CHAPTER - II
BACKGROUND
CHAPTER – II
BACKGROUND

In this socio legal research, the provisions related to primary education in the Indian Constitution are mentioned in Article 21 A as a fundamental right to children. Corresponding union legislation to this Article is the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009) and the Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011 which constitute basic legal materials and are the background of the present study. In this chapter importance of primary education and evolution of right to education to children are discussed and traced. In the first part of this chapter right to education in the international framework and regional framework are highlighted. In the second part the position of right to education in developed countries such as U.K and U.S.A is analyzed. Right to education in the Asian Countries such as China and Japan are explained in the third part of this chapter. The status of right to education in SAARC Countries such as Sri Lanka and Pakistan is discussed in the fourth part of this chapter. These four parts would highlight the right to education at the global level.

In the fifth part right to education at the National Level is analyzed normatively. Constitutional provisions, legislative guarantees, executive actions, judicial responses, administrative structure of the school system, major initiatives, programs and schemes related to implementation of RTE are analyzed. As far as Chennai city is concerned demographic features of the Chennai city, administrative structure of Chennai city with reference to right to education of children, mechanism of enforcing right to education of children, stakeholders involved in order to implement the provisions of right to education of children stated in the RTE Act and the Tamil Nadu Rules are explained. The RTE Act and Rules prescribe the rights and responsibilities of the stakeholders. They are analyzed normatively.

Education is the backbone in everyone’s life. Education is the powerful element which has an immense impact on the human society. It trains the human mind to think and to take the right decision in all spheres. Man becomes a better rational animal when he is educated. It is through education a man sharpens his knowledge, makes use of it to achieve success in life. Success of a man spreads goodness to the society in which he lives in and even throughout the world. An uneducated person who cannot read and write has closed all vital means of acquiring knowledge and wisdom. Man can attain them through books and
other media. An educated person lives in a room with all windows open towards the outside world, allow the knowledge and wisdom to flow freely. Only with education a man may become a complete human being and one can give out the best of oneself in everything he does in life. Early civilizations would have struggled to survive and thrive as a culture. It is a universal truth that education empowers the people to the fullest development of human personality, strengthens the human rights and helps to overcome exploitations. Right from childhood, hearing is the first valuable human right a child receives from parents, teachers etc.

2.1 IMPORTANCE OF EDUCATION FOR CHILDREN

Education moulds a human being from childhood. It equips with all that is needed to make the dreams come true in one’s life. Only by means of education knowledge passes from one generation to the next generation. Education is the pathway to brilliant career opportunities. It helps to reach great heights in career and growth in everyone’s life. It is a day to day transformation for living one’s life in a better way by participating successfully in the modern etiquettes of life. Education is empowerment. It enables socio-economic mobility, an instrument to trigger growth and development. There has been a paradigm shift in the sphere of education.

The right to education originates from the apparent motion that it is obligatory for the state to provide education to its citizens.1 The core of right to education relates to its substance, which differs from education itself. Effective and transformative education should be the result of the exercise of the right to education, which is a universal human right. The right is about the entitlement to claim the substance of it. It relates to the possibility of demanding the right to education and making it justiciable. The substance of the right to education is given in broad terms by international legislation but real meaning is given to it as national legislators incorporate it. The process of incorporation is more important than the process of adhering to an international treaty because it is this incorporation that entitles people to demand for their right to education.

The importance of education cannot be neglected by any nation. And in today’s world, the role of education has been even more vital. It is an absolute necessity for economic and social development of any nation. In the context of democratic form of government like

---

1 Article 45 of the Constitution of India.
India, education is at once a social and political necessity. Even several decades ago, Indian leaders harped upon universal primary education as a desideration for national progress. It is rather sad that in this great land, where knowledge first lit its torch and where the human mind soared to the highest pinnacle of wisdom, the percentage of illiteracy has been appalling. Today, the foremost need to be satisfied is, eradication of illiteracy which persists in a depressing measure. A true democracy is one where the education is universal and the people ought to know how to govern themselves. Education is undoubtedly a human right which has been transformed into a “luxury” instead of a right in many places. Signs of that is observed all through the world.

2.1.1 Importance of Primary Education

Childhood days are very important in everyone’s life. Whatever children receive during childhood is the basic foundation for a brighter future. Primary education plays the main role and helps build a better future in everyone’s life. The cornerstone of primary education objectives has always been the balanced development of children’s personality by creating situations which will help them in the conquest of knowledge and the development of appropriate attitudes and skills, thereby rendering them capable for their future undertaking of responsibilities and actions in the constantly changing world. The basic aim of primary education is to organize, ensure and offer all children – regardless of age, gender, family or social background and intellectual abilities – learning opportunities that will allow them to:

(i) Achieve a balanced cognitive, emotional and psychomotor development while taking full advantage of the means offered by modern technology;
(ii) Successfully resolve the various problems they could potentially face and the possible difficulties they might find in adapting to their school and wider environment;
(iii) Develop positive attitudes towards learning;
(iv) Develop social understanding, resiliency, belief in humanitarian values, respect for cultural heritage and human rights;
(v) Appreciate the ‘beautiful’ and develop a disposition for creativity and love towards life and nature, so as to become effectively sensitized towards issues of environmental sustainability and environmental improvement.²

² unesdoc.unesco.org, visited on 12/11/2016.
The right to education is recognized, promoted and protected at all levels from national, regional to international. “Education is of prime importance by which economically and socially marginalized children can lift themselves out of poverty and obtain the means to participate as a complete human being in the society. Education plays an important role in safeguarding children from exploitation, hazardous works, human trafficking, beggary, all forms of forced labour and child labour, promoting human rights and democracy, protecting the environment, and controlling population growth.” The right to education is a fundamental human right. It is the main right to realize other human rights. Achieving the right to basic education, as a fundamental human right was one of the biggest development challenges faced by the international and national community today. Millions of children remain deprived of basic education.

2.1.2 Primary Education and Basic Education

According to Article 13(2)(a) of the ICESCR, primary education shall be compulsory and free to all. Primary education includes the elements of availability, accessibility, acceptability and adaptability, which are common to education in all its forms and at all levels. The Committee took guidance on the proper interpretation of the term ‘primary education’ from the World Declaration on Education for All which states: ‘The main delivery system for the basic education of children outside the family is primary schooling.’ Primary education must be universal, ensure that the basic learning needs of all children are satisfied, and take into account the culture, needs and opportunities of the community. The Declaration further defines ‘basic learning needs’ as ‘essential learning tools, such as literacy, oral expression, numeracy, and problem solving and the basic learning content such as knowledge, skills, values, and attitudes required by human beings to be able to survive, to develop their full capacities, to live and work in dignity, to participate fully in development, to improve the quality of their lives, to make informed decisions, and to continue learning’.

---

3 General Comment No. 13 on the Right to Education, Article 13 of the Covenant, adopted by the UN Committee on Economic, Social and Cultural Rights at its 21st session in 1999.
5 Article 5 of the World Declaration on Education for All, 1990.
6 Article 1 of the World Declaration on Education for All, 1990.
While primary education is not synonymous with basic education, there is a close correspondence between the two. As formulated in Article 13(2)(a), primary education has two distinctive features: it is ‘compulsory’ and ‘available free to all’. The element of compulsion serves to highlight the fact that neither parents, nor guardians, nor the state are entitled to treat as optional the decision as to whether the child should have access to primary education. The nature of this requirement is unequivocal. The right is expressly formulated so as to ensure the availability of primary education without charge to the child, parents or guardians. Fees imposed by the government, the local authorities or the school, and other direct costs, constitute disincentives to the enjoyment of the right and may jeopardize its realization. It is reported that out of the children between the age of 5 to 14 years, 72 million have no access to basic education which is a sorry state of affairs.

I. GLOBAL SETTING - RIGHT TO EDUCATION

2.2 INTERNATIONAL ORGANISATIONS AND RIGHT TO EDUCATION

The international community reaffirmed the right to education at the World Education Forum in 2000. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) has placed the right to education at the forefront of its activities and the Education for All (EFA) is high on its agenda. The Dakar Forum agreed on six goals, which were considered to be essential, attainable and affordable, given strong international commitment and resolve. The right to education is an integral part of UNESCO’s

---

7 General Comment No. 11, Plans of action for Primary Education, Article 14, para. 6.
8 Ibid, para 7.
10 The World Education Forum, which took place in Dakar, Senegal, in April 2000, was the first and most important event in the education at the dawn of the new century. By adopting the Dakar Framework for Action, 1,100 participants of the Forum reaffirmed their commitment to achieving Education for All by the year, 2015 and entrusted UNESCO with the overall responsibility of coordinating all international players and sustaining the global momentum. Available at www.unesco.org/education/efa/wef_2000/, visited on 15/03/2016.
11 The six goals are as follows: (1) expanding and improving comprehensively early childhood care and education, especially for the most vulnerable and disadvantaged children; (2) ensuring that by 2015 all children, particularly girls, children in difficult circumstances and those belonging to ethnic minorities, have access to and complete free and compulsory primary education of good quality; (3) ensuring that the learning needs of all young people and adults are met through equitable access to appropriate learning and life skills programs; (4) achieving a 50 percent improvement in levels of adult literacy by 2015, especially for women, equitable access to basic and continuing education for all adults; (5) eliminating gender disparities in primary and secondary education by 2005, and achieving gender equality in education by 2015, with a focus on ensuring girls’ full and equal access to and achievement in basic education of good quality; (6) improving all aspects of the quality of education and ensuring excellence of all so that recognized and measurable learning outcomes are achieved by all, especially in literacy, numeracy and essential life skills. The Dakar Framework for Action, Education for All: Meeting our Collective Commitments, adopted by the World
constitutional mandate. The constitution of UNESCO expresses the belief of its founders in “full and equal educational opportunities for all”. The Dakar Framework for Action committed governments to strengthening national and regional mechanisms to ensure that EFA was on the agenda, inter alia, of every national legislature. It also emphasized that at the national level concrete measures are to be taken so that legal foundations of the right to education are strengthened in national systems. The international community has set a target that by 2015 children everywhere, both boys and girls, will be able to complete a full course of primary schooling.\textsuperscript{12}

