educational system or institutions for pupils of the two sexes, if these systems or institutions offer equivalent access to education, provide a teaching staff with qualifications of the same standard as well as school premises and equipment of the same quality, and afford the opportunity to take same or equivalent courses of study;
(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil’s parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level;
(c) The establishment or maintenance of private educational institutions, if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities, if the institutions are conducted in accordance
teach their own languages for national minorities, to formulate, develop and apply a national policy which will tend to promote equality to opportunity and of treatment in the matter of education and prohibits any reservation. The convention enters into

with that object and if the education provided conforms with such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

22 Article 3 provides -
In order to eliminate and prevent discrimination within the meaning of this convention, the State Parties thereto undertake:
(a) To abrogate any statutory provisions and any administrative instructions and to discontinue any administrative practices which involve discrimination in education;
(b) To ensure, by legislation where necessary, that there is no discrimination in the admission of pupils to educational institutions;
(c) Not to allow any differences of treatment by the public authorities between nationals, except on the basis of merit or need, in the matter of school fees and the grant of scholarships or other forms of assistance to pupils and necessary permits and facilities for the pursuit of studies in foreign countries;
(d) Not to allow, in any form of assistance granted by the public authorities to educational (institutions) any restrictions or preference based solely on the ground that pupils belong to a particular group;
(e) To give foreign nationals resident within their territory the same access to education as that given to their own nationals.

23 Article 5 provides -
1. The State Parties to this Convention agree that:
   a. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;
   b. It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the Public authorities but conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their convictions;
   c. It is essential to recognize the right of members of national minorities of carry on their own educational minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or teaching of their own language provided however.
      i. That the right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in the activities, or which prejudices national sovereignty;
      ii. That the standard education is not lower than the general standard laid down or approved by the competent authorities; and
      iii. That attendance at such schools is optional.
2. The State parties to this convention undertake to take all necessary measures to ensure the application of the principles enunciated in paragraph 1 of this Article.

24 Article 4 provides -
The States Parties to this convention undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and to treatment in the matter of education and in particular:
force for each State 12 months offer the deposit of instrument of ratification. As at December 2016, 102 States were members of the convention.\textsuperscript{26}

In spite of there being sufficient international documents adopted by the United Nations time to time, the right to education as envisaged by the aforesaid binding documents is not duly available to every child. Millions of children have no access to primary education and many of them who started attending, are forced to leave the school, because of poverty or family and social pressures.\textsuperscript{27}

\section*{3.2. MILLENNIUM DEVELOPMENT GOALS}

The Millennium Development Goals (MDGs) were the eight international development goals for the year 2015 that had been established following the Millennium Summit of the United Nations in 2000. All 191 United Nations Members States and 22 International Organizations committed to help to achieve the following Millennium Goals by 2015\textsuperscript{28}:

- To eradicate extreme poverty and hunger.
- To achieve Universal primary education.
- To promote gender equality and empower women.

\begin{itemize}
  \item[(a)] To make primary education free and compulsory make secondary education in its different forms generally available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law;
  \item[(b)] To ensure that the standards of education are equivalent in all public educational institutions of the same level, and that the conditions relating to the quality of the education provided are also equivalent;
  \item[(c)] To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity;
  \item[(d)] To provide training for the reaching profession without discrimination.
\end{itemize}

\textsuperscript{25} Article 9 prohibits any reservation to the convention.
\textsuperscript{26} \url{https://en.in.wikipedia.org}, last accessed on July 17, 2017, at 8:45 p.m.
\textsuperscript{27} Supra note 7, p. 56
\textsuperscript{28} \url{https://en.wikipedia.org/wiki/Millennium_Development_Goals}, last accessed on August 7, 2018 at 3.15 p.m.
➢ To reduce child mortality.
➢ To improve maternal health.
➢ To combat HIV/AIDS, Malaria and other diseases.
➢ To ensure environmental sustainability.
➢ To develop a global partnership for development.

