CHAPTER IV

CONSTITUTIONAL PROVISIONS ON EDUCATION IN INDIA

In the previous chapter, the researcher has explained completely the international instruments and national legislation on the right to education. In the present chapter various Constitutional provisions on Education will be explained in detail by the researcher.

Whenever any community or any society decides to organise itself politically, it is faced with a number of questions. The “Constitution” of the society contains the answer to all such questions which it has for itself. People write and adopt a Constitution because they want to make a fresh start in their system of governance.

The Constitution represents a break from the past, yet it is influenced from the past in what it accepts and what it rejects.¹

A Constitution may be briefly defined as a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of these organs.

It is the basic or fundamental document of a society or a country and contains the basic, the fundamental, the first law of the country.²

Constitution of a state cannot be conceived merely as a set of rules and laws framed for governance of the people. It represents the hopes and aspirations of the people; ideals, norms and values of their life to be maintained. It reflects the social ethos and philosophy with which a nation is to live and develop. A Constitution exerts a comprehensive influence on life of the people, their feeling, thought and activity.\(^3\)

The Indian Constitution which came into effect from the 26\(^{th}\) January, 1950 has its totality of influence on the people. It was basically aimed at reorientation and reorganisation of the socio-economic, political, cultural and educational situation of the country after the independence.

Education and more particularly primary education is a major aspect that affects socio-economic development of a country at its grass-root level. Education is the backbone of a nation. The all-round development of a nation very much depends upon the system of education.

For successful running of democracy, it is necessary for every person to be educated and be familiar with his right and duties. In this context, education is considered as very important in a democracy and efforts are taken to make education compulsory upto a certain level. It is because, if the society is not educated, democracy will not be successful and despotism, dictatorship will take its place.

Therefore, there are certain rights in the field of education for every citizen in a democracy, which is an obligation upon the state in order to eradicate illiteracy and ignorance of the people which are considered as the root cause of all socio-legal problems of the country.\(^4\)

Our Constitution makers had deeply realised this truth and accordingly made certain significant provisions in it to this effect. The Constitution had guaranteed certain rights and privileges to the people and has safeguarded their educational interest in order to ensure equality and social justice.

The Constitution had the remarkable feature of its own called the preamble. The preamble has been described as the inner soul of the Constitution and the major aims and objectives of the Indian Constitution were laid down in the preamble in order to ensure the basic principles of democracy viz., justice, liberty, equality and fraternity to the people.

Although the working out of these principles largely depended on education and enlightenment of the mass people in the country. Incidentally the percentage of literacy of the Indian people on the eve of our independence was only 19.78%. It implied that near about 80% of the Indian people remained illiterate and ignorant.

The Constitution makers were, therefore, quite aware of the delicate socio-cultural and educational situation that prevailed in the Indian society due to lack of mass education. Owing to this reason necessary constitutional provisions were made in this regard to preserve, protect and promote the cultural, religious and educational interest of the people.\(^5\)

Part III of the Constitution of India guarantees certain fundamental rights because they are considered necessary for the development of human personality. These rights enable a man to chalk out his own life in the manner he likes best.\(^6\)

The fundamental rights are manifests of man’s inviolable and fundamental freedoms. The fundamental rights are calculated to protect the dignity of the individual

\(^5\)Supra note 3, p. 2.
and create conditions in which every human being can develop his personality to the fullest extent. These rights recognise the importance of the individual in the affairs of the state and seek to assure to every citizen full freedom to enjoy life, liberty and happiness as he likes.

The development of a citizen’s personality the pursuit of his profession or vocation and the manner in which he seeks to enjoy the pleasure and comforts of life are basically his individual concern and the state can interfere with his basic right only if consideration of public good justifies such interruption.

The fundamental rights included in Part III of the Constitution have been given special importance. *M. Nagraj v. Union of India*, the Supreme Court observed that fundamental rights are not gift from state to its citizen. Individuals possess basic human rights independently of any Constitution by reason of basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value.

Fundamental Rights form the basic structure of the Constitution and, therefore, they may be abridged by Constitutional amendment but this cannot be abrogated or destroyed.

