LEGAL POSITION OF
HUMAN RIGHTS EDUCATION IN INDIA
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Human rights are to be exercised and enjoyed by all people, without them people cannot fully develop as human beings. Human rights and fundamental freedoms allow one to develop and use one's intrinsic qualities, intelligence, talents, and material needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of a human being is respected and protected. Fundamental human rights are the same world over. Individuals everywhere want the same essential things. To have sufficient food and shelter, to be able to speak freely to practice their own religion or to abstain from religious belief, or to feel that their person is not threatened by the State, to know that they will not be tortured, or detained without charge, and that, if charged, they will have fair trial.¹

Denial of human rights and fundamental freedom has led to social and political unrest sowing seed of violence in conflicts within and between societies and nations². Human rights and fundamental freedoms can be ushered in a democracy through good governance.

Human rights can be gained through education. Education cultivates the mind and promotes ideals and values, if any nation aspires to progress then the citizen in particular have to be educated. There is no denying the fact that education is a great liberating force without which one cannot earn a

¹ Justice Anant Mane, Acting Chairperson, Maharashtra Human Rights Commission Protecting Human Rights Through New Institution pp 1, 3-7
² A. Chandrasekaran, Human Rights Awareness in Education in Human Rights in Chranji vij Nirmal, India Historical, Social and Political Perspectives, Indian Institute of International Studies, OUP
rightful place in society. General comment No. 13, 1999 of the Economic Social and cultural Rights states that

"Education is both a human rights in itself and an indispensable means of realizing other human rights. As an empowerment rights education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment and controlling population growth. Investing in education is recognized as one of the best financial investment a State can make. Education leads one to be of an enlightened and active mind able to wander freely and participate widely leading to a fruitful human existence."³ It transfigures the human personality into a pattern of protection though a synthetic process of perfection, though synthetic process of development of the body, the enrichment of mind, the sublimation of the emotions and illumination of the spirit. Knowledge, skill and attitudes are very much linked with human rights. To be true, education is preparation for a living and for life⁴ since it helps in reforming the person.

Human rights can be acquired in two ways. One is the way of ancient India where rights are conferred automatically though a commitment to duty. Education for imparting duty, education for imparting human values and creating a duty bound society play an important role here. The importance of rights and government is less. The second is the present western way where

rights have been given special emphasis. Struggle and conflicts are advocated as a tool and the government or administration gives the rights, the role of duty is greatly reduced here. The first is the path of love, peace and devotion; the second is all about conflict, resistance and a breakdown in peace. The proponents of the second view however do not accept this.

An enlightened and educated society can maintain strict vigil on the government, ensuring good governance and accountability. Therefore education is considered very vital for the progress and development of nations. In India the Constitution has provided for a democratic form of government with high ideal as propounded in the preamble to the Constitution. This has been sought to be achieved through a democratic order and the rule of law. However the promotion of the noble ideals depends on the education of the citizens. Even in the ancient days education was emphasized upon. Literacy amongst the people is an important characteristic of a developed society.

Several hymes are found in Rig-Veda concerning the spread of education. These hymes pray to the king to make proper arrangements for imparting education relating to speech and the Brahma Vidya. The world ‘speech’ or Vani is used in the Vedas in the sense of Science in many places. The reason is that speech was the primary medium for transmission of knowledge during that period. Yathemam Vacham Kalyanim, this Mantra clearly equates speech with the knowledge of Vedas. Since the prayers are made to the king, it can be easily concluded that he was supposed to take effective steps for creating the facilities for imparting education. The Brahma

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5 Bharat Jhunjunwala, Governance and Human Rights, Kalpas Publication, New Delhi, pp 184,220-21
Vidya knowledge is also on reference to the Vedas and actually means Ved Vidya. Ved Vidya is an extensive phase and includes statecraft, code of behaviour, medicine, physical sciences, astrology, mathematics and philosophical concepts.

While teaching men about the importance of spreading the education, they have also been advised that they must never allow it to stop in their society.⁶

Human rights education in particular is considered very essential for the promotion of democratic value, assertion of ones democratic values, of ones democratic rights and liberties. Human rights education is at the heart of the effort to promote and protect human rights⁷. Education for human rights is available only when it is firmly rooted in the social process. In order to promote democratic form of government the founding fathers framed an elaborate Constitution providing for various rights and obligations. This was particularly adopted in light of the freedom struggle where the demand for fundamental rights was evident from the various resolutions of the Indian national congress. The fundamental rights and directive principles in particular are some of the basic human rights that find prominent place in the Constitution. These apart, there are other rights provided for by legislation that not only concern the right to education but that of human rights education, though implicitly. In other words the legal rights are laid down by various Acts of Parliament and State Legislatures to give meaning and life to the constitutional mandate of the right to education. The researcher therefore

⁶Vasu - Rudra, Aditya, (Rigveda 8-10-15)
⁷R.M Pal, S Chakrabarty, ed., Human Rights Education in India, Indian Statistical Institute, 2000, New Delhi, pp 36-37
attempts to analyse the legal position of human rights education in India through the Constitution and the law.