\subsection*{2.3 INTERNATIONAL FRAMEWORK}

Several international conventions, numerous writings and reports by United Nations (UN) bodies stress the importance of the fundamental right to education.\textsuperscript{13}

\subsubsection*{2.3.1 U.N. Framework}

Universal Declaration of Human Rights, 1948 states that everyone has the right to free and compulsory elementary education which shall be directed to the full development of human personality. It also states that Parents have a prior right to choose the kind of education that shall be given to their children.\textsuperscript{14} International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) devotes two articles to the right to education namely, Article 13 and 14. Article 13 contains the longest provision, and is the most wide-ranging and comprehensive article on the right to education in international human rights law. It states that the state parties to the present covenant recognizes the realization of this right by providing compulsory primary education shall be available free to all. It also mentions about the state parties to the present covenant undertake to have respect for the liberty of parents and legal guardians to choose schools for their children.\textsuperscript{15} It also states that each state party to the present Covenant which at the time of becoming a party, has not been able to secure in its

\footnotesize
\begin{itemize}
\item 1\textsuperscript{89} States adopted the UN Millennium Declaration, www.undp.org, visited on 26/04/2016; General Assembly Resolution, 55\textsuperscript{th} session, held on 18 September 2000.
\item Article 26 of the Universal Declaration of Human Rights; Articles XII and XXXI of the American Declaration on Rights and Duties; Article 18 (4) of the International Covenant on Civil and Political Rights; Article 12 (4) of American Convention on Human Rights and Article 17 (1) of the African Charter on Human and People’s Rights.
\item Article 26 of the International Covenant on Economic, Social and Cultural Rights.
\item Article 13, Ibid.
\end{itemize}
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 of the principle of compulsory education free of charge for all within a reasonable number of years. In spite of this obligation a number of state parties have neither drafted nor implemented a plan of action for free and compulsory primary education. This obligation is a continuing one and states parties to which the provision is relevant by virtue of the prevailing situation are not absolved from the obligation as a result of their past failure to act within the two-year limit. The plan must cover all of the actions which are necessary in order to secure each of the requisite component parts of the right, and must be sufficiently detailed so as to ensure the comprehensive realization of the right. This is as interpreted in the light of the World Declaration on Education for All.

2.3.1.1 Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child (CRC) was put into force in 1990. “The convention undertakes the obligation to provide the children of the word a uniform and common respect for their basic human rights.” The convention requires that “The state parties recognize the right of the child to education” State Parties recognize the right of the child to education with a view to achieving the right to education progressively on the basis of equal opportunity by making primary education compulsory and free to all by taking measures to encourage regular attendance at schools and the reduction of drop–out rates. It also states that the state parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present convention. It further states that the state parties shall promote and encourage international cooperation in matters relating to education. According to this convention state parties to the convention agree that the education of the child shall be with

16 Article 14, Ibid.
17 General Comment No. 11, supra note 7, para 1.
18 In 1990, delegates from 155 countries, as well as representatives from some 150 organizations, agreed at the World Conference on Education for All in Jomtien, Thailand, which was held from 5 – 9 March 1990, to universalize primary education and massively reduce illiteracy before the end of the decade and this was finally reflected in Article 1 of World Declaration on Education. Available at www.unesco.org/education/efa/edforall/background/jomtien_declaration.html, visited on 23/02/2017.
the objective to direct to the development of the child’s personality, talents, mental and physical abilities to their fullest potential; the preparation of the child for responsible life in a free society, in the spirit of understanding peace, tolerance, equality of sexes, friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; respect for the natural environment.23 “The provision includes making primary education compulsory and available free to all, encouraging the development of different forms of secondary education, making higher education accessible to all, making educational and vocational information and guidance available, and taking measures to encourage regular attendance at schools and reduction of drop-out rates.”24 With all of these affirmative obligations, the right to education under the Children’s Convention is a positive right.

2.3.1.2 Convention on the Elimination of All Forms of Discrimination against Women, 1979

This convention states that 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 the basis of equality of men and women.25

2.3.1.3 Convention on the Elimination of All Forms of Racial Discrimination, 1966

In compliance with the fundamental obligations laid down in Article 2 of this convention, State parties undertake to prohibit and to eliminate racial discrimination in all its forms and guarantee the right to everyone the right to education without distinction as to race, colour or national or ethnic origin, to equality before the law.26

2.3.1.4 Convention on the Protection of the Right of All Migrant Workers and Members of their Families, 1990

The provision states that each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public educational institutions or schools shall not be refused or limited

23 Article 29, Ibid.
24 Ibid
by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child’s stay in the State of employment.  

2.3.1.5 Convention Relating to the Status of Refugees, 1951

It states that the contracting states shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.  

2.3.1.6 International Covenant on Civil and Political Rights, 1966

It states that States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.  

2.3.2 UNESCO Framework

2.3.2.1 UNESCO Convention Against Discrimination in Education, 1960

The UNESCO Convention constitutes the UNESCO framework. It states that the state parties to this convention should 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 of treatment in the matter of education and in particular to make primary education free and compulsory.  

2.3.3 ILO Framework

2.3.3.1 ILO Convention No. 138 on the minimum age for employment, 1973

The ILO Convention constitutes the ILO framework. It states that each member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to ensure access to free basic education. It also states that members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support

29 Article 18 of International Covenant on Civil and Political Rights, 1966.
30 Article 4 (a) of the UNESCO Convention.
for social and economic development, poverty eradication programs and universal education.32

2.4 REGIONAL FRAMEWORK

This part of analysis deals with the framework related to various charters, declarations, conferences etc. that are dealing with RTE. They are as follows:

2.4.1 European Framework

2.4.1.1 Revised European Social Charter (1996)

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed. This charter aims at the following: to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose,33 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.34

2.4.1.2 European Union Charter of Fundamental Rights

Everyone has the right to education and the possibility to receive free compulsory education.35

2.4.2 Inter-American Framework

2.4.2.1 Charter of the Organisation of American States, 1967

The Member States will exert the greatest efforts, in accordance with their constitutional processes, to ensure the effective exercise of the right to education, on the following bases: Elementary education, compulsory for children of school age, shall also be

32 Article 8, Ibid.
33 Article 17 (1) (a), Ibid.
34 Article 17 (2), Ibid.
35 Article 14 (2) of EUROPEAN UNION Charter of Fundamental Rights.
offered to all others who can benefit from it. When provided by the State it shall be without charge.\textsuperscript{36}

\subsection*{2.4.2.2 Additional Protocol to the American Convention on Human Rights, Protocol of San Salvador, 1988}

The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education. Accordingly, primary education should be compulsory and accessible to all without cost.\textsuperscript{37} Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction.\textsuperscript{38} It prescribes that every child has the right to free and compulsory education, at least in the elementary phase.\textsuperscript{39}

\subsection*{2.4.2.3 Inter-American Democratic Charter, 2001}

Education is key to strengthening democratic institutions, promoting the development of human potential, and alleviating poverty and fostering greater understanding among the peoples. To achieve these ends, it is essential that a quality education be available to all, including girls and women, rural inhabitants and minorities.\textsuperscript{40}

\textbf{(A) RIGHT TO EDUCATION IN DEVELOPED COUNTRIES}

Right to education has been transformed from moral obligation to legal obligation. In this transformation developed countries are pioneers. Rest of the countries followed from time to time based on their socio – economic and political conditions. In this part of the analysis position of RTE in developed countries is analyzed from the perspective of RTE in U.S.A and U.K.

\section*{2.5 Education in the United States of America}

The right to education in the United States of America has a long and varied history. Without formal recognition of a federal fundamental positive right to education it has always been a localized practice provided by the states and local authorities. Fundamental right to

\begin{itemize}
\item Article 49 (a) of Charter of the Organisation of American States, 1967.
\item Article 13 (3) (d), Ibid.
\item Article 16, Ibid.
\item Article 16 of Inter-American Democratic Charter, 2001.
\end{itemize}
education has not been explicitly enumerated in the U.S Constitution.\textsuperscript{41} The purview of the tenth amendment has entrusted the right to education in the U.S. to the states.\textsuperscript{42} ‘With regard to education, states not only control access to education but also have the responsibility to provide every child with a free, appropriate education.’\textsuperscript{43} Citizens will have to depend on the state constitutional and statutory grants to gain access to education.