Therefore, at present the Constitution of India guarantees six Fundamental Rights which are as diagrammatically given below:

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9 AIR 2007, SC 71.
The various Constitutional provisions regarding education in India are in accordance with our political, economic, social and cultural needs. These provision aims at fulfilling the aspiration of the people through the medium of education. The Constitution of India has provided a large number of clauses and articles, which have a direct or indirect bearing on education. These are as follows-

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4.2. EDUCATION FOR WOMEN AND CHILDREN ARTICLE 15(3)

The basic right to equality provides education for women and children. Article 15(3) is one of the two exceptions to the general rule laid down in clause 1 and 2 of Article 15.\(^\text{12}\) It stipulates for making any special provision for women and children. Women and children require special treatment on account of their very nature. Article 15 (3) empowers to make special provisions for them whether in the field of education, reservation etc.\(^\text{13}\)

4.3. EDUCATION FOR THE BACKWARD CLASSES ARTICLE 15(4)

The Court gave a literal interpretation to the Constitutional provisions which lead to the insertion of Clause (4) in Article 15.\(^\text{14}\)

This Clause was added by the Constitution (First Amendment) Act, 1951, as a sequel to the decision of the Supreme Court in *State of Madras v. Champakam Dorairajan*.\(^\text{15}\) This is an enabling provision. It merely confers discretion on the State to

\(^{12}\) Article 15 of the Constitution of India –
1) The State shall not discriminate against any citizens on grounds only of religion, race, caste, sex, place of birth or any of them.
2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, is subject to any disability, liability, restriction or condition with regard to-
   a) access to shops, public restaurants, hotels and places of public entertainment; or
   b) the use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.
3) Nothing in this article shall prevent the State from making any special provision for women and children.


\(^{14}\) Clause 4 of Article 15 of the constitution provides -Nothing in this Article or in Clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

\(^{15}\) AIR 1951 SC 226
make special provisions in social and educational field. It does not impose any obligation on the State to take any action under it.\textsuperscript{16}

Clause (4) of Article 15 enables the State to make special provisions for advancement which has a wide expression and should not be construed in a restricted sense as meaning only social and educational advancement. The expression also covers many more things, such as financial assistance, free medical, educational and hostel facilities, scholarships, free transport, concessional or free housing and so on besides mere reservation of seats in college.\textsuperscript{17}

\textbf{4.4. PROVISION FOR RESERVATION OF BACKWARD CLASSES S.C. AND S.T. IN PRIVATE EDUCATIONAL INSTITUTIONS ARTICLE 15(5)}

The Constitution (93\textsuperscript{rd} Amendment) Act, 2005 has inserted a new Clause (5) after Clause (4) in Article 15.

The new Clause enables the State, to make, by law, special provisions, for the advancement of any socially and educationally backward classes or for the Scheduled Castes or the Scheduled Tribes citizens regarding their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than minority educational institutions as envisaged in Clause (1) of Article 30.\textsuperscript{18}

\textsuperscript{17} Supra note 2, p.164
\textsuperscript{18} Clause (5) of Article 15 provides that, “Nothing in this Article or in Sub clause(g) of clause 1 of Article 19 shall prevent the State from making any special provision, by law, for the advancement of Any socially and educationally backward classes of citizens or for the Schedule Castes or the Schedule Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause(1) of article 30.
4.5. RIGHT TO EDUCATION ARTICLE 21 A

The Constitution (86th Amendment) Act, 2002 has added a new Article 21 A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. Therefore, this provision makes education a fundamental right.

Article 21(A) may be read with new substituted Article 45 and new Clause (K) inserted in Article 51A under same amendment Act, 2002.

Stressing that educational empowerment was the way to economic empowerment, Dr. M. H. Joshi, the then Human Resource Development Minister, called the “Right to Education”, “the dawn of the second revolution in the chapter of Citizens’ right”.

To ensure proper implementation of the provisions of the 86th Amendment, 2002, in terms of not just the funds spent but the content of the implementation, Dr. Joshi said that a monitoring system would be put in place. It is hoped that the measure adopted would herald the nation’s march to cent per cent literacy.