Achieve Universal primary education is a vital one which was envisaged in the Goal 2 of the Millennium Development Goals which sets to achieve-

- All children can complete a full course of primary schooling, girls and boys.
- Enrollment in primary education,
- Completion of primary education.

The year 2015 is a landmark year for global development of The Millennium Goals (MDGs). The word is said to adopt a new set of Transformative and Universal sustainable development goals. India is a signatory to the Millennium Declaration adopted at the United Nations General Assembly in September 2000, and has consistently reaffirmed its commitment towards the eight development goals. The targets of MDGs converge with India’s own development goals to reduce poverty and other areas of deprivation.\(^{29}\)

India has witnessed significant progress towards the MDGs, with some targets having been met ahead of the 2015 deadline, however progress has been inconsistent. The country has achieved gender parity in primary school enrollment yet it is lagging behind on targets for primary school enrollment and completion. The Millennium Development Goals influenced Development policy formulation and planning globally. Along with bringing critical development challenges to the

\(^{29}\)www.in.undp.org/content/india/en/home/post-2015/mdgoverview.html, last accessed on August 7, 2018 at 7 p.m.
forefront, they also provided countries with a strong target-oriented agenda. While India has been moving in the right direction in some areas, there is still work remaining in the other areas. This is therefore an opportune moment to incorporate the lessons learned from the MDGs, into the sustainable development goals and build upon the unfinished MDG agenda\textsuperscript{30}.

Regarding goal 2 to achieve Universal Primary education, India has made significant progress in universalizing primary education and is moderately on track to achieve this Millennium Development Goal. Enrollment and completion rates of girls in primary school have improved and are catching up with those of boys as are elementary completion rates. At the national level, male and female youth literacy rate is likely to be at 94.81\% and 92.47\%.

In 2009, India introduced the Right of Children to Free and Compulsory Education Act (RTE), however the quality of education remains a major concern. Another issue, which will have to be addressed, is the large numbers of children remaining out of school and failing to complete primary education, particularly in the case of girls, children in rural areas and those belonging to minority communities.

3.3. The Sustainable Development Goals (SDGs)

The international community has set in motion a historic plan of 17 Sustainable Development Goals (SDGs) adopted by 193 member states at the United Nations General Assembly Summit in September 2015 and which came into effect on 1 January 2016. It aims to build a more prosperous, more equal and more secure world by the year

\textsuperscript{30}id.
2030. These goals are the result of an unprecedented consultative process that brought national Governments and millions of citizens from across the globe together to negotiate and adopt the global path to sustainable development for the next 15 years. The SDGs and targets will stimulate action in some important areas, such as poverty, hunger, education, health and well-being, education, gender equality, water and sanitation, energy, economic growth and decent work, infrastructure, industry and innovation, reducing inequalities, sustainable cities, consumption and production, climate action, eco-systems, peace and justice and partnership. At the core of this global agenda for 2030 is the principle of universality, that is ‘Leave No One Behind’. Development in all its dimensions must be inclusive of all people, everywhere, and should be built through the participation of everyone, especially the most vulnerable and marginalized.31

The Government of India is strongly committed to the 2030 Agenda, including the SDGs, as evidenced by the statements of the Prime Minister and other Senior Ministers at National and international meetings. India’s national development goals and its “Sab ka saath, sab ka vikas” or “development with all, and for all”, policy initiatives for inclusive development coverage well with the SDGs, and India will play a leading role in determining the success of the SDGs, globally. NITI Aayog has undertaken a mapping of schemes as they relate to the SDGs and their targets. State governments are key to India’s progress on the SDG Agenda as they are best placed to put people first and to ensuring that ‘no one is left behind’. Many of the Government’s

31http://in.one.un.org/page/sustainable-development-goals/, last accessed on December 22, 2018 at 10:45 a.m.
flagship programmes such as Swatch Bharat, Make in India, Skill India and Digital India are at the core of SDGs.\textsuperscript{32}