Education in the United States is provided by Public Schools and Private Schools. Depending on the state compulsory education is provided starting from age 5 and 8 and ending somewhere between ages 16 and 18. The requirement can be satisfied in public schools, state – certified private schools or an approved home school program. Education in the U.S. is divided into a number of distinct educational stages. Most children enter the public education system around ages 5 or 6. Education is mandatory till age 16. In U.S.A schools are of 3 levels. 6 years of primary (elementary) school, three years of middle or junior high school and 4 years of high school where children are divided by age – groups into grades ranging from kindergarten and 1\textsuperscript{st} grade for the youngest children upto 12\textsuperscript{th} grade as the final year of high school. Primary education is from four to seven years, i.e. grades 1 to 4, 1 to 7 respectively. Each state determines what grade range constitutes primary education called “elementary education”. There is no prescribed national structure, curriculum or governing law. All laws and policies are set and enforced by the 50 state governments and over 14, 000 local school districts. US is the top most country which spends more per student on education than any other country. In 2014, U.S. education is rated as 14\textsuperscript{th} best in the world just behind Russia.\textsuperscript{44}

Between 1750 and 1870 parochial elementary schools were started. In 1823, 1\textsuperscript{st} normal school commenced. Laws were passed by states to make schooling compulsory between 1852 (Massachusetts) and 1917 (Mississipi). By 1870, every state had free elementary schools. Starting from about 1876, 39 states passed a constitutional amendment to their state constitutions called Blaine Amendments after James G. Blaine.\textsuperscript{45} Following the American civil war, responding to many competing academic philosophies being promoted at

\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid.
the time, an influential working group of educators known as the committee of ten established National Education Association which recommended that children should receive 12 years of instruction consisting of 8 years of elementary education (also known as grammar schools) followed by 4 years in high school in 1892. 72% of children attended schools by 1910. Private schools spread during this time. The high school movement resulted in rapidly increasing public high school enrolment and graduations in the year between 1910 and 1940. 100% of children attended school by 1930 (excluding children with significant disabilities or medical concerns).

The legislative framework on right to education consists of several acts namely the


(i) The National School Lunch Act, 1946

The National School Lunch Act, 1946 which is still in operation, provided low-cost or free school lunch meals to qualified low-income students through subsidies to schools, based on the idea that a “full stomach” during the day supported class attention and studying.46

(ii) National Defense Act, 1958

The National Defense Education Act (NDEA) was signed into law on September 2, 1958, providing funding to United States education institutions at all levels.47

(iii) Elementary and Secondary Education Act, 1965

The far reaching Elementary and Secondary Education Act was passed as a part of President Lyndon. B. Johnson’s war on poverty. It was the most expansive federal education bill ever passed. It is significant to note the bill was enacted less than three months after it was introduced, as part of President Lyndon B. Johnson’s “War on Poverty”. Through a special source of funding, the law allocated large resources to meet the needs of educationally deprived children, especially through compensatory programs for the poor.

46 Ibid.
47 Ibid.
The Congress declared a policy of the United States to provide financial assistance in recognition of the special educational needs of low-income families and the impact that concentration of low-income families have on the ability of local educational agencies to support adequate educational programs to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means (including preschool programs) which contribute to meeting the special educational needs of educationally deprived children.” 48

(iv) The Education for All Handicapped Children Act, 1975

The Education for All Handicapped Children Act (EHA) established funding for special education in schools. 49

(v) Individuals with Disabilities Education Act. (IDEA)

In 1990 The Education for All Handicapped Children Act, 1975 was replaced by the Individuals with Disabilities Education Act. This Act creates a federal positive fundamental right to education for those who are disabled. 50 (IDEA), which placed more focus on students as individuals and also provided for more post high school transition services.

(vi) Improving America’s School Act, 1994

To reform education this Act was a major part of the Clinton’s administration’s efforts. It was signed in the gymnasium of Framingham High School. It reauthorized the Elementary and Secondary Education Act of 1965.

(vii) No Child Left Behind Act, 2002 (NCLB)

Former President George W. Bush passed the No Child Left Behind Act. This Act was designed to improve student improvement with various far ranging provisions. ‘The purpose of NCLB Act is to ensure that all children have a fair, equal and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.’ 51

49 Supra note 43.
50 Supra note 41.
NCLB is seen as a federal attempt to improve educational equity and reduce the necessity to bring constitutional claims or educational malpractice suits.”52 “At the very least, this over 1,100 page document could be seen as evidence of a federal statement of a positive fundamental right to education.”53 “Its provisions appear to express willingness by the federal government to undertake an obligation to provide some guaranteed right to education and federal supervision and accountability of that right if the states do not abide or follow the mandates of the act. This idea might not have been the intention of Congress but it provides a good resource, along with tradition of the importance of education, other statutes, and prior decisions, in helping along the idea of a positive fundamental right to education under the Due Process Clause of the Constitution.”

(viii) Every Student Succeeds Act, 2015

President Barack Obama signed this legislation on December 2015 replacing No Child Left Behind Act.

Education is a hallmark of civic life in America, so it has no surprise that it has been at the center of many landmark controversies over the years. The Supreme Court cases related to education that impacted both constitutional law and the public-school experience are analyzed briefly:

In 1954 Supreme Court made racial desegregation of public elementary and high schools mandatory, although private schools expanded in response to accommodate white families attempting to avoid desegregation by sending their children to private secular or religious schools. Arguably the most well – known ruling of the 20th century, Brown overturned Plessy v. Ferguson and established that “separate educational facilities are inherently unequal.” The Warren Court’s unanimous decision explained that the separate but equal doctrine violated the Equal Protection Clause of the 14th Amendment, and ordered an end to legally mandated race- segregated schools. While this decision marked only the beginning of a prolonged struggle to achieve actual integration, its impact cannot be understated.54

53 Supra note 51, p. 400.
The reliance on local funding sources has led to a long history of court challenges about how states fund their schools. These challenges have relied on interpretations of state constitutions after a U.S. Supreme Court ruling in San Antonio Independent School District v. Rodriguez\textsuperscript{55} that school funding was not a matter of the U.S. Constitution. The state court cases, beginning with the California case of Serrano v. Priest\textsuperscript{56} were initially concerned with equity in funding, which was defined in terms of variations in spending across local school districts. More recently, state court cases have begun to consider what has been called 'adequacy.' These cases have questioned whether the total amount of spending was sufficient to meet state constitutional requirements. Perhaps the most famous adequacy case is Abbott v. Burke \textsuperscript{57} which has involved state court supervision over several decades and has led to some of the highest spending of any U.S. districts in the so-called Abbott districts. The background and results of these cases are analyzed in a book by Eric Hanushek and Alfred Lindseth. That analysis concludes that funding differences are not closely related to student outcomes and thus that the outcomes of the court cases have not led to improved policies.\textsuperscript{58}

In McCleary v. Washington State\textsuperscript{59}, Supreme Court decision that found the state had failed to "amply" fund public education for Washington's 1 million school children. Washington state had budgeted $18.2 billion for education spending in the two-year fiscal period ending in July 2015. The state Supreme Court decided that this budget must be boosted by $3.3 billion in total by July 2019. On September 11, 2014, the state Supreme Court found the legislature in contempt for failing to uphold a court order to come up with a plan to boost its education budget by billions of dollars over the next five years. The state had argued that it had adequately funded education and said diverting tax revenue could lead to shortfalls in other public services.

Most U.S. public schools, the San Antonio Independent School District in Texas was funded in part by local property taxes. The District sued the state on behalf of the students in its district, arguing that since property taxes were relatively low in the area, students at the public schools were being underserved due to lack of funding compared to wealthier districts. They argued that the Equal Protection Clause of the 14\textsuperscript{th} Amendment mandates equal funding among school districts, but the Court ultimately rejected their claim. It held that there is no

\textsuperscript{55} 411 U.S. 1 1973.
\textsuperscript{56} 5 Cal.3d 584 1971.
\textsuperscript{57} 100 N.J. 269, 495 A.2d 376., 1985.
\textsuperscript{58} Ibid
\textsuperscript{59} 269 P.3d 227 Wash 2012.
fundamental right to education guaranteed in the Constitution, and that the Equal Protection Clause doesn’t require exact “equality or precisely equal advantages” among school districts.60

2.6 Education in the United Kingdom

The administration of education policy in the United Kingdom began in the 19th century. UK has a long constitutional tradition that goes back to Magna Carta (1215). Britain’s constitution is to be found partly in conventions and customs partly in statutes. Moreover, the respect for rights is based on the so-called “residual” principle: what is not explicitly forbidden by law is allowed.

Education in the United Kingdom is a devolved matter with each of the countries of the United Kingdom having separate systems under separate governments. The U.K. government is responsible for England while the Scottish government, the Welsh Government and the Northern Ireland Executive are responsible for Scotland, Wales and Northern Ireland respectively. Official mandation of education began with the Elementary Education Act, 1870 for England and Wales and the Education (Scotland) Act, 1872 for Scotland. With respect to right to education there are variations. It varies from province to province.61

The system of education is determined by the National Education Acts. Schools in England are functioning with the support from the public funds paid to the local education authorities who are responsible for organizing the schools in their areas. The education provided is free. On outlining the basic features of public education in Britain, it is observed that inspite of most educational purposes England and Wales are treated as one unit, though the system in Wales is different from that of England. Scotland and Northern Ireland have their own education systems.