The India Constitution is the cornerstone of a liberated nation. It lays the grand foundation of a great peoples edifice of governance. It projects the socio-economic vision of a generation emerging from a feudal, cultural, colonial domination and federal negation. It spells out the fundamental rights and socialistic aspirations of the vast masses long inhibited by an imperialist ethos. It creates a trinity of democratic instrumentalities with checks and balances, parliamentary in structure, quasi-federal in character. Endowed with adult franchise, empowered with periodic elections, provided with plural parties, equipped with a unitary justice system with a uniquely Supreme Judicature at the apex which gives access to every citizen against injustice strong Indian humanity is a paradigm of secular, socialist, democratic republic.

To be true, the Constitution of India is a document rich in human rights jurisprudence. The preamble concisely sets out the quintessence of human rights, which represents the aspirations of the people who have established the Constitution. Various objectives of the preamble like place Democracy, secularism liberty and equality as they appear in the preamble, are considered as the basic feature of the Constitution of India which cannot be taken off their significance, ever by a constitutional amendment. All framed rights and freedoms in the Universal Declaration of Human Rights, 1948 and in the International Covenant on Civil and Political Rights, 1966 are guaranteed in part-III of the Indian Constitution as Fundamental rights. In fact, part-III of the Constitution may be characterized as the Magna Carta of India. It embodies and sanctifies certain fundamental, individual justifiable rights,
which are primarily meant to protect and promote the basic human rights of the people and protect the individual against the state action by imposing negative obligations. There are limitations upon all the powers of the government, legislative as well as executive and they are essential for the preservation of human rights. The incorporation of the fundamental rights in the Constitution serves as reminder to the government in power that certain liberties and freedoms essential for all the people as assured to them by the fundamental law of the land are to be respected. The foregoing discussion clearly indicates that the Constitution of India has one of the most elaborate chapters on human rights. For a proper appreciation the investigator has considered it essential to briefly analyse the pre constitutional developments that led to the framing of the Constitution providing for a firm foundation of human rights jurisprudence.

The Constituent Assembly entrusted with the responsibility to draft a Constitution for independent India was engaged in the stupendous task of constitution making at a time when the Universal Declaration was adopted by the United Nations in 1948. The Constituent Assembly took note of the Declaration and incorporated many human rights as citizens' fundamental rights in the Constitution. Rights to equality before law (Article 14), right to freedom from discrimination (Article 15), rights to freedom of speech and expression (Article 19), right to assemble peacefully (Article 19), prohibition of employment of children in hazardous occupation (Article 24) can be mentioned in this regard. Article 46 of the Constitution states that it shall be duty of the government to promote with special care the educational and

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8 ibid pp 45,56
economic interests of the weaker section of the people, particularly the Scheduled Caste and Scheduled Tribes. It further states that the Government shall protect these communities from social injustice and all forms of exploitation.

Right to education in India enjoys a constitutional status. A time-honoured way of guaranteeing rights is to enshrine them in the Constitution. The fundamental rights enshrined in Part-III of Constitution of India, and the rights envisaged in Part-IV in particular which are brought in to Part-III by judicial interpretation as basic human rights of men, woman and children. Thus Parliament themselves can be, at their best be vital instruments for protecting human rights so also an independent Judiciary. Likewise a free press universities, trade unions, and faith-based organizations. The protection for human rights to promote the dignity of the individual is too important a matter for symbolic gestures alone. It is only through the pursuit of practical and effective efforts to promote human rights that we show our real commitment to the welfare of individuals and society says Alexander Downer.9

The constitutional status has been accorded to it because of the reason that true democracy is one where education is universal, where the people understand what is good for them and the nation and know how to governor themselves. That is why the directive principles contained in Article 45 and 46 were originally designed to achieve the said goal among others. The importance of education also lies in the fact that it enables a man to understand the meaning of human rights and awaken him to cultural values adjusting him thereby to the healthy environment of the society.

9 Anant Mane, Maharastra Human Rights Commission, Supra 1.
Till recently there was no fundamental right to education. It was through the 86th constitutional amendment act that the right to education for children between six to fourteen years has been put on a firmer pedestal by incorporating it as a fundamental right under Article 21A of the Constitution of India. Now the violation of Article 21A is subject to being challenged before the court and the State has been brought under the constitutional obligation to provide for education of such children as a fundamental right. Furthermore, the country's commitment under the Convention on The Rights of the Child obliges it to provide for compulsory free primary education up to the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State. The right to education is implicit in the right to life and personal liberty. It has been held by the Supreme Court that the fundamental right to education does not extend to their right to contest students' union election.

Apart from above constitutional provision there are other provision in part -III of the Constitution along with the Directive Principles of State Policy as alluded to above, the conscience of the constitution that also deals with human rights education. While the Constitution emphasized under Article, 45 to provide for free and compulsory education till the age of 14 years, within 10 years from the commencement of the Constitution this was to be realized. Since children constitute the backbone of a nation and their human rights as well as rights to education are required for their proper development the matter came up before the Supreme Court on few occasions.

Article, 14 include the rights to equality before the law and equal protection of law. This provides space for a definition wherein, while discrimination is considered undesirable, discriminatory laws are permissible to abolish the existing discrimination, provided they are based on same valid principle, which itself is not irrational or discriminatory. It says that differential treatment does not *per se* constitute a violation of Article 14, but only where there are no reasonable basis for the differentiation.