Among the 17 SDGs, the fourth goal is Quality Education which ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. A quality education is the foundation of sustainable development because education is a force multiplier which enables self-reliance, boosts economic growth by enhancing skills, and improves people’s lives by opening up opportunities for better livelihoods. These goals call for ensuring the completion of primary and secondary education by all and guarantees equal access to opportunities for technical and vocational education for everyone.\textsuperscript{33}

In India, significant progress had been made in universalizing primary education, with improvement in the enrolment and completion rates of girls in both primary and elementary schools. The new National Education Policy and Sustainable Development Goal 4 share the goals of Universal quality education and lifelong learning. The flagship government scheme, Sarva Shiksha Abhiyan is aimed at achieving Universal quality education for all Indian and is complemented in this effort by targeted schemes on nutritional support higher education and teacher training.\textsuperscript{34}

3.4. CONSTITUTIONAL PROVISIONS REGARDING EDUCATION IN DIFFERENT COUNTRIES OF THE WORLD:

Education for All is an international goal as well as global commitment which are a matter of major concern both for developed and developing countries.

\textsuperscript{32} id
\textsuperscript{33}http://in.one.un.org/page/sustainable-development-goals/sdg-4/, last accessed on December 22, 2018 at 10:45 a.m.
\textsuperscript{34} id
International Commission of the Development of Education 1973 has aptly remarked, the Universal right to education which contemporary civilization takes such premature pride is often refused, by a complete reversal of justice, to the most underprivileged. They are the first to be denied their right in poor societies; the only ones deprived in the rich.

The various agencies of the U.N. have therefore come forward to help realizing this laudable objective of Education For All (EFA) with the joint collaboration of all countries developed and developing.35

A Constitutional is a legal foundation on the political, social or economic assemblage of the people that gives legal recognition to such assembly and regulates the relations of these units inter se. The units are otherwise independent but surrender their right to the Union for ensuring security safety and progress of all safeguarding from internal friction and conflicts. Its aims to serve identical purpose.36

Constitution of any country is the basic political document which is adopted by the people of that country or is given to them showing what system of the governance they are having, in that country. The country is over and above this statement. The country is known by and recognized by its people, its youth, its experience, its territory, its flag, its emblem, its culture, character, history and its constitution.37

The Constitutional Provision regarding Education of some of the countries of the world is as follows

---

35 Supra note 7, p. 12.
37 id.
3.4.1. Right to Education in United Kingdom (U.K.)

The United Kingdom does not have one specific Constitutional document. The British Constitution primarily draws from four sources: Statute Law (laws passed by the legislature), Common Law (laws established through court judgments), Parliamentary Conventions and works of authority. It remains undefined, unsystematized and uncodified. It has grown with the growth of the English Nation, changed with its wants, and adapted itself to the needs of various times.³⁸

In U.K. right to education is a state guaranteed right. 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 made generally available and higher education shall be equally accessible to all on the basis of merit.

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

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

The State education system is free, but a small proportion of children attend private fee-paying schools. Local educational authorities have to meet the parents wishes unless the school is full or, if selective, the child does not meet required academic standards.

Secondary schools those catering for 11 to 16 years olds in England and Wales are required to admit pupils up to the limit of their available physical capacity if there is sufficient demand on behalf of eligible children by parents. 39

Children whose learning difficulties are severe or complex, wherever possible, are educated in ordinary schools.

### 3.4.2. Right to Education in Canada

The Constitution of Canada is the Supreme law in Canada; the country’s Constitution is an amalgamation of codified acts and uncodified traditions and conventions. Canada is one of the oldest Constitutional democracies in the world.