Compulsory education ranges for all children aged 5 to 18 either at school or otherwise where the primary education of a child begins at the age of 5. Children between the ages of 3 and 5 are entitled to 600 hours per year of optional, state-funded, pre-school education. The age at which a student may choose to stop education is commonly known as

the “leaving age” for compulsory education. This age was raised to 18. The change took effect in 2013 for 16 years old and 2015 for 17 years old. 93% of children between the ages of 3 and 18 are in education in state – funded schools without charge. Since 1998, there have been six main types of maintained or state funded schools in England: They are academy schools, community schools, free schools, foundation schools, voluntary aided schools, voluntary controlled schools and independent schools.

2.6.1 Compulsory Education in England

In England compulsory education is provided from the age of five to sixteen years. The parents are bound by the duty to ensure that their child receives “efficient full – time education suitable to his age, ability and aptitude, and to any special educational needs he may have, either by regular attendance at school or otherwise.” The highlighting factor in their education system is once a child has reached the age for compulsory education and is admitted in a school it is the duty of the parents to send their children regularly to school. In case of irregularity parents may be punished with a fine for not sending their children regularly to school. Thus, for the children to receive education the duty falls upon the parents that their children are regular in attending school and the local education authorities who are responsible for providing the schools.

In England and Wales, the national curriculum is applicable to children aged 5+. The United Kingdom’s department of education oversees the education of England. The responsibility for implementing policy for public education and state funded schools at a local level rests with the local government authorities. Education system is divided into stages based upon age. The primary education is from 5 to 11 years of age. England also has a tradition of independent schooling and home schooling. Legally parents may choose to educate their children by any suitable means.

Since the 19th century as there is no devolved government for England, the administration of education policy for the nation has been carried out by a number of different British Central government departments. The legislative Acts of education in England are the Elementary Education Act, 1870; the Education Act, 1902; the Education Act, 1944 and the Education Reform Act, 1988.

---

62 Education And Skills Act, 2008
English law prevails largely in the component nation of the United Kingdom of Great Britain and Northern Ireland, England and Wales. The responsibility for the care and protection of children is with their parents as guardians by the law of nature, and on the crown as parents patriae, with the powers of a child’s parents somewhat limited in certain areas by law. There are numerous pieces of legislation that provide children with rights in the area of education.63

Education is governed primarily by the statute and a voluminous amount of secondary legislation and it is funded by the government, although some aspects of the common law continue to exist in the educational setting, such as the duty of care owed by education authorities and their employees regarding the care and supervision of students. It is the duty of the Secretary of State to provide children with education in England and Wales and this duty is typically performed by the Local Education Authorities for each country in England. Education in Wales is a devolved area, meaning that it can pass regulations to address educational issues separately from England.64

2.6.2 Education in Northern Ireland

The Northern Ireland Department of Education functions the education policy in Northern Ireland. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.65 Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.66 The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.67 The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.68 The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard

63 Supra note 61.
64 Ibid.
65 Article 42 (1) of the Constitution of Ireland.
66 Article 42 (2), Ibid.
67 Article 42 (3) (1), Ibid.
68 Article 42 (3) (2), Ibid.

52
for the rights of parents, especially in the matter of religious and moral formation. In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

2.6.3 Education in Scotland

Education policy in Scotland is always on its own lines. Since devolution it has transferred from the defunct Scottish office to the Scottish Executive. Scotland has a long history of universal provision of public education and the Scottish education system is distinctly different from the other countries of the United Kingdom. The principal legislation governing education in Scotland is the Education (Scotland) Act, 1980. The Scotland Act, 1998 fetters the Scottish Parliament legislative control over all education matters. Education Act of 1633 provides universal primary education to Scotland. Similar Act to the English Elementary Education Act was passed in 1872 for Scotland known as the Education (Scotland) Act, 1872. The Act prescribes compulsory education for all children between 5 and 13 inspite of the system of fees to be paid until 1890.

2.6.4 Education in Wales

Until devolution in 1998 education policy in Wales was functioning with that of England. Since then it has been functioning under the Welsh Assembly Government. Education policy in the four constituent countries of the UK has diverged since devolution. It has a similar structure to primary education in England but teaching of the welsh language is compulsory and it is used as the medium of instruction in many schools. For example, England has undergone reforms based on diversity of school types and parental choice, Wales and Scotland concentrate more to the concept of the community – based comprehensive school. Increased differentiation across the four home countries is observed in the systems of governance and regulation – the arrangements for planning, funding, quality – assuring and regulating learning, and for its local administration. Policy in Wales is driven by a “producerist” paradigm emphasizing collaboration between educational partners. Education

---

69 Article 42 (4), Ibid.
70 Article 42 (5)
Researcher David Reynolds also alludes to lower funding in Welsh schools compared to England, echoing similar concerns at university level. He concludes that performance data do not suggest that Wales has improved more rapidly than England, although there are considerable difficulties in making these kinds of assessments. Education in wales is compulsory from the ages 5 to 16.⁷⁴ The legislative framework of Britain consists of several Acts namely i. Education Act, 1870; ii. Education Act, 1880; iii. Balfour Education Act, 1902; iv. Balfour Education Act, 1944. These Acts are briefly discussed hereunder:

(i) Education Act, 1870

It is the first piece of legislation to deal specifically with the provision of education in Britain at the national scale. The Act allowed voluntary schools and established a system of 'school boards' to build and manage schools in areas where they were needed. The boards were locally elected bodies which drew their funding from the local rates. Unlike the voluntary schools, religious teaching in the board schools was to be 'non-denominational'. A separate Act extended similar provisions to Scotland in 1872. The issue of compulsory education for children had not been settled by the Act. In 1876 royal commission on the Factory Acts recommended that education be made compulsory in order to stop child labour.

The Elementary Education Act 1870 is also known as Forster’s Education Act. It was drafted by William Forster, a Liberal MP. It created the framework for schooling of all children between the ages of 5 and 13 in England and Wales. It was one of the Elementary Education Acts made from 1870 to 1893.⁷⁵

(ii) Education Act, 1880

This Act made school attendance compulsory between the ages of five and ten, in England and Wales, though by the early 1890’s attendance within this age group was falling short at 82 per cent. In 1891, elementary schooling became free in both board and voluntary (church) schools. This Act was one of the most damaging piece of legislation in the social history of the Welsh language, as children in Wales who wasn’t familiar with the English language were taught in English only.⁷⁶

⁷⁴ www.wales.com/education-system, visited on 06/06/2016.
(iii) Balfour Education Act, 1902

The Education Act, 1902 is also known as Balfour Act. The school boards were abolished by this Act. Boards were replaced by local education authorities (LEAs). At that time there were 5,700 board schools which consists of 2.6 million pupils and 14,000 voluntary schools which consists of 3 million pupils. Further legislation in 1893 extended the age of compulsory attendance to 11 and in 1899 to 12.77

(iv) National Education Act, 1944

The Act provided that every child has a right to free education in a school from the age of 5 to 16. It also states that everybody has a duty to make sure that the child goes to school until he or she is 16.78

Apart from the Acts stated above there are various Acts on Education namely

(v)The Sex Discrimination Act, 1975

(vi)The Education Act, 1996

(vii)The School Inspection Act, 1996

(viii) Every Child Matters, 2003, etc.

The right to education is provided in a number of international conventions in which UK is a party. The Convention for the Protection of Human Rights and Fundamental Freedoms, the European Convention on Human Rights and the Universal Declaration of Human Rights are some of them. Discrimination in various forms is prohibited when providing education in England and Wales.

There has in recent years been a substantial body of Strasbourg cases on education. The Strasbourg court takes a broad view of what constitutes education in Campbell and Cosans v. United Kingdom.79 It is observed that, “The education of children is the whole process whereby adults endeavour to transmit their beliefs, culture and other values to the young. Teaching or instruction refers to the transmission of knowledge. Intellectual development is the process and the process whereby a school seeks to achieve the object for

79 (1982) 4 EHRR 293, ECHR.
which it was established, including the development and moulding of the character and mental powers of its pupils.”  

“Article 2 constitutes a whole that is dominated by its first sentence, the right set out in the second sentence being an adjunct of the fundamental right to education. There is also a substantial difference between the legal basis of the two claims, for one concerns a right of a parent and the other a right of a child. The issue arising under the first sentence is therefore not absorbed by the finding of a violation of the second. The right to education guaranteed by the first sentence of Article 2 by its very nature calls for regulation by the State, but such regulation must never injure the substance of the right nor conflict with other rights enshrined in the Convention or its Protocols”.  

(B) RIGHT TO EDUCATION IN ASIAN COUNTRIES

India being part of the Asian continent, it is pertinent to understand the position of RTE in China the largest populous country and Japan one of the pioneer developed countries. China and Japan Constitutions talk not only of the right but also duty, a direction towards a balanced and sustainable education.

2.7 Education in China

Chinese education is the largest education system in the world. China’s investment in education accounts for about 4% of total GDP. The Chinese government made nine years of education mandatory for all Chinese children by passing a compulsory education law in 1986. Today, as per the estimation of the Ministry of Education 99.7% of the population of the country has achieved universal nine-year basic education. The right oriented approach is adopted by the Constitution of China which guarantee the right to primary education and the state shall adopt a nine-year compulsory education system.