In *Francis Mullin V Administrator, Union Territory of Delhi*\(^\text{11}\), while elaborating the scope of the right guaranteed under Article 21 of the Constitution, the apex court stated as follows:

"But the question which arises is whether the right to life is limited only to the protection of limit or faculty or does it go further and embrace something more". We think that the right to life includes right to live with human dignity and all that goes along with it, viz., the basic necessities of life such as adequate nutrition, clothing and shelter, facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings....

Education has not always been considered an accessible instrument of social change. Gandhi wanted to bring about a silent social revolution in India through the basic system of education. All social reformers have stressed that education is the single most important instrument and medium for bringing about beneficial changes in society. In fact, education has been unanimously accepted as a vital instrument in improving the quality of life of the people. It was for this reason that the government for India formulated the National Policy of Education in 1986 to provide assess to education of a comparative quality up to a certain level to all students irrespective of caste, creed, location or sex. Earlier in 1968 the government of India had evolved the National

\(^\text{11}\) (1981) ISCC, 608
Policy of Education to equalize education among the backward classes and especially among the tribal people, yet imbalances and inequalities persisted. Girls and women schedule caste and tribes, landless labourers, backward classes and the urban poor generally continue to lag behind in education. Hence in 1979 special schemes were again drafted to bring all such people into the fold of education. Education remained a state subject until 1976 when it was brought under concurrent list.\textsuperscript{12}

Prior to the constitutional amendment, the Supreme Court emphasized in \textit{Unni Krishnan V state of Andhra Pradesh}\textsuperscript{13} that the right to education implicit in the right to life and personal liberty qualified under Article 21 of the Constitution of India must be considered in the light of the Directive Principles of State Policy in part IV of the Constitution. The provisions of part III and part IV are supplementary and complementary to each other and that the fundamental rights are but a means to achieve the goals indicated in part IV. It also held that the fundamental rights must be construed in the light of the directive principles. The Supreme Court observed that the right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 of the Constitution, the State cannot deprive the student in accordance with the procedure prescribed by law. It stated

"We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21 of the constitution, it does not follow automatically that it includes within the purview of Article 21 of the constitution, we have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact we have referred to Article 41, 45 and 46 merely to determine the parameter of the said right.'\textsuperscript{12}

\textsuperscript{12} COTRANTIVIT NIRMAL, \textit{HUMAN RIGHTS IN INDIA, HISTORICAL, Social and Political Perspectives} Oxford University Press, VMER Library Building Jai Singh Road, New Delhi-, 2000, pp 82, 83
\textsuperscript{13} Ibid
Article 46 of the Constitution states that it shall be the duty of the government to promote with special care the educational and economic interests of the weaker sections of the society, particularly the scheduled castes and the scheduled tribes. It further states that the government shall protect these communities from social injustice and all forms of exploitation.\(^\text{14}\) Periodically schemes have been formulated excessively for these communities and monitoring mechanism had been established to follow up on the implementation of specific plans such as the special component plan and the Tribal such-plan. Also it was noted that vocational and non-formal education was necessary for the tribal population. Proposals were made to include literacy schemes as a component of the tribal development programmes. As a result there was a marked course of higher and technical education. The State governments for the improvement of backward communities of various regions, including free, have formulated similar schemes and compulsory education, adult education programmes free board and lodging and other educational facilities, at par with the students belonging to Schedule Caste and Tribes.

Article-30 (i) gives the minorities two rights, namely (a) to establish and (b) administer educational institution of their choice. The second right clearly covers pre-constitutional schools.

By admitting a non-minority member into it, the minority institution does not shed its character and cease to be a minority institution. Indeed the object of constitution of the distinct language script and culture of minority may be

\(^{14}\) Article 46, Constitution of India
better served by promoting the same amongst the non-members of the particular minority community.  

Apart from the provisions of the Constitution several laws have been enacted concerning education. Many of these legislations have been necessitated due to the country’s obligations before the international community. Therefore, before entering into an analysis of the laws the investigator considers it useful to delineate on a few of the international obligations that have necessitated enactment of laws.

The right to education is essential and has been recognized initially in the Universal Declaration of Human Rights under Article 26 way back in the year 1948 followed by the International Covenant on Economic, Social and Cultural Rights incorporated in Article 13. Not only to speak of education in general and human rights education in particular, science education too develops human personality, understanding, tolerance and comradeship.

Article 28 of the Convention on the Rights of the Child recognizes the rights of the child to education which calls for achieving this right progressively and on the basis of equal opportunity. It mandate the State to

(a) Make primary education compulsory and available free to all,
(b) Encourage the development of different forms of secondary education, including general aid vocational education making them available and accessible to every child and take appropriate measure such as the introduction of free education and offering financial assistance in case of need.
(c) Make higher education accessible to all on the basis of capacity by every appropriate means,
(d) Make educational and vocational information accessible to all children.
(e) Take measure to encourage regular attendance at schools and the reduction of drop out rates.