4.6. RELIGIOUS EDUCATION ARTICLE 28

The Republic of India is secular state. The 42nd Amendment Act, 1976, has inserted the word ‘secular’ in the preamble of our Constitution of India.

In the educational matter also, the secular character of our state are tried to be maintained under the provisions of the constitution.

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19 Article 21A provides that “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law determine.
20 This amendment is made after taking into consideration the 165th Report of the Law Commission of India and the recommendations made by the Standing Committee of Parliament.
21 Supra note 2, p. 380.
22 Article 28 provides –
   1) No religious instruction shall be provided in any educational institution wholly maintained out of State Funds.
Article 28 provides that no religious instructions shall be provided in any educational institution wholly maintained out of state funds but has been established under any endowment or trust which requires that religious instructions shall be imparted in such institution, or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.\textsuperscript{23}

Article 28 was enacted to ensure that the peaceful atmosphere of educational institutions should not be disturbed by the controversies with regard to the truthful character of any particular religion and the erroneous character of the other. It was to provide for a path of complete safety.

4.7. EQUAL OPPORTUNITIES FOR EDUCATION ARTICLE 29(2)

The Constitution of India provides equal opportunities in education for all individual without any kind of discriminations whatsoever.\textsuperscript{24} This Article has given the right to seek admission to any educational institution maintained by the state or receiving aid out of the state funds without having regard to their, religion, race, caste, language or any of them.\textsuperscript{25}

\begin{itemize}
\item[2)] Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
\item[3)] No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.
\end{itemize}


\textsuperscript{24}Article 29 provides –

1) Any section of the citizens residing in the territory of India or any part there of having a distinct language, script or culture of its own shall have the right to conserve the same.

2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

\textsuperscript{25}Supra note 13, p. 66
The right contained in Article 29(2) is available to every citizen of India whether belonging to a minority or majority group. It is a right of a citizen as a citizen and not as a member of any community or class.26

4.8. MINORITIES RIGHT TO RUN EDUCATIONAL INSTITUTIONS

ARTICLE 30

Article 30 is a charter of educational right.27 It guarantees in absolute terms the right of linguistic and religions minorities to establish and administer educational institutions of their choice and at the same time claim grants in aid without any discrimination based upon religion or language.28 The right contained in Article 30(1) is available only to minorities whether based on religion or language.

Article 30 is held to be more in the nature of protection for minorities and is not immuned from regulatory control. It is to ensure equality with minority and not intended to place them in a more advantageous position vis-a-vis majority.29

The political and civil rights have been guaranteed to the people in Part III of the Constitution of India containing Fundamental Rights. It may be said that the Fundamental Rights laid the foundation of political democracy in India. But the Fundamental Rights contained no social and economic rights for the people.

It is the Directive Principles of State Policy which embody the social and economic ideals. The Irish Constitution contains a similar declaration of the Directive

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27Article 30 provides-
   1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
   2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.
28Supra note 13.p. 67
Principles. The Directive Principles, addressed to the State, contain certain ideals and rights which the state strike to realise by enacting suitable laws.

The Principles also show certain directions in which legislative and executive exercise should follow. These ideals, rights and direction are, however, not enforceable by the courts like the Fundamental Rights. But the State shall aim at securing these ideals by its legislative and executive exercise of power and policy.

The Constitution makes it clear that though the Directive Principles shall not be enforceable by any court, but the principles laid down in the text of the Directive Principles are, nevertheless fundamental in the governance of the country. And it shall be the duty of the State to apply these principles in making laws and in discharging executive functions.