The Education law of the People’s republic of China was adopted on 1995. The nine year compulsory education has been implemented by governments at various levels and has made significant progress since the promulgation of the “Compulsory Education Law of the People’s Republic of China”. The net enrolment rate of primary school age children is above 99%. There were altogether 280, 184 primary schools with an enrolment of 17, 388, 465

---

80 Ibid, para 33.
81 Ibid, Para 40.
82 Ibid, Para 41.
83 Article 9.
students. In the rural, poor and minority areas the Chinese government attaches great importance to the universalization of compulsory education. At present, the governments at the county, township and administrative village levels with the administrative power assumed by county and township governments provide basic education.

Chinese education system is a state- run system of public education. It is under the Ministry of Education. The government funds the nine- year compulsory education by which all citizens must attend school for at least nine years. The education starts at the age six or seven which includes six years of primary education and three years of junior secondary education (middle school) for ages 12 to 15. In some provinces the education system consists of five years of primary school and four years of middle school.

The Education system of China has been geared toward economic modernization since the end of the cultural revolution (1966 – 1976). The national government ceded responsibility for basic education to local governments through the central committee of the Chinese Communist Party’s decision on the reform of the educational structure in 1985. The authorities called for nine years of compulsory education and the establishment of the State Education Commission by unveiling the education reform plan in May 1985. The government operated primary and lower secondary schools in China have 28.8 million students as of 2015. China covered 90% of generalization of primary school education by 1999 and now mandatory nine-year compulsory education effectively covered 85% of the population.

2.8 Education in Japan

The Fundamental Law of Education and the School Education Law were enacted after World War II. The school system that is still in effect today is defined by the latter law. It consists of six years of elementary school and three years of junior high school. Education in Japan is compulsory at the elementary and lower secondary levels as stated in the Constitution.

---

85 According to the statistics of 2010.
87 en.moe.gov.cn/, visited on 10/07/2016.
88 Ibid.
89 Article 26, Japan 1946
After 1850 as part of its engagement with the West a modern concept of childhood emerged in Japan. The nation-state had the primary role in mobilizing individuals and children in the service of the state. This was decided by the Meiji period leaders. To reach the goal decided by them the western style school was introduced as the agent to reach that goal. New sensibilities regarding childhood were generated by the schools by the year 1890. Japan had numerous reformers, child experts, magazine editors and well-educated mothers who brought into the new sensibility after the year 1890.

A model of childhood that included children having their own space where they read children’s books, played with educational toys and devoted enormous time to school homework. It was provided to the upper middle class. Dissemination of these ideas was rapid through all social classes. Some children attended teratoma or temple schools where they learned practical methods of reading, writing and calculation. The modern elementary school system started compulsory education in 1886. Elementary schools had compulsory education till 1947. State education was used as a propaganda tool by the Japanese fascist government immediately before and during World war II.

Today virtually all elementary education takes place in public schools. Families have to pay for school lunches, supplies and non-school expenses such as extra books or lessons. Tuition fees to these schools are free. Partly because of the latter’s expenses less than 1% of the schools are private. Some private elementary schools which are affiliated to a university are prestigious and they serve as a first step to higher level private schools. Intensive competition prevails to enter some of these ladder schools. Strength of the students varies from thirty to forty in the elementary schools. Organisation of students into small work groups are carried out which have both academic and disciplinary functions.

The standards for the Japanese education system are set by the Japanese law known as the fundamental law of education. It is a law concerning the foundation of Japanese education. Since it acts as the basis for the interpretation and application of various laws and ordinances regarding education, it is also known as the “The Education Constitution” and “The Charter of Education”. The fundamental law of education contains a preamble and 18 Articles. To provide for equal opportunity in education, compulsory education, coeducation, social education, political education, religious education, educational administration etc serve to be the purposes and objectives of education set out by the above stated law. “The fullest development of personality” is the purpose of education according to the law. The current
fundamental law enacted in 2006 has replaced the previous Act of 1947, which was known as the old fundamental law of education.\textsuperscript{90}

Education plays a crucial social role in Japan today. The Japanese education system was devastated by the world war and with the defeat came the discredit of much prewar thought. During the postwar period of military occupation, a new wave of foreign ideas was introduced. Number of changes aimed at democratizing Japanese education was made by the occupation policy makers. The United States education mission set up in 1946 instituted the six- three- three grade structure comprising of six years of elementary school, three years of lower- secondary school and three years of upper secondary school. Compulsory education was provided till nine years.

Elementary level schooling in Japan is compulsory. First grade for children begins in April after they turn six. Elementary level schooling is considered a very important event in a child’s life. As soon as a child reaches his or her sixth year the child will normally attend the local public elementary school where compulsory schooling begins. Elementary level education is for six years. The proportion of private elementary schools is less than one percentage.

Japan’s important part of the education system are the juku often known as ‘cram schools’. These are private institutions. They are supposed to complement the lessons in regular schools and specially to prepare for entrance examinations to the next level of school. One third of Japanese children as young as elementary school age are sent to these institutions by their parents. Their classes are often held late in the afternoon or evening, leaving children and young people with little free time. Moral education has a fundamental role in Japanese education which is a distinct area of instruction at every level of compulsory education in which attitudes, habits and behaviours run throughout the curriculum as it is consistent with the Japanese value system.

As Japan is highly advanced industrialized nation the relationship between education and the economy appears to be closer and more effective than most other industrialized nations. Since it has a high level of basic education, disciplined work habits and group cohesiveness prevail because of these factors Japan has a very effective job of providing a flexible and productive labour force for its economy. Indeed, the remarkable performance of

\textsuperscript{90} \texttt{www.mext.go.jp/en/}, visited on 15/07/2016.
the Japanese economy over the past 25 years provides compelling testimony to the fundamental contributions that education can make to national development and international competitiveness.

(C) EDUCATION IN SAARC COUNTRIES

The South Asian Association for Regional Cooperation is regional inter – governmental organization and geo political union in South Asia. Its member states include Afghanistan, Bangladesh, Bhutan, India, Nepal, Maldives, Pakistan and Sri Lanka.

As of 2015, SAARC comprises 3% of the world’s area, 21% of the world’s population and 9.12 % of the global economy. SAARC was founded in Dhaka in 1985. Its secretariat is located in Kathmandu. It is an organisation which promotes development of economical and regional integration. It launched the South Asian Free Trade Area in 2006. SAARC maintains permanent diplomatic relations with the UN as an observer and has developed links with multilateral entities, including the EU. However, the organisation continues to face many challenges, disputes between nuclear rivals. India and Pakistan have often clouded the union’s potential and progress. Apart from India RTE is comparatively better in Sri Lanka and Pakistan among the SAARC countries. Hence these two countries are taken for detailed study.91

2.9 Education in Sri Lanka

Education in Sri Lanka dates back to two millennia and has a long history. Education is enshrined as a fundamental right as per the Constitution of Sri Lanka. The state is under obligation to completely eradicate illiteracy.92 In 2015, Sri Lanka’s population had an adult literacy rate of 92.63% which is ranked above average by world and regional standards. Sri Lanka’s education dates back to 543 B.C and plays a major part in the life and culture of the country. In the 19th century Sri Lanka’s modern educational system was brought about by its integration into the British Empire. Both central government and the provincial councils exercise control on education with some responsibilities lying with the central government and the provincial council having autonomy for others.

---

91 saarc-sec.org/about-saarc, visited on 17/07/2016.
92 Article 27, Constitution of Sri Lanka.
As a result of the establishment of the Buddhism in the reign of king Devanampiya Tissa from the Buddhist monks sent by Emperor Asoka of India it is believed that the Sanskrit language was brought to the island from North India. Christian missionary societies became active in education with the outset of the colonial expansion on the island, first in the coastal provinces and then the interior. The Anglican Church’s monopoly of government schools and in education ended following the Colebrooke commission set up by the British administration.

In 1836, based on the recommendations of the Colebrooke commission a standard system of government schools was begun by the British.\(^93\) This marked the beginning of the government’s schooling system in the island. The Royal College in Colombo was established by which the British formed several single sex schools constructed during the colonial period. Affiliation of some of these schools was to the Anglican church. Government grants was provided to vernacular schools to cover the cost of teaching and local philanthropists providing the buildings, equipment and the books and the education was free at a larger scale.

Following the granting of universal franchise in 1931 the education system in Ceylon (now Sri Lanka) was made formally free in 1938. The initiative in establishing free education was taken by the minister of education, late Hon. Dr. C.W.W. Kannangara and the executive committee of education which included members such as H.W. Amarasuriya.\(^94\) The medium of instruction was either Sinhala or Tamil. The Sri Lankan Constitution entitled each Sri Lankan the right to be educated in either Sinhala or Tamil.\(^95\)

The number of schools and the literacy rate substantially increased after independence. Today there are approximately 9,830 public schools serving close to 4,030,000 students all around the island after Independence. Educational structure of Sri Lanka is divided into five parts. Primary education in Sri Lanka is from grades 1 to 5 and it lasts five to six years. At the end of this period the students may elect to write a national exam called the scholarship exam by which the exam allows students with exceptional skills to move on to better schools. Compulsory education to children is provided till grade 9 and the Sri Lankan law prescribes that all children till the age of 14 go to school compulsorily. After this grade of study, the children are free to choose to continue their education or drop out and


\(^95\) Section 22 of the Sri Lankan Constitution.
engage in apprenticeship for a job or farming. However, the ministry of education strongly advises all students to continue with their studies at least till the General Certificate of Education (G.C.E.) ordinary level. Many schools teach only in either Sinhala medium or in Tamil medium and not the English medium due to the variety of ethnic groups in Sri Lanka.