Article 29, of the Convention envisages that the State parties agree that the education of the child shall be directed to:

15 Re Kerala Education Bill para 22
(a) The development of the child personality, talent and mental and physical abilities to their fullest potential;
(b) The development of respect for human rights and fundamental freedom and for the principles enshrined in the charter of the United Nation;
(c) The development of respect for the child’s parents, his or her own cultural identity, language and values for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
(d) The preparation of the child for responsible life in a free society in the spirit of understanding, of sexes, and friendship among all people, national and religious groups and persons of indigenous origin, and
(e) The development of respect for the natural environment.

The Convention on the rights of the child reiterates and elaborates what is already contained in the Constitution of India. According to Article 39 of the Directive Principles of State Policy, the State shall, in particular direct its policy towards securing:

That the health and strength of workers, men and women and the tender age of children are not abused and that children are not forced by economic necessity to enter avocations unsuited to their age or strength.

Along with the above Articles of the Convention these provisions have given a mandate to the country to provide for education of children and these have been met through amendment of the Constitution incorporating Article 21 A. The domestic legal system has also taken into consideration the other international instruments pertaining to human rights education including the deliberations at the Vienna conference and the mandate of the United Nations decade for human rights education. In this regard the instruments of the UNESCO on education and human rights education have also sought to be implemented through legislation. Since the various international instruments concerning human rights education have already been discussed the same are not considered here.

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16 Annexures
The government is under an obligation to fulfill the constitutional mandate of the right to education. Parliament and the State Legislatures have enacted various laws in this regard. The legislators are not only under the duty to provide for the education of children in general but also to provide them human rights education. Though human rights education have not been specifically provided for, various components of it are structured into the rights of children. Children who have been working in fields, factories and remain in garages, tea stalls or in other manufacturing or weaving process ought to be receiving education. Therefore several legislation has been enacted by Parliament and State Legislature to ban or regulate their employment in the organized or unorganized sector.

There are over 300 legislations in the country pertaining to children. Many of them are in consonance with the constitutional mandate or are pursuant to norms or regulation set by international labour organization.

The government of India by ratifying the Convention on the Rights of the Child on November 12, 1992 once again reaffirmed its commitment to the cause of children. This obligates the government to-

(i) Review national and state legislation and bring it in line with the provision of the convention.
(ii) Develop appropriate monitoring procedures to assess progress in implementing the Convention.
(iii) Involve all relevant government ministries and departments international organizations, and the legal profession in the implementation and reporting process,
(iv) Publish the convention and seek public inputs for reporting, and
(v) Ensure that reporting is frank and transparent.
Government of India has formally reaffirmed its commitment to advance the cause of children in India and fulfill its commitment as laid down by the World summit for Children.\(^ {17}\)

The Rehabilitation Council of India was set up by the Government of India in 1986 initially as a society to regulate and standardise training policies and programmes in the field of rehabilitation of person with disabilities. The need of minimum standard was felt urgent as majority of persons engaged in education; vocational training and counseling of people with disabilities were not professionally qualified. Poor academic and training standards adversely affect the chance of disabled in the world of work. Therefore Act of Parliament was enacted in 1993 enhanced the status of the council to a statutory body with an aim-

1. To regulate the training policies and programmes in the field of rehabilitation of people with disabilities.
2. To standardize training courses for professionals dealing with people with disabilities.
3. To prescribe minimum standard of education and training of various categories of professionals dealing with people with disabilities,
4. To regulate these standard in all training institutions uniformly throughout the country.
5. To recognize Institutions/Organizational/Universities offering Certificate, Diploma, undergraduate and postgraduate degrees in the filed of rehabilitation of persons with disabilities.

6. To promote research in rehabilitation and special education (Added as per amendment in the Rehabilitation Council Act).

7. To maintain central rehabilitation register for registration of professionals. It is therefore evident that handicapped children have been given equal rights in the matter of admission to educational institutions for prosecuting their studies. A handicapped girl asserted her right of persons similarly situated to get reservation in medical colleges in Dy. Secretary V Sanchita Biswas. In this case, the West Bengal government reserved seats for donors' nominees, candidatures. However, there was no quota for the handicapped though the persons with Disabilities (Equal Opportunities Protection of rights and Full Participation) Act 1996 ask the government to provide the handicapped in educational institutions. The Calcutta High Court allowed the petition of the candidate observing that the authorities had a constitutional and statutory obligation to reserve 3 per cent seats for the handicapped. The reservation of hill candidates was stuck down as arbitrary.

P. Cherriyakoya Vs Union of India A.I.R, 1994 Ker 27 and Ramchandra Tandi Vs state, A.I.R. 1994. In another case Orissa High Court held is that welfare of children and disabled is paramount duty of the State and directed the State to grant recognition and financial assistance to a school for physically handicapped children.

Thus, Supreme Court has rightly and harmoniously interpreted the provision of part IV of the Constitution in the light of fundamental rights. The Court through judicial activism has made the basic right to education as a

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19 AIR 2000, Cal.202
20 M.J. Anthony, Annual Digest of HUMAN RIGHTS Judgments, INDIAN SOCIAL INSTITUTE, NEW DELHI 2000, p 35
fundamental enforceable right. This interpretation of the Court is also in consonance with Article 26 of the Universal Declaration of Human Rights and Art 12(2) (a) and (c) of International Covenant on Economic, Social and Cultural Rights.