Section 23 of the Canadian charter of Rights and Freedoms is the section of the Constitution of Canada that guarantees minority language educational rights to French-Speaking communities outside Quebec, and to a lesser extent, English-speaking minorities in Quebec. 40

Section 23 provides 41:

- **Citizens of Canada**
  
  (a) Whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
  
  (b) Who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they receive that instruction is the language of the English or French linguistic minority population of the

---

40 Supra note 38, p. 429.
41 Supra note 39, p. 155.
province, have the right to have their children receive primary and secondary school instruction in that language in that province.

1) Citizens of Canada of whom any child have received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

2) The rights of citizens of Canada under sub-sections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province.

a) Applies wherever in the province the member of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and

b) Includes, where the number of children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

3.4.3. Right to Education in China

The Constitution of the People’s Republic of China is normally the Supreme law within the People’s Republic of China. The current Constitution is China’s twelfth Constitution since 1911. The first Constitution was declared in 1954.

Article 46 of the 1982 Constitution of the People’s Republic of China provided the citizens of the People's Republic of China have the right as well as the duty to receive education.
Clause (2) of the Article 46 provides that the State shall promote the all-round development of children and young people, morally, intellectually and physically.

Article 51 of 1978 Constitution simply provided that the citizen had the right to education and did not prescribe it a duty as well. Duty to receive education implies that parents must compulsorily send their children to schools to receive education.42

Further Article 19 of the 1982 Constitution provides that the state develops socialist educational undertakings and works to raise the scientific and cultural level of the whole nation. The state runs schools of various types, makes primary education compulsory and universal, develops secondary, vocational and higher education and promotes pre-school education.

The State develops educational facilities of various types in order to wipe out illiteracy and provide Political, cultural, scientific, technical and professional education for workers, peasants, state functionaries and other working people. It encourages people to become educated through self-study.

The State encourages the collective economic organizations, state enterprises and undertakings and other social forces to set up educational institutions of various types in accordance with the Law. The State promotes the nation wide use of Putonghua (Common speech based on Beijing pronunciation).43

Citizens also enjoy the freedom to engage themselves in scientific research, literacy and artistic creation and other cultural pursuits. The state encourages and assists creative endeavour conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art and other cultural work.44

42Supra note 38, p. 613.
43Supra note 39, p. 169.
44Supra note 38, p. 613.
3.4.4. Right to Education in Bangladesh

Bangladesh obtained Independence from Pakistan on the 26th day of March 1971 and established an Independent Sovereign People’s Republic of Bangladesh. Bangladesh adopted its Constitution on 4th November 1972.

In Part II of the Constitution some Fundamental Principle of State Policy is mentioned. Right to Education is one of the Article 17 of the Constitution of Bangladesh provide as

Free and compulsory education the state shall adopt effective measures for the purpose of –

(a) establishing a Uniform, mass-oriented and Universal system of education and extending free and compulsory education to all children to such stage as may be determined by law;

(b) relating education to the needs of society and producing properly trained and motivated citizens to serve those needs;

(c) removing illiteracy within such time as may be determined by law.

3.4.5. Right to Education in France

The French Constitution enshrines the right to education for all in France. The provision that does so is found in the Preamble of the Constitution of 1946, which was incorporated by reference into the Preamble of the current French constitution. This provision declares that the Nation guarantees equal access for children and adults to instruction (education), vocational training and culture. The provision of free, public and secular education at all levels is a duty of the State. 

---

45Supra note 39, p. 70.
46https://www.loc.gov>law>help> constitution, last accessed on July 22, 2017 at 6:45 a.m.
3.4.6. Right to Education in Japan

Japan’s former Constitution, the Constitution of the Empire of Japan of 1889, did not have a provision on the right to education, though there was debate on the issue when it was enacted. The current Constitution of Japan of 1946 contains the following provision on the right to education:

Article 26 provides that all people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obliged to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.47

3.4.7. Right to Education in India

By way of Constitution (86th Amendment) Act, 2002, the right to education has been explicitly declared as a fundamental right by inserting a newly Article 21A. The Amendment has inserted the following provision in the Constitution of India.48

➢ Article 21A Right to Education – 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.