As a part of the free education most of the schools in Sri Lanka are maintained by the government. The central government handed over the control of most schools to local governments with the establishment of the provincial council system in the 1980s. Three types of government schools namely the national schools, provincial schools, pirivenas were created by the central government in order to retain the old schools which had been around since the colonial times. Due to the emergence of the upper – middle class during the colonial era there has been a considerable increase in the number of private schools in Sri Lanka. Local curriculum has been followed by these schools in the local language mediums of Sinhala and Tamil besides English set up by the ministry of education. Many of the private schools have access to newer facilities than the state run schools.

The country boasts one of the most literate populations in the developing world despite years of civil war between Sri Lanka’s majority and the Tamil minority. Almost 91% of the adult population and over 97% of the youth population are literates. This is comparatively high to the South and West Asian regional average of 62% and 80% respectively. Colonial past’s influence is still observed in Sri Lanka’s current system of education. From 1796 to 1948 the British who incorporated the South Asian nation as part of its empire had a major influence on the development of Sri Lankan education. The year 1997 was made “year of education reforms and restructure” by President Kumaratunga and he promised to implement the educational reforms in 1998. These reforms were targeted for the improvement in the quality of primary education. The commission’s recommendations acted as a bridge to resolve educational issues.

Today education in Sri Lanka is highly advanced. There are 10, 390 government schools. Free education is offered at all levels starting from the schooling including the university level. Education is state funded and free text books to school children are issued by the government. After the independence of Sri Lanka in 1948 the literacy rates and

---

educational attainment levels is on high scale. Today the youth literacy rate stands at 97%. Improvement in education is experienced since because the government gives high priority to improving the national education system and access to education.

2.10 Education in Pakistan

The Constitution of Pakistan mandates free and compulsory education to all children between the ages of 5 – 16 years. As a move towards provincial autonomy the concurrent list which comprised of 47 subjects was abolished and these subjects, including education were transferred to federating units. Pakistan has expressed its commitment to promote education and literacy in the country by education policies at domestic level and getting involved into international commitments on education. In this regard national education policies are the visions which suggest strategies to increase literacy rate, capacity building and enhance facilities in the schools and educational institutes. The global commitments of Pakistan for the promotion of literacy are the Millennium Development Goals and the Education For All programmes. When the 18th amendment enshrined education as a fundamental human right in the Constitution of Pakistan, it is suggested by a review of the education system that there has been little change in Pakistan’s schools since 2010. Problems of access, quality, infrastructure and inequality of opportunity remain endemic.

As per the Constitution, Article 37 (b) of the principles of state policy defines that the state was only obligated to provide free and compulsory education subject to availability of resources. The 18th Constitutional Amendment of 2010 added Article 25 A to the fundamental rights in the Constitution of Pakistan, 1973. As a fundamental right Article 25 A has been a boon to the citizens of Pakistan. Pakistan is having the highest number of out of school children. It is the second highest in South Asia. The most agonizing part remains resources to education. Pakistan spends barely 2% of its GDP on education. Education in Pakistan is overseen by the Federal Ministry of Education and the provincial governments. The curriculum development, accreditation and the financing of research and development is assisted by the federal government.

99 18th Amendment to the Constitution of Pakistan, 2010.
100 “The state shall provide free and compulsory education to all children of the age of five to sixteen years in such a manner as may be determined by law”.
There is an obligation by the state to provide free and compulsory quality education to children of the age group 3 to 16 years as per Article 25 A of the Constitution of Pakistan. Pakistan is the third largest English speaking nation in the world and the second largest in Asia with more than 92 million Pakistanis (49% of the population) having command over the English language. Among the world countries Pakistan has one of the highest illiteracy rates in the world. It is also to be noted that Pakistan is the second largest country with out of school children (5.1 million children) after Nigeria.

2.11 Education in other SAARC Countries

The right of children to free and compulsory education has been given importance in the constitutions of the other SAARC countries. Articles 43, 17 and 44 of the Constitution of Afghanistan, Article 17 of the Constitution of Bangladesh, Article 9 of the Constitution of Bhutan, Article 29 of the Constitution of Maldives and Article 31 of the Constitution of Nepal guarantees free and compulsory education to children.

II. NATIONAL SETTING – RIGHT TO EDUCATION

(D) RIGHT TO EDUCATION IN INDIA

2.12 Education in India

The history of education in India has deep rooted in its culture. The oldest literature of the world is Vedas. ‘Veda’ is derived from the root word ‘vid’ means knowledge. In the Indian culture, life of an individual is divided into four stages or ‘ashramas’. The first stage is Brahmacharya, means bachelorhood meant for pupilage or disciple hood. There are several literatures that deal with learning and teaching. Guru and disciple relationship is said to be the most important one next to parenthood and childhood.

The importance of education was emphasized in the “Neethisahatakan” by Bhartrihari (1st Century B.C.) as follows:

“Education is the special manifestation of man;

Education is the treasure which can be preserved without the fear of loss;

Education secures material pleasure, happiness and fame;
Education is the teacher of the teacher;

Education is God incarnate;

Education secures honour at the hands of the State, not money;

A man without education is equal to animal”  

2.12.1 Education During Ancient Period

During the Vedic period the chief aim of Indian education in those times was to enrich the spiritual and moral powers of the individual. The system of education was dominated by religious values and ethical considerations. Gurukula system of education was prevalent to carry out the entire process of education. Education was a privilege of one section of the people. Education has been notorious for not being socially inclusive. Till the 19th century people of higher caste or class system had a privilege to receive education whereas the people from lower castes were barred from receiving education. “At the end of the ancient period, the Hindu system of education developed two main types of schools or pathashalas. One was schools of higher learning. In addition to these institutions of higher learning a large network of elementary schools which provided instruction to children, mostly boys of the upper castes, richer landlords and agriculturists was prevalent”. Female education underwent a severe setback and a steady decline during the ancient period.

2.12.2 Education During Mughal Rule

Muslim education in India was primarily confined to that minority of the population, which embraced the religion of Islam. During the Mughal rule education was not considered as a function of the state. The Muslim rulers did not give importance to education. Education was seen as a branch of religion and it was entrusted to learned theologians called ‘Ulemas’. It was interlinked with religion in ancient and medieval India. All levels of persons in the society were not educated and the system of education was not prevalent among them. The result was this education could not find roots in India to develop as a national system of education.  

---


2.12.3 Education During the British Regime

Modern education policy was introduced by the British and was facilitated with the administrative objective. To staff their vast politico–administrative machinery and have effective administration the Britishers had the view to train Indians as clerks, managers and other sub – ordinate workers. In the British India the school system was no doubt developed but it was modelled to suit the British Government and the Britishers. There were very few educational institutions, and only the children of well to do families got the benefit of education. The British Parliament directed the East India Company to take up the responsibility of providing education to all the people but the East India Company was not keen about education at all. Finally, the educational interests of the Indian masses was largely neglected and as a result at the commencement of the 19th century the education was in shambles. It is to be noted that for the first time in India, primary schools on the English pattern were opened all over India.

2.12.3.1 Various Committees and Commissions on Elementary Education during British Period


i. Macaulay’s Minute

The views of Thomas Babington Macaulay are known as Macaulay’s minute. The main points covered in the Macaulay’s minute were

(i) “British system of education was considered better as compared to ancient Indian education system;

(ii) Literature means only English literature;

(iii) Indian literature was criticized enormously;

Gauri Viswanathan, *Masks of Conquest: Literary Studies and British Rule in India*, (Faber and Faber publishing house, London, 1989); See also Sabyasachi Bhattacharya, *Education and Disprivileged: Nineteenth and Twentieth Century India*, (Orient BlackSwan publishers, India, 2009).
(iv) English was recommended as the medium of instruction and it was declared as the best among the languages of the West; and
(v) Aim of education should be to develop such personalities who are Indians in blood and colour, but English in taste, opinion and intellect.”

ii. Wood’s Despatch (1854)

Sir Charles Wood was the President of the Board of control to Government of India. A report on the reformulation of education policy in India was submitted by him in 1854 which was the first clear cut policy for the spread of primary education. The proposals of the Despatch formed the basis to establish a very comprehensive scheme of British Education in India. It was during this period the English language was spread to great masses of people. The Department of Public Instruction (DPI) was created for the first time in each province to strengthen educational administration and management.

iii. First Indian Education Commission (1882)

The First Indian Education Commission with Mr. William Hunter, a member of the Viceroy’s Executive Council as the chairman of the commission was appointed by Lord Rippon to look into the condition of Primary and Elementary education in India. Several recommendations were framed to strengthen the education system.

iv. Gokhale Resolution (1913)

Gopalakrishna Gokhale made remarkable efforts to make Government to accept the principle of compulsory education. He moved a resolution in the imperial legislative council in the direction of making elementary education free and compulsory throughout the country. The bill dealt with that the expenditure of primary education should be shared by the provincial government and local bodies. It also stated that a secretary should be appointed to organize, supervise and look after the primary education and there should be a separate department in the Central Government to draw up a scheme for the expansion of primary education.

v. Hartog Committee Report on Education (1929)

To raise the standards in the field of primary education, Hartog committee put forward several recommendations.
vi. Wood’s Report of Education (1937)

It stated that the elementary education should be properly, thoroughly and scientifically organized. It stressed the importance to pay a good deal of attention to the education of girls.

vii. Sargent Report on Education (1944)

John Sargent, was the educational advisor to the Government of India, who was deputed to draw up memorandum before Central Advisory Board on Education (CABE) for the improvement of education in India. This report also stated about free and compulsory education should be provided to the children of the age group of 6 to 14 years. It assured that the universalization of education is to come about in forty years’ time.