4.9 DIRECTIVE PRINCIPLES OF STATE POLICY

<table>
<thead>
<tr>
<th>Directives in the Nature of Ideals of the State</th>
<th>Directive Shaping the Policy of the State</th>
<th>Non-justiciable Rights of Citizen</th>
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<tbody>
<tr>
<td>1. The State shall strive to promote the welfare of the people by securing a social order based on social, economic and political justice.</td>
<td>1. To secure a uniform civil code for the citizens.</td>
<td>1. Right to adequate means of livelihood.</td>
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Supra note 11, p.193.
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<td>2. The State shall endeavour to secure just and human conditions of work, a living wage, a decent standard of living.</td>
<td>2. To provide free and compulsory primary education.</td>
<td>2. Right to both men and women to equal pay for equal work.</td>
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<td>3. The State shall direct its policy towards securing equitable distribution of the material resources and prevention of concentration of wealth and means of production</td>
<td>3. To prohibit consumption of liquor and intoxicating drugs except for medical purposes.</td>
<td>3. Right against economic exploitation.</td>
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<td>4. The State shall endeavour to promote international peace and relations</td>
<td>4. To develop cottage industries</td>
<td>4. Right to work</td>
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<td>5. To organise agriculture and animal husbandry</td>
<td>5. Right to public assistance in case of unemployment, old age, sickness and other cases of underserved want.</td>
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<td></td>
<td>6. To prevent slaughter of useful cattle.</td>
<td>6. Right to humane conditions of work and maternity relief.</td>
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</tbody>
</table>
5. To organise Village Panchayats as units of self-government.

7. Right of children to free and compulsory education.

4.9. Table Directive Principles of State Policy

The Directive Principles contain a bundle of social, economic and educational ideals and rights essential for the establishment of a welfare state.

4.10. RIGHT TO WORK, TO EDUCATION AND TO PUBLIC ASSISTANCE IN CERTAIN CASES ARTICLE 41

The principle enshrined in Article 41 read with Article 45 provides that it is not only necessary but also desirable for the performance of the State’s ultimate duty and responsibility, to provide education to all citizens.³¹

It has been held that Articles 29 and 30 relating to cultural and Educational Rights should be read in the backdrop of Articles 41 and 45.³²

4.11. PROVISION FOR EARLY CHILDHOOD CARE AND EDUCATION TO CHILDREN BELOW THE AGE OF SIX YEARS ARTICLE 45

The Directive contained in Article 45 had been held to be a fundamental right forming part of the Right to Life secured by Article 21.³³

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³¹ Article 41 requires that “the State, shall within the limits of its economic capacity and development, make effective provision, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”.

³² In re Kerala Education Bill, AIR 1958 SC 956.

98
It implies that the direction under Article 45, is not confined merely to primary education. It extends to the duty to provide free education until the children attain the age of 14 years, whatever the stage of education, it may come to be.  

The observations made by the Court in *Unni Krishnan v. State of A.P.*\(^\text{35}\), as to the provision for free and compulsory education, have been acknowledged and incorporated by the Constitution (86\(^\text{th}\) Amendment) Act, 2002, inserting a new Article 21A, declaring free and compulsory education for all children of the age of six to fourteen years, as independent Fundamental Right.

The Directive contained in Article 45, being replaced by the Fundamental Right guaranteed under Article 21A, is, therefore omitted and is substituted by the Constitution (86\(^\text{th}\) Amendment) Act, 2002, by the following new Directive: The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

**4.12. PROMOTION OF EDUCATIONAL AND ECONOMIC INTERESTS OF S.C. AND S.T. AND OTHER WEAKER SECTION ARTICLE 46**

The expression “weaker section of the people” is not defined in the Constitution. This Article mainly provides for the upliftment of the weaker section of the people by giving special care both educationally and economically and also to protect them from social injustice and all forms of exploitation.\(^\text{36}\)

\(^{33}\) Article 45 provides the State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.


\(^{35}\)AIR 1993 SC 2178.

\(^{36}\)Article 46 obligates the state to promote with special care the educational and economic interests of the weaker section of the people, and in particular, of the schedule castes and the schedule Tribes, and to protect them from social injustice and all forms of exploitation.
In *Indira Sawhney V. Union of India*\(^{37}\), commonly known as the Mandal Commission case, the Court laid down that the expression ‘weaker sections of the people’ was wider than the expression “backward classes of citizens” or “socially and educationally backward classes” or Scheduled castes and Scheduled Tribes”.

The expression included all sections of the society, who were rendered weaker due to various causes including poverty and natural and physical handicaps.