➢ Article 45, Provision for early childhood care and education to children below the age of six years – The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

47Supra note 38, p. 542.
➢ Article 51A Clause (k) – Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six to fourteen years.

So, the Parliament by Act, 2002 has tried to justify its obligation sat out in the Directive Principles of State Policy, International obligation or as advocated by the Apex Court in number path breaking judgments. Constitution (86th Amendment) Act, 2002 has inserted a new Fundamental Right by way of Article 21A but limited its scope to the target group of children to the age group of six to fourteen years.

After being complied with Article 21A by making an appropriate law, the violation of this right by the State permits an aggrieved person to go to the Supreme Court under Article 32 or to the respective High Courts under Article 226 for enforcement of the right to education. This Right Based Approach to education can rightly be said as a remarkable step.

The second provision as inserted by the Constitution (86th Amendment) Act, 2002 is the substitution of Article 45. Earlier it used to put a mandate upon the State for free and compulsory education for all children until they complete the age of fourteen years. As now by 86th Amendment, the right to education, it has been inserted in Part III of the Constitution and Article 45 has been substituted by 86th Amendment itself.49

Further the last provision which has been inserted by Constitution (86th Amendment) Act, 2002 was Clause (K) to the Article 51A which deals with Fundamental Duties in Part – IVA of the Constitution. This provision puts a Constitutional mandate upon the citizen to provide opportunities for education to his child or, as the case may be, ward between the ages of six to fourteen years.

49ibid, p. 53.
In contemporary India, it is noteworthy to mention that after the Constitution (86th Amendment) Act, 2002, Right to Education is the only right which falls consecutively in Part III, Part IV and Part IVA of the Constitution of India.\(^{50}\)

3.5. Right of Children to Free and Compulsory Education (RTE) Act, 2009

In compliance of the mandate laid in Article 21A, the Parliament has passed the Right of Children to Free and Compulsory Education Act, 2009 (RTE). The RTE Act, 2009 was passed by the Indian Parliament 3\(^{rd}\) September, 2009. India became one of the 135 countries to make education a fundamental right of every child with effect from April 1, 2010 when RTE Act was enforced.\(^{51}\) The law came into effect in the whole of India except the state of Jammu and Kashmir.

The first time in the history of India a law was brought into force by a speech by the Prime Minister of India stated that: “We are committed to ensuring that all children, irrespective of gender and social category, have access to education – an education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizen of India.”\(^ {52}\)

3.5.1. Main / Major Provisions of the Right of Children for Free and Compulsory Education Act, 2009: are as follows\(^ {53}\)

1) Right of Child to Free and Compulsory Education (Section 3))

---

\(^{44}\)ibid, p. 54.

\(^{51}\)The Bill was approved by the cabinet on 2\(^{nd}\) July, 2009. RajyaSabha passed the Bill on 20\(^{th}\) July, 2009 and the LokSabha on 4\(^{th}\) August, 2009. It received Presidential assent and was notified as law on 3\(^{rd}\) September, 2009, as the Children’s Right to Free and Compulsory Education Act, 2009.

\(^{52}\)“P.M.’s Address on Fundamental Right of children to Elementary Education”, The Hindu, April 2, 2010.Hyderabad publication.

\(^{53}\)Supra note 48, Pp. 54-58.
Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education. No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education:

Provided that a child suffering from disability or defined in Clause (i) of Section 2 of the Persons with Disabilities (Equal opportunities, Protection and Full Participation) Act, 1996, shall have the right to pursue free and compulsory elementary education.

2) Special Provisions for children not admitted to, or who have not completed, elementary education (Section 4)

A child who is above six years of age and has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age.

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed. Provided further that a child so admitted to education till completion of elementary education even after fourteen years.