2.12.3.2 Demand for Free and Compulsory Education

During the early stages of the freedom struggle in British India the demand for education started. It subsequently became an integral part of the freedom struggle. The Indian National Congress fought valiantly for the expansion of elementary education and literacy in general and in rural literacy in particular. In 1882, the Indian Education Commission was established. For the introduction of free and compulsory education to children Gopala Krishna Gokhale made a plea to Imperial Legislative Council in 1906. A bill named as Private members bill moved by Gopala Krishna Gokhale in 18.3.1910 was rejected. In the imperial legislative assembly, a bill was first mooted by Gopala Krishna Gokhale to make primary education compulsory atleast for boys in the year 1911. This bill was defeated for the following reasons:

The Britishers were not willing to provide a huge budget for primary education; secondly, many Indian members of the assembly did not want to suffer the loss of cheap child labour available for their huge farms and palaces due to the introduction of child education to all. Even after seventy years of independence the same story prevailed. An estimated 12.6 million children between the ages of 5 to 14 were employed.\textsuperscript{106} First law on compulsory education was passed in 1917. Compulsory Education Act in the Statute book was accepted by every province in British India in the year 1918. Due to lack of control over resources the

\textsuperscript{106} According to the census of India, 2001.
progress in universalizing education was poor even though provincial legislatures had greater control and autonomy in enacting laws.

Better quality in free and compulsory education was recommended by Hartog Committee in 1930. Mahatma Gandhi called for universal education in 1937. Constituent Assembly began its task of deliberating about Universal Elementary Education in 1946. Kher committee was set up to explore ways and means of achieving Universal Elementary Education in 1947. During the freedom struggle and at the time of drafting the Constitution there was no unanimous view that the citizens of India should have a right to education as a fundamental right despite the consistent demand for free and compulsory education. The Constitutional Assembly debates reveal that an amendment was moved to alter the draft Article relating to free and compulsory education by removing the term entitled to ensure that it was merely a non-justifiable policy directive in the Constitution.

Therefore, free and compulsory education made its way into the Constitution whereby the states were required to ensure that free and compulsory education was provided to all children till the age of 14 as stated in the Directive Principle of State Policy. On another occasion during the debates over Article 18 which was a provision relating to ‘abolition of child labour’ in the Constituent Assembly, Prof. Shibban Lal Saksena argued for increasing the age mentioned from 14 to 16 years citing that in other countries the age for employment is higher and therefore in our country also the age should be increased to 16 years.” However the above proposition was not accepted. Finally, the amended Article 18 was added to the Constitution of India as Article 24.109

2.12.4 International Commitments

The United Nations Convention on the Rights of the Child, 1989 has also been recognized as the complete code of the children’s rights with the force of international law as compared to the earlier instruments which proved to be a toothless exercise. India

---

107 Former Article 45, The Constitution of India.
109 Ibid
110 Article 28, 29, The Convention on the Rights of the Child, 1989 cast duty upon the State Parties to recognize the right of the child to education. Article 28 provides that State Parties with a view to achieving right to education progressively and on the basis of equal opportunity, they shall, in particular: make primary education compulsory and available free to all…, take measures to encourage regular attendance at school and the reduction of drop-out rates. Likewise, Article 29 provides for the development of the child’s personality, talents, mental and physical abilities to their fullest potential…
ratified the convention and obliged to comply with the international commitment in 1992. The Government of India has undertaken to take positive measures to progressively implement the provisions of the CRC, subject to resources. It focusses its attention on certain priority issues affecting children, like child labour and compulsory education. Further in the year 2000, the Millennium Summit devised some goals in the form of Millennium Development Goals (MDGs) for the signatory countries. Millennium Declaration was signed by 147 countries.\textsuperscript{111} One of the goals is to provide universal primary education to all by 2015. Though achieving universal primary education is one of the MDGs, it is equally true that without a feasible and authentic education system the achievement of other MDGs seem to be a distant dream. So, there was an adequate force at international level and it was obligatory for Government of India to endeavour to foster respect for international law and treaty obligations.\textsuperscript{112}

2.12.5 National Commitments

In the 53\textsuperscript{rd} year of the Republic of India, a new fundamental right was added. It stated 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”.\textsuperscript{113} Article 21 A was inserted by the 86\textsuperscript{th} Amendment, 2002.\textsuperscript{114} The right to free and compulsory education is a fundamental right under Article 21 A of the Indian Constitution. In compliance of the mandate laid in Article 21A, the Parliament has passed the RTE Act, 2009. The historic legislation of the Right of children to free and compulsory education Act was enacted in 2009. It was passed by the Indian Parliament on 3\textsuperscript{rd} September, 2009.\textsuperscript{115} The model rules for the right to education which state governments will use for their implementation of the Act was approved on January 2010. India joined the league of over 135 countries all over the world that have legal guarantees to provide free and compulsory education to children. The RTE came into force on April 1, 2010. 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. In his speech Dr. Manmohan Singh, then Prime Minister of

\begin{itemize}
\item \textsuperscript{111} \url{www.un.org/millenium/declaration/ares552e.html}, visited on 7/10/2016.
\item \textsuperscript{112} Article 51 of The Constitution of India.
\item \textsuperscript{113} Article 21 A of The Constitution of India.
\item \textsuperscript{114} Indiacode.nic.in, visited on 20/10/2017.
\item \textsuperscript{115} The Bill was approved by the Cabinet on 2\textsuperscript{nd} July, 2009. Rajya Sabha passed the Bill on 20\textsuperscript{th} July, 2009 and the Lok Sabha on 4\textsuperscript{th} August, 2009. It received Presidential assent and was notified as law on 3\textsuperscript{rd} September 2009, as the Children’s Right to Free and Compulsory Education Act, 2009.
\end{itemize}
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 citizens of India.”

The right to education was placed in the directive principles of state policy since the inception of our Constitution in 1950. To establish a just society in the country the Directive Principles of State Policy serve as important guidelines towards making laws. But these rights are non-justifiable rights of the people. They are not enforceable like the fundamental rights. The most compelling reasons for the insertion of Article 21 A in the Constitution of India and the passage of the RTE Act, 2009 in the Parliament is the need to address inadequacies in retention, residual access, particularly of un-reached children and the questions of quality.

The Constitution (Ninety – Third) Amendment Bill, 2001 which deals with the free and compulsory education for children of the age group 6 to 14 years as a fundamental right was introduced by the government in the Parliament. Prior to this the Constitution (Eighty – Third) Amendment Bill, 1997 was introduced by the government on the same subject. Finally, when the Ninety- Third Amendment Bill, 2001 was passed by the Parliament it became the Constitution (86th Amendment Act, 2002). This amendment substituted Article 45, inserted Article 21 – A as a fundamental right and added Article 51 – A (k) as a fundamental duty. The National Commission to review the working of the Constitution observed that right to free and compulsory education should under no circumstances be diluted and the State should fulfil this solemn obligation to the nation. The Commission also recommended “… that an independent National Education Commission should be set up every five years to report to Parliament on the progress of the constitutional directive regarding compulsory education and on other aspects relevant to the knowledge society of the new century.” But the Parliament while amending constitution in the year 2002 did not pay heed to all recommendations.

116 “P. M’s Address on Fundamental Right of Children to Elementary Education”, The Hindu, 2, April, 2010.
117 Supra note 114.
118 Ibid.
119 Ibid.
121 Ibid.
A system of education which was characterized by large scale inter – and intra – regional imbalances was inherited in the Post independent India. Only few selected people were educated during such system. There was a wide gap between the educated and the illiterate people. Economic inequality, gender disparity and rigid social stratifications aggravated educational inequality. Only through education a change can be accomplished by accompanying corresponding changes in the attitudes, values, knowledge and skills of the people as a whole. There has been a growing realization that development would never become self-sustaining unless it is accompanied by the above stated factors.

Formation of various committees and national policies which reflects the effects of the above stated initiatives. They are analyzed. The University Education Commission (1948 – 1949) under the chairmanship of Dr. Radhakrishnan recognized that, “in a democratic society the opportunity of learning must be open not only to elite but to all those who have to carry the privilege and responsibility of citizenship. Education is a universal right, not a class privilege.” The post-independence agenda of education, whether envisaged by Jawaharlal Nehru or the Kothari Commission formed in 1964, National Policy on Education formed in 1968, National Policy for Children in 1974, National Policy on Education in 1986, 165th Law Commission Report, 1998 and Sarva Shiksha Abhiyan have initiated a discourse towards better education. The education came to be perceived as a right and not privilege.