The Paris Principles pertaining to establishment of National Human Rights Institutions were negotiated and were subsequently adopted by the General Assembly of the United Nations. These principles lay down a set of minimum standards for the establishment of national human rights institutions.

The Human Rights Act, 1993 defines, the human rights to mean the rights relating to life, liberty equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India. That follows that UN Convention and Human Rights Instruments upon ratification becomes part of the country's law. The source of this meaning of Human Rights in the Part-III and Part-IV of the Constitution of India, is that it enshrines the basic human rights, particularly of civil and political as well as economic, social, and cultural rights. The Act contains provisions where public authority is made answerable for violation of human rights or abetment thereof or negligence to prevent such violation, by public servant and so, it is a statutory duty on one to act in accordance with Convention rights as introduced in section 2 read with section 12 of the Act in principle. It may be stated that in 1998 the Committee on Economic Social and Cultural Rights issued guidelines on the role of the national human rights institutions that included promoting educational and information programmes on economic, social and cultural rights directed both at the general public and to public servant, judiciary, private sector and the labour movement and
conducting research and inquires of human rights, monitoring compliance with the rights in the Covenant.

The Protection of Human Rights Act is a piece of legislation, which if properly implemented can achieve a lot in providing human rights education. Under section 12 (d) of the Act, the Commission has a statutory responsibility to study treaties and other international instruments on human rights and make recommendations for their effective implementation. This Act is about building of rights and responsibilities culture. The Commission has been mandated under section 12 (h) of the Act, to promote human rights awareness and literacy. It has accordingly endeavored to promote a cultural of human rights in the country by following a strategy of many parts: it has pressed for introduction of human rights education in the curricula both of schools and universities, it has involved NGOs in effort to spread human right awareness at the grass root level; it has sought to bring about a greater sensitively among civil servants, police and security personnel and members of the Judiciary by reorienting their seminars, workshop and the like. It has encouraged the media to report on human rights issue and has urged the central government to devise a National Action Plan for human rights and a Plan for Human Rights Education. Ever since the world conference on Human Right in Geneva in June 1993, greater emphasis has been placed on the value of individual State formulating National Action Plan for Human Rights. The elaboration of such national plan has also been the subject of frequent discussion in workshops organized by the United Nations for participation from the Asia-pacific regions.
The Commission has been of the view that the development of a national plan for human rights can crystallize programmes and policies that are human right-friendly across the entire range of governmental activity issues having a bearing on human rights in the work of a variety of ministries and departments, and it can re-orient attitudes and priorities across the spectrum of governmental endeavor. It can further add legitimacy and strength to the voice of those who advocate good and humane governance as essential to the well-being of a country. The Commission has therefore been urging that such as a national plan be formulated. The whole issue of human rights education was being debated and proposed by the National Human Rights Commission, that it is to be incorporated in the syllabus as a separate subject in schools and universities. For this a national policy has to be evolved in coordination with all concerned including the university grants commission, the national council of educational research and training and the state council of educational research and training. A radical transformation of beliefs and attitudes will take place and take care of the denial of the dignity and worth of the human person, bigotry and prejudices that have persisted for centuries.

Several legislations as mentioned herein before have provided for reforms in education. These legislations have to be given life and meaning through their effective implementation if they are to be meaningful. Effective law enforcement is possible only when there are trained and educated keepers of law wedded to human rights norms. Many of the laws that are on the statute book or that were there during pre-independence days have to be effectively implemented. Among them are the Child Marriage restraint Act, 1929. Despite the Act, due to lack of education and awareness child
marriages are found to take place in various parts of the country. In fact the National Human Rights Commission has recommended recasting of the Act to make it meaningful. Furthermore, there have been suggestions by the Commission with regard to the Convention on the Rights of the Child, that of the Geneva Convention, the Convention on Torture and the Protocol on status on Refugees. Under section 12 (f) of the Protection of Human Rights Act, 1993, the Commission has a statutory duty to study treaties and other international instruments on human rights and make recommendations for their effective implementation.

The Commission continued to urge the Central government to proceed with the ratification of the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Punishment or Treatment, which has been signed by India on 14 October 1997, The Commission was earlier informed by the Government of India that the question was under consideration. The Commission is of the view that the protracted delay in ratification does no credit to the country, and sends an ambiguous message regarding the commitment of the Government to respect the provision of the convention, when Article 21 of the Constitution already covers the area effectively. The Apex Court has judicially recognized the rights against torture as fundamental rights, making the rights and the corresponding obligation on the State and its agencies a fundamental entrenched right. The Commission therefore reiterated, in the clearest terms that the delay in ratification should end and that the Government should complete the process without further damage to the good faith of the country.
The Commission's views in regard to the need for India to develop a national policy and possibly a national law, fully in consonance with the 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol on the subject have been recounted in its earlier reports. Its remains the opinion of the Commission that the drafting and adoption of such a law is essential. The Commission continued to take *suo-motu* cognizance of news items highlighting the plight of Sri Lankan refugees in Tamil Nadu, Karnataka, and elsewhere. In one such case, based on a report of the Peoples Union for Civil Liberties, an NGO, the Commission examined allegations of human rights violations of 56 refugees held in a special camp in Vellore. While concluding its proceedings in this case, the commission resolved to pursue the general issue relating to the enactment of the national legislation relating to the status of refugees. In response to questions by the commission, the Government of India indicated that the possibility of enacting relevant legislation was being examined, as also the possibility of signing the 1951 Convention on the Status of Refugees and the 1967 Protocol on the subject. The Commission reiterated its view that a small expert group, including experts from outside the structure of Government should be constituted by the Ministry of External Affairs to go in to the matter at an early date. The Commission would invite this expert group, as and when it is constituted, to discuss all aspects relating to a national law needed to protect the right of refugees. The Commission intends to monitor the treatment of refugees in the country and to pursue its recommendation in regard to this matter. These will go a long way in improving human rights standards through education. Along with ensuring human rights of the child, rights of women and various related
laws need to be made aware of among the people through formal and non-
formal education. The right to health too should include the recommendations
on access to health care, measures to initiate legislation on HIV/AIDS and
human rights. All these measures need to be facilitated through education
about human rights values and attitudes.