3) Sharing of financial and other responsibilities (Section 7)

Section 7 of the Act provides that the Central Government and the State Government shall make available funds for carrying out its provisions. The Central Government shall prepare the estimates of capital and recurring expenditure and provide to the State Government, as grants-in-aid of revenues, such percentage of expenditure as it may determine from time to time, in consultation with State Government.
4) Duty of Parents and Guardian (Section 10)

It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighborhood school.

5) Appropriate Government to provide for pre-school education (Section 11)

With a view to prepare children above the age of three years of 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.

6) Extent of school’s responsibilities for free and compulsory education (Section 12)

This Act also provides for 25% reservation for students of disadvantaged groups and of economic weaker section of the society in admission to Class I in all private schools excluding the unaided minorities’ schools.

It ensures reimbursement by the government to these unaided schools, based on per child expenditure incurred towards admitting these students.

By virtue of section 12(2) RTE Act, 2009 the unaided school which has not received any land, building, equipment or other facilities, either free of cost or at concessional rate, would be entitled for reimbursement of the expenditure incurred by it to the extent of per child expenditure incurred by the State, or the actual amount charged from the child, whichever is less, in such manner as may be prescribed.
Such reimbursement shall not exceed per child expenditure incurred by a school established, owned or controlled by the appropriate Government as a local authority.

7) No capitation fee and screening procedure for admission (Section 13)

No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure. A provision of heavy penalty in case of charging capitation fee, to the tune of ten times the capitation fee charged and further a penalty which may extend up to twenty five thousand rupees in case of conducting any screening first time and fifty thousand rupees for each subsequent contravention.

8) Proof of age for admission (Section 14)

For the purpose of admission to elementary education, the age of the child shall be determined on the basis of the birth certificate issued in accordance with the provision of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be prescribed. No child shall be denied admission in a school for lack of age proof.

9) Prohibition of holding back and expulsion (Section 16)

No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

10) Prohibition of physical punishment and mental harassment to child (Section 17)
No child shall be subjected to physical punishment or mental harassment. Whoever contravenes the provisions shall be liable to disciplinary action under the service rules applicable to such person.

11) Norms and standards for school (Section 19)

School infrastructure (where there is problem) to be improved within three years after the implementation of this Act, else recognition cancelled. Any person who continues to run a school after the recognition is withdrawn, shall be liable to fine which may extend to one lakh rupees and in case of continuing contraventions, to a fine of ten thousand rupees for each day during which such contravention continues.

12) School Management Committee (Section 21)

Provision of a School Management Committee consisting of Parents or guardian of children admitted in such school, elected representatives of the Local authority and teachers. This committee shall have at least three-fourth of its member from Parents or guardians of children inclusive of proportionate representation from disadvantaged group or weaker section. Overall there shall be fifty percent women member in this Committee.

13) Pupil-Teacher Ratio (Section 25)

Within six months from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that the Pupil-Teacher Ratio. No teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose other than the decennial population census,
disaster relief duties or duties relating to elections to the local authority or the State Legislatures or Parliament, as the case may be specified in Section 27 of the Act.

14) Prohibition of private tuition by teacher (Section 28)

This Act prohibits private tuition or promotes teaching activity of teachers.

15) Curriculum and evaluation procedure (Section 29)

The curriculum and the evaluation procedure for elementary education shall be laid down by an academic authority to be specified by the appropriate Government. The academic authority, while laying down the curriculum and the evaluation procedure shall take into consideration the following, namely –

(a) Conformity with the values enshrined in the constitution;
(b) All round development of the child;
(c) Building up child’s knowledge, potentiality and talent;
(d) Development of physical and mental abilities to the fullest extent;
(e) Learning through activities, discovery and exploration in a child friendly and child-centered manner;
(f) Medium of instructions shall, as far as practicable by in child’s mother tongue.
(g) Making the child free of fear, trauma and anxiety and helping the child to express views freely;
(h) Comprehensive and continuous evaluation of child understands of knowledge and his or her ability to apply the same.