The State may make such provisions or reservations for the betterment and amelioration of the weaker and economically backward sections and to implement the Directive Principles contained in Article 46.\(^{38}\)

### 4.13. FUNDAMENTAL DUTY ARTICLE 51A (K)

The 86th constitution Amendment Act, 2002, inserted a sub-clause in Article 51 clause A in the nature of fundamental duties. Now Article 51 clause (A) sub-clause (K) reads as that who is apparent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age six and fourteen years.\(^{39}\)

With reference to Article 51A (K), which imposes a Fundamental Duty on Parents / Guardians, that the emphasis would be “to encourage and prompt” parents to bring children to schools, rather than to punish the economically weak parents. It was explained that the Government would endeavour to target children to economically weak parents / guardians through Sarva Shiksha Abhiyan and a Series of measures and facilities.

\(^{37}\)AIR 1993 SC 477


\(^{39}\)Supra note 13, p. 92
4.14. DISTRIBUTION OF POWER BETWEEN CENTRE AND STATES

ARTICLE 246

The Indian Constitution stated a very elaborate scheme of Centre State distribution of powers and functions within three lists namely Union list, State list and Concurrent list in the seventh schedule.

The union list consists of 97 subjects. Among them the following are concerned with education:

ENTRY 63 The institutions known at the commencement of this constitution as the Banaras Hindu University; the Aligarh Muslim University and the Delhi University; any other institution declared by parliament by law to be an institution of national importance.

ENTRY 64 Institutions for scientific or technical education financed by the government of India wholly or in part and declared by parliament by law to be institutions of national importance.

ENTRY 65 Union agencies and institution for
   a) professional vocational or technical training of police officers; or
   b) the promotion of special studies or research, or
   c) Scientific or technical assistance in the investigations or detection of crime.

ENTRY 66 Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

According to Article 239, education in the Union Territories comes under the central responsibility.

The state list consists of 66 subjects. Among them following are concerned with education.
ENTRY 12 Libraries, museums and other similar institutions controlled or financed by the state; ancient and historical monument and records other than these (declared by or under law made by parliament) to be national importance.

The concurrent list consists of 47 items. Among them Entry 25 of list -3 is related to education.

ENTRY 25 Education, including technical education, medical and universities subject to the provisions of entries 63,64,65 and 66 of list 1; vocational and technical training of labour.

By having education in the “concurrent list”, the centre can implement directly any policy decision in the states.40

4.15. FACILITIES FOR INSTRUCTION IN MOTHER TONGUE AT PRIMARY STAGE ARTICLE 350 A

Article 350A was inserted by the Constitution (Seventh Amendment) Act, 1956.

Under Article 350 A, the constitution imposes a duty on every state to provide adequate facilities for instructions in the mother tongues at the primary stage of education to children belonging to linguistic minority groups and empowered the president of India to issue direction which he may consider necessary to any state for securing the provisions of facilities under this Article.41

4.16. ENFORCEMENT OF FUNDAMENTAL RIGHTS ARTICLE 32

A right without a remedy does not have much substance. The Fundamental Rights guaranteed by the constitution would have been worth nothing had the

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41 Supra note 1, p. 833.
constitution not provided an effective mechanism for their enforcement. Article 32 guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the Fundamental Rights in the Constitution.\textsuperscript{42}

The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any rights conferred by Part III.\textsuperscript{43}

Education is the fundamental method of social progress and reform. All reforms which rest simply upon the law, or the threatening of certain penalties, or upon changes in mechanical or outward arrangements, are transitory and futile. But through education society can formulate its own purposes, can organized its own means and resources.\textsuperscript{44} As rightly said by Ben Sweet land, “we cannot hold a touch to light another’s path without lightening our own.” “Right to education’ will be meaningful only when it is ensured to all without making any discrimination.

Hence, under chapter IV, the scholar discusses various Constitutional provisions regarding education in India elaborately. In the next chapter, the researcher will fully analysis the main reasons of drop-out of children from school which is a main hindrance for reaching the Universal goal of Education for All in context of rate of school drop-outs in elementary stage in Dibrugarh district of Assam.

\textsuperscript{42} Supra note 34, p. 1428.
\textsuperscript{44} Singh, Subhash Chandra: Gender Violence, Serials Publications, New Delhi; Edition 2011, p. 161