Access to justice has been universally recognized as one of the most
important basic human rights and this right is included in Article-39 (A) of the
Constitution, a Directive Principle of State Policy with a view to ensuring equal
access to the people irrespective of their Caste, creed or resources. But sadly
this principle was not implemented in its letter and spirit up to 1978. Strong
awareness of rendering legal aid and advice has resulted in Supreme Court's
interpretation of Article-21 and 19 (i) (d) and (5) as incorporating provisions for
legal aid.

The Gujarat High Court, in *Ragehreeban V. State of Gujarat*21
emphasized the duty of the bar and bench to inform litigants about their rights
to legal aid. In this case, a woman filed a case against her husband and in-
laws accusing of cruelty under section 498 and 114 of Indian Penal Code. She
wanted the trial of the case in the city where she was living with her father and
brother. She had no source of income. Her application for maintenance under
section 125 of Code of Criminal Procedure had also been rejected. The Court
granted her request for transfer of the case to her city and made the
observations about informing such women about their rights to legal Aid
authority Act 1987. This case has been illustrated to indicate that lack of

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education places people in very strange situations and that they are unable to assert their basic human rights that are required to eke out a livelihood.

Significant question relating to the right to legal aid is—whether it includes the right to "standard" legal education and necessary facilities for training and functioning for law students one advocated? In view of the combined effort of Article-21 and 39 (a) of the Constitution, the Supreme Court felt the need of a vast number of persons trained in law in order to afford free legal aid. The abuse of reasonable facilities, infrastructures, competent teachers, and staff in law colleges would adversely affect the standard of legal education and this could also effect the quality in providing free legal aid. The quality should on no account suffer in providing free legal aid and if it is not so, the free legal aid will only be a farce or make believe or illusory or a meaningless ritual. The Supreme Court therefore directed the State to provide grant in aid to recognized law colleges so as to enable them to function effectively and in a meaningful manner of well trained or properly equipped law graduates. That is turn enable the State to provided free legal aid and ensure that opportunities for securing justice are not denied to any citizen on account of any disability. These aspects necessarily flow from Article-21 and 39(a) of the Constitution. Following the above decision, the Karnataka High Court included the obligation of the State to provide building and other facilities to the Advocates Associations as the fundamental rights guaranteed under Article-21 of the constitution of India.

Tracing back the development of free legal aid requires one to refer to a couple of decisions of the United States Supreme Court. In USA the judiciary in evolving the fundamental right of legal aid took the initiative. In
Powell V. Alabama, the defendants were prosecuted for the offence of rape. Justice Sutherland delivering the opinion of the Court, held that in a capital case where the defendant was unable to employ a counsel, it is the duty of the Court, whether requested or not necessary requisite of the “due process” clause.

In Gideon V. Wainright, the Court overruled Belts V. Brady, where the free legal aid was refused to the accused. The court extended the right of counsel in all felony trials without the requirement of any special circumstances. In the opinion of the Court any person held into Court, who is too poor to hire a lawyer, cannot be assured a fair trial unless a counsel is provided for him at the State expense. The right to hear was interpreted to include the right to get legal aid, which was inherent in the “due process” clause.

The judiciary has performed a very important role in expounding the cause of human rights education in course of its various judgments. This is not only pertinent to India but to the United States of America as well. In fact in one of the landmark judgments delivered way back in 1954, the United States Supreme Court held in 1954 in Brown VS Board of Education. Chief Justice Earl Warren emphasising the importance of education in society said – “today education is perhaps the most important function of state and local government. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is very foundation of good citizenship. To day it is the principal instrument in awakening the child to

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22 287 US 45
23 372 US, 335
24 (1942) 316 US
25 347 US 483 (1954)
cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful if any child may succeed in life if he is denied the opportunity of an education".

*In Labourers working on Salal Hydro Project Vs State of Jammu & Kashmir*, the Supreme Court considered the root cause of the problem that is why most of the children do not go to schools or why most of the parents do not send their children to schools. It was pointed out that augmenting their meager earning through employment of children is very often the root cause why parents do not send their children to schools. This is also the reason for large dropouts from schools. The Supreme Court took cognizance of this problem and directed the Central Government to persuade the workmen to send their children to a nearby school and arrange not to provide free of charge books and other facilities such as transportation. The Court also suggested that whenever the government undertakes a construction project, which is likely to last for some months, the government should provide that the children of construction workers, who are living at or near the project site should be given facilities for schooling. If the construction work is not done from the contractor then the necessary provision should be made in the contact with the contactor.