Therefore this Act makes a provision for improvement in quality of education.
16) Examination and Completion Certificate (Section 30)

A child who completes elementary education shall be awarded with a certificate.

17) Monitoring of child’s right to education (Section 31):

To examine, review the safeguards and recommend measures for implementation of rights provided by or under this RTE Act, 2009, the National Commission for Protection of Child Rights and State Commission for Protection of Child Rights have been empowered in addition to the functions already assigned.

18) Constitution of National Advisory Council and State Advisory Council (Sections 33 and 34)

The Act also provides for the constitution of National Advisory Council and State Advisory Council, consisting of such number of Members, not exceeding fifteen, as the Central Government may deem necessary, to be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development.

The functions of the National Advisory Council shall be to advice the Central Government on implementation of the provisions of the Act in an effective manner.

The functions of the State Advisory Council shall be to advise the State Government on implementation of the provision of the Act in an effective manner.

The Schedule attached to the RTE Act, 2009, prescribes certain names and standards for a school to be comply with under this Act like: number of teachers, infrastructure, minimum working days / instructional hours in a academic year or per week, teaching learning equipment, library, play material, games and sports equipment.

55Constituted under Section 17, The State Commission for Protection of Child Rights Act,
Therefore, with the Right to Free and Compulsory Education (RTE) Act, 2009, coming into force, India has joined the league of over 130 countries which have legal guarantees to provide free and compulsory education to children.

According to the UNESCO’s “Education For All” Global Monitoring Report, about 135 countries have constitutional provisions for free and non-discriminatory education for all. Chile tops the list of countries in providing free education for a period of 15 years to a child. It gives free and compulsory education to children in the age group of six(6) to twenty one (21) years.

The Latin American Country, where elementary education was among the worst two decades ago, had implemented a special education programme in 1990 which recorded a significant improvement among primary and upper primary students.

There are seven countries such as Germany, Belgium, Italy and Norway that have provisions of free compulsory education to children covering their entire schooling period.

Countries like Britain and New Zealand have made education compulsory and free for children for a period of 11 years. Spain, France and Canada are among the 19 Nations where education is free of cost for duration of 10 years ranging from the age of five (5) to fifteen (15) or six (6) to sixteen (16) years.

There are 34 countries including Japan, Finland, Russia and Sweden where a child gets nine years of compulsory education. Saudi Arabia, UAE, Iraq and eight other countries have the provision of five years of free education for children.
However there are over 50 countries including the US, South Africa, Malaysia and a majority of Sub-Saharan African countries which do not have any constitutional provision to provide free and compulsory education to children.\textsuperscript{56}

In essence, a citizen is only free when he can make a meaningful challenge to his fellow citizen or Government’s attempt to curtail his natural freedom. For this to happen, he needs a certain degree of education. Without it, a citizen may never come to know of his other rights; nor would he have the resources to adequately enforce them.

Archibald Macallum, an Ontario teacher, summarized in an report of 1875 favouring the introduction of compulsory schooling in Canada observed that the right of every Canadian child to receive education will make him a good, loyal subject, prepared to serve his country in the various social functions which he may be called on to fill during his life; and prepare him, through grace, for the life to come\textsuperscript{57}

It is interesting to note that compulsory education has been introduced in one form or the other in various countries. From the historical experience of various nations, it is clear that the legislation pertaining to compulsory education has played an important role in improving educational outcomes and may at least contribute to an increase in bilingualism and employment and a reduction in poverty.\textsuperscript{58}

Thus, under the present chapter, the researcher has discussed in detail the concept of Right to Education in its Global perspectives as well as Indian

\textsuperscript{56}\url{https://www.loc.gov} last accessed on July 14, 2017, at 3:20 p.m.
The next chapter deals with various Constitutional provisions in India which have a direct or indirect bearing on Education.