The Law Commission of India took up the matter suo motu concerning provision of free and compulsory education to all children upto the age of 14 years. It is a cherished goal set in the Constitution of India. It is observed that education has an acculturating role whereby it refines sensitivities and perceptions that contribute to National cohesion, scientific temper and independence of mind and spirit – thus furthering various goals set out in our Constitution. During Dakar Declaration in 2000 various heads of world’s Governments including India observed that absence of commitment at implementation part, weak political will, limited resource, lack of attention, is considered as denial of right to education to millions of people.

---

123 Ravi Kumar, Introduction: Quality and Quantity – Mapping the Challenges before Elementary Education in India: In the Crises of Elementary Education in India, (Sage Publications, New Delhi, 2006), p.22.


With a view to realizing the Constitutional goal set for education, an education commission was appointed by the government of India in 1964. The commission’s task was to evolve a national system of education. A radical transformation in the prevailing education system and highlighting the need for the “common school approach” to promote equity and social justice was recommended by the commission. The first National Education Policy (NPE), 1968, recommended free and compulsory elementary education and equalization of educational opportunities especially for girls and children belonging to SCs and STs.\textsuperscript{126} Another National Policy on Education was adopted and further updated in 1992. A comprehensive policy framework for the development of education up to the end of the century and a Plan of Action 1992, assigning specific responsibilities for organizing, implementing and financing its proposal was provided by the National Policy on Education, 1986.\textsuperscript{127}

2.11.6 Various Commissions, Committees and Schemes on Elementary Education after Independence


i. Mudaliar Commission (1953)

This was the first attempt to reform educational administration at the secondary education stage in 1952. This commission was appointed by the Government of India under the chairmanship of Dr. A. Lakshmana Swamy Mudaliar.


This commission was popularly known as Kothari Commission under the chairmanship of Prof. D.S. Kothari. He was appointed to advise the Government of India on the national pattern of education and on the general principles and policies for development of education at all stages. Shri J.P. Naik was the member, secretary of the commission. The


\textsuperscript{127} Ibid
commission identified three important facets that would bring about desired “Educational Revolution”. A new educational structure consisting of 10+2+3 pattern of education was proposed.

iii. Acharya Ramamurthy Committee (1990)

Parliament adopted the National Policy on Education in May, 1986. A committee was set up under the chairmanship of Acharya Ramamurthy in May 1990. A set of suggestions were reported by reviewing the National Education Policy for its modifications.


A committee was set up in July 1991 under the chairmanship of Shri N. Janardhana Reddy, Chief Minister of Andhra Pradesh. The committee was directed to consider the report of the Ramamurthy committee and to make recommendations regarding modifications to be made in the National Education Policy. On the basis of these two reports, the government introduced some amendments in the National Education Policy, 1986 and proclaimed it under the title “National Policy on Education, 1986, with modifications undertaken in 1992.


A National Advisory Committee was set up by the government in March 1992 under the chairmanship of Yash Pal, former Chairman of the UGC to suggest ways and means to reduce academic burden on school students.


On receipt of the Report of the National Advisory Committee under the chairmanship of Prof. Yash Pal, a decision was taken by the Chaturvedi, Additional Secretary, Department of Education, to examine the recommendations of the committee and give its views.

vii. Report of Ramakrishna Rao Committee

For achieving the goal for universalization of elementary education, government constituted a high-powered committee under the chairmanship of Shri. Ramakrishna Rao. Several recommendations were framed by the committee.
2.12.7 Relationship between Directive Principles of State Policy, Fundamental Rights and the Fundamental Duties

The leaders of India’s freedom struggle fully realized that in the new dispensation following political freedom, the state should make suitable provision for ensuring such progress and the people should have the fullest opportunities for advancement in the social and economic spheres. The idea of enacting the directive principles of state policy was borrowed from the Irish constitution by the framers of the Indian Constitution. The Constituent Assembly adopted the Indian constitution on 26th November 1949 and brought into force on 26th January, 1950. The Preamble of the Indian Constitution\(^\text{128}\) declares India a Sovereign, Socialist, Secular, Democratic, Republic\(^\text{129}\) and sets out the main objectives of the Constitution to secure justice for all citizens, social, economic and political.\(^\text{130}\) A democracy which guarantees freedom under the law and the dignity of the individual in envisaged by the Indian Constitution. The fundamental rights are enumerated in Part III of the Indian Constitution and the Directive Principles of State Policy in Part IV of the Constitution. The Directive Principles of State Policy gives direction to the state to provide economic and social rights to its people in specified matters.\(^\text{131}\) The fundamental rights are guaranteed to the individual.\(^\text{132}\) The Directive Principles of State Policy and the Fundamental Rights together


\(^{129}\) Subs. by the Constitution (Forty-Second Amendment) Act, 1976, sec. 2, for “Sovereign Democratic Republic.”

\(^{130}\) Ibid.

\(^{131}\) Articles 36 to 51 contains the Directive Principles of State Policy. Part IV of the Constitution covers the following rights: (a) State to secure a social order for the promotion of the welfare of the people (Article 38); (b) certain principles to be followed by the State, namely, equality of men and women, right to an adequate means of livelihood; and equal pay for equal work for both men and women (Article 39); (c) right to free legal aid (Article 39 A); (d) organisation of village panchayats (Article 40); (e) right to work, to education and to public assistance in certain cases (Article 41); (f) provisions for just and humane conditions of work and maternity relief (Article 42); (g) living wage (Article 43); (h) participation of workers in management of industries (Article 43 A); (i) uniform civil code for the citizens (Article 44); (j) provision for free and compulsory education for children (Article 45); (k) promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections (Article 46); (l) duty of the state to raise the level of nutrition and the standard of living and to improve public health (Article 47); (m) organisation of agriculture and animal husbandry (Article 48); (n) protection and improvement of environment and safeguarding of forests and wildlife (Article 48 A); (o) protection of monuments and places and objects of national importance (Article 49); (p) separation of judiciary from executive (Article 50); and (q) promotion of international peace and security (Article 51).

\(^{132}\) Articles 12 to 35 of the Indian Constitution deal with Fundamental Rights. The Indian Constitution groups the Fundamental Rights under several sub-heads: (a) Right to Equality (Articles 14 to 18); (b) Right to Freedom (Articles 19 to 22); (c) Right Against Exploitation (Articles 23 to 24); (d) Right to Freedom of
constitute the conscience of the Constitution. The enforceability and the justiciability of
fundamental rights is guaranteed under the Indian Constitution.\(^{133}\) The responsibility for the
enforcement of the fundamental rights lies with the Supreme Court and the High Courts by
virtue of Article 32 and Article 226 of the Constitution. Part IV A which deals with the
Fundamental Duties of the citizens is included by means of 42\(^{nd}\) Amendment of the Indian
Constitution.\(^{134}\) The nature and effect of Fundamental Rights and the Directive Principles of
State Policy which are separate are essentially different. The Directive Principles of State
Policy enunciated in Part IV of the Indian Constitution are nothing but principles of Raj
Dharma (duty of the state).\(^{135}\)

Soon after the commencement of the Indian Constitution the question was raised
regarding the Directive Principles of State Policy before the Court in *State of Madras v.
Champakam Dorairajan*\(^ {136}\) Justice Das had expressed the view that the Directive Principles
of State Policy have to conform and run subsidiary to the Part on fundamental rights. By this
decision the implementation of economic, social and cultural rights was affected. However,
the Supreme Court in *M.H. Qureshi v. State of Bihar*\(^ {137}\) propounded the doctrine of
harmonious construction, and the doctrine of integrated scheme in *I.C. Golak Nath v. State of
Punjab*.\(^ {138}\) The Indian judiciary accepted the primacy of some of the principles of DPSP
through the 25th Amendment of the Indian Constitution. Other agencies of the government,
legislature and the executive rarely advocated the subordination of the DPSP to fundamental
rights. It is now well known that Article 21 has both a negative and affirmative dimension. It
is also well established now that the provisions of Parts III and IV are supplementary and
complementary to each other.\(^ {139}\) Thus, the view that the DPSP are inferior to fundamental
rights, relying on the views of the Constitution makers and Courts, has changed. The
Directive Principles of State Policy are now no way subordinate to the fundamental rights,
which is firmly endorsed by the Indian judiciary subsequently and also equally recognized by
the government.

---


\(^{134}\) Inserted by the Constitution (Forty-Second Amendment) Act, 1976, sec. 11 (w.e.f. 3 January 1977).

\(^{135}\) *Raj Dharma* includes varieties of activities of kings in Ancient India, including personal, character and
his public relations.

\(^{136}\) AIR 1951 SC 226.

\(^{137}\) AIR 1958 SC 731.

\(^{138}\) AIR 1967 SC 1943.

\(^{139}\) *Unni Krishnan, J.P. and Ors. etc. v. State of Andhra Pradesh and Ors.*, 1993 AIR 2178.
Education was a state subject in entry 11 placed in List II State List. By the Constitution (42
Amendment) Act, 1976 the above said entry was deleted and education was placed as a subject under the Concurrent List of the Indian Constitution. Swaran Singh committee (1976) also suggested to put education in the Concurrent List and highlighted that ‘Agriculture and education is subject of prime importance to country’s rapid progress towards achieving desired socio-economic changes….’ Both the central and the state governments share the responsibility of framing laws related to education. Central government laid down broad policies and guidelines for