"In *Mohini Jain Vs State of Karnataka* , the question considered was 'whether a citizen has a fundamental right to education for a medical, engineering or other professional degree'. The question whether the right to primary education, as mentioned in Article 45 of the Constitution of India is a fundamental right under Article 21 did not arise in Mohini Jain's case. The

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26 1984(3) SCC 538
27 AIR 1992 SC 1858
Hon'ble judges further held in the case that no observation or finding on the said question was called for" " we are of the view that these arguments as also the arguments of counsel of the other side and the observations in decisions relied upon by them would need a through consideration, if necessary by a larger Bench in a case where the question squarely arises". It was held that there is no Fundamental Right to education for a professional degree that follows from Article21 of the Constitution.

In State of Madhya Pradesh V Promod Bharitya\textsuperscript{28}\ the apex court held that every child has the right to free education until he completes the age of 14 years. Thereafter his right to education is subject to the limits of economic capacity and development of the State. The right to education is implicit in the right to life and personal liberty. In M.C.Mehta Vs State of Tamil Nadu (1991), the Supreme Court has held that in terms of Article 45, children should get free and compulsory education until they complete the age of 14 years. It, however, observed that the provision of Article 45 in the Directive Principles of State Policy has still remained a far cry and though according to this provision all children up to the age of 14 years are supposed to be in schools, economic necessity forces grown up children to seek employment.

So, even before 86\textsuperscript{th} Amendment of the Constitution, the judiciary had recognized right to education as a fundamental right under Article 21.

The judiciary has interpreted different provisions of laws and has given necessary directions to the government or the employers so that the rights of the child labour can be safeguarded.

\textsuperscript{28} 1975 (2) SCC 148
In *Sheela Barse Vs Union of India*\(^{29}\) the Supreme Court held that Article 39(f) of the Constitution provides that the State shall direct its policy towards securing the goal that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and the childhood and youth are protected against exploitation and against moral and material abandonment. The Apex Court further held that though various States have enacted children Act for fulfillment of constitutional obligation for welfare of children under Article 39(f) yet it is not enforced in some States and the court directed that such beneficial statutes should be brought into force and administered without delay.

Supreme Court also emphasized in *Unni Krishnan V. state Andhra Pradesh*\(^{30}\), the right to education implicit in the right to life and personal liberty qualified under Article 21 of the Constitution of India must be considered in the Right of Directive Principles of State Policy enshrined in part-IV of the Constitution. The provision of the part-III and IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal indicated in part IV.

In *Unni Krishnan V. State of Andhra Pradesh*\(^{31}\) the Supreme Court observed that the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 of the Constitution and the State can not deprive the student of his education.

*Vardhan Chandel Vs University of Delhi* has held that education is a fundamental right under the Constitution. The court also observed that expression of life and personal liberty in Article 21 of the Constitution includes

\(^{29}\) AIR 1986 SC 1773  
\(^{30}\) AIR 1993 SC 2178  
\(^{31}\) ibid
a variety of rights, though they are not enumerated in part III of the Constitution. It held that they are necessary for the full development of the personality and all aspects of the liberty of the individual.

This right can be denied only means of 'procedure established by the law' as contemplated in Article 21 of the Constitution. The procedure to be fair, just and reasonable must pass a test under Article 14, 19 and 21 of the Constitution.

In Chameli Singh Vs State of Uttar Pradesh\(^{32}\), the Supreme Court held that the right to live implies the right to education along with other rights. Article 41 of the Constitution directs the State to provide education to all. Article 45 provides free and compulsory education to children and Article 46 enjoins the State to promote education to the weaker section of the people. However, in Indra Sawhney Vs union of India\(^{33}\), the Supreme Court clarified that the expression weaker section connotes all, which are rendered weaker due to various causes, like poverty, natural calamity or physical handicap.

In Murli Krishna Public School case also the Andhra Pradesh High Court observed that right to education of the dalits is a fundamental right and it is the mandatory duty of the State to provide adequate opportunities to advanced educational interests by establishing schools.

By this decision, the Court recognised the need of providing better educational opportunities for the Dalit children. The Dalit who were rejected earlier have the fundamental right to education and they can compel the State to take positive action to provide educational facilities to their children. Any failure on the part of the State to provide to better and adequate educational

\(^{32}\) AIR 1996 SC 1051
\(^{33}\) AIR 1993 SC 47
facilities, economic support and proper atmosphere to the children belonging to the lower strata of the society is violative of not only Article 45, but also Article 21 of the Constitution.

"We must hasten to add that just because we have relied upon some of the directive principles to locate the parameters of the right to education implicit in Article 21 of the constitution, it does not follow automatically that it includes within the preview of Article 21 of the constitution, we have held the right to education to be implicit in the right to life because of its inherent fundamental importance. As a matter of fact we have referred to Articles 41, 45 and 46 merely to determine the parameter of the said right."

India is one of the non-western nations facing the challenges of a growing paradox that affects the human rights education scene. Particularly so despite avowed commitment to the constitutional values and international Covenants the Indian State has been systematically engaged in the erosion of basic human rights of its own population. It appears strange that a nation built on the premise of liberal and democratic values, the world's largest democracy, and a sovereign socialist secular republic with a comprehensive charter of human rights protected by an independent judiciary should and find her in the company of some of the most authoritarian regimes in Asia and Africa censured for their human rights record.34 The erosion of human right of the people to whatever extent has been possible due to the lack of an effective legal regime concerning human rights education. Moreover, though of late there have been concerted efforts to train personnel of the law enforcements machinery to abide by human rights norms, the lack of an effective and coordinated and scientifically based curriculum in their training manuals has facilitated the violation of human rights. People due to lack of basic education in human rights are not aware of their rights as well as of the

measures they are entitled to in order to assert and vindicate their rights, has been responsible for such a situation. However all is not bleak as is being projected above and the investigator believes that much has been achieved. It is only to reflect different perceptions that the aforesaid observations have been considered. In fact in the matter of civil liberties some material improvement has been brought about in the post independence period. The higher judiciary as indicated above along with the free press and the non governmental sector, as referred to elsewhere in this investigation, has succeeded to a large extent in protecting and promoting through education the fundamental rights of the people. The broad interpretation given by the Supreme Court to Article 14, 19 and 21 have succeeded to a noticeable extent in establishing the rule of law and in the process promoting value based education as well. On the legislative front the right to education along with the right to information has ushered in a constitutional and legal regime and if properly implemented there is treason to believe that the shortcomings in the matter of access to education in general and human rights education in particular will be progressively removed. Human rights being waged under very trying circumstances will grow as efforts are being made to make human rights education to generate wider awareness. The investigation so far has revealed that the process is on though at a preliminary stage. This is however with the caveat that despite significant role of the judiciary in ensuring that the principles of the Constitution it requires stronger legal and moral adherence to international norms of human rights and justice among other things. Hence much remains to be overcome. The Constitution being the cornerstone of a

35 Chapter IV
liberated nation endowed with a unitary judicial system with a unique supreme judicature at the apex provides access to every citizen against injustice with a strong Indian humanism as a paradigm of secular, socialist democratic republic. Once the basic values are inculcated in her people through education the country can certainly achieve much progress in the liberated comity of nations. Justice Bhagwati essentially had this in mind in the *Hussinara Khatoon Vs. Home Secretary, State of Bihar*\(^{36}\) case when he mentioned of the mass illiteracy prevailing at that point of time that came in the way of exercising their right to free legal aid. In the said judgment he therefore held that the subordinate judiciary had an obligation to offer free legal aid to those accused who on account of poverty or illiteracy or indigence could not afford a lawyer to defend himself.

Human rights can be secured and promoted in the world only when each citizen of the country adopts the right kind of values for guiding his conduct. He should always be striving to secure human rights by discharging his duties towards others. He should always be ready to serve others. There is therefore a need to adopt the ancient values through imparting of value education in the human rights curriculum through adoption of the gurukul system of education with necessary modifications in order to inculcate such qualities among its citizens.

In a democracy the interplay between social opinion and the law molding activities of the State is very obvious. \(^{37}\) The vital social issues are being expressed not through the elected representatives but through public discussion, in press, radio, other electronic media and public discourses.

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\(^{36}\) A.I.R. 1979 SC 1369  
\(^{37}\) Manish Arora, *Career in Law*, Universal Publishing House, G.T. Kanal Road, Delhi-110033, 2004 pp 50-51
Therefore a determined and courageous individual might initiate and pursue a legal change in the face of government of parliamentary lethargy and an indifferent public opinion. The determination and courage in every individual is gifted, but in most cases he never comes to know that he possesses these attributes. The same individual after acquiring human rights education becomes a completely different person and can identify his qualities prerequisite for any social change. Through the acquisition of human rights education one can develop the attributes of different nuances of the legal system which helps him or her to become more involved and concerned of the rights and duties of his own self as well as that of the society and the State. One can further become more precise, comprehensive and logical in his thoughts and actions. In other words once can become more assertive. An educated individual equipped with human rights education becomes more enlightened in his thought and actions that leads to responsible behaviour.

The investigator has engaged himself in the above discussion since it is very much material to education in general and human rights education in particular. From the foregoing analysis of the legal position of human rights education in India the investigator feels that the Constitution has a very solid foundation in human rights jurisprudence, yet people had to depend on the judiciary to a large extent for asserting their right to education. The incorporation of education as a fundamental right is of great significance, only time will reveal to what extent the same is translated into action and made really meaningful and effective. The apex judiciary in particular may have to continue to play a stellar role in promoting human rights education in the absence of an effective legal mechanism in the sphere of human rights
education. Though concerted efforts have been witnessed in promoting human rights education the need of the hour is to provide for an affective legal regime in order to make it obligatory on the part of the policy makers and educational institutions as well as the non formal and informal sectors to involve themselves in concrete terms to usher in a society based on human rights and duties. This is not a bureaucratic task or one that can be left to a handful of national commissions, however well mentioned or industrious. All thinking elements of civil society must be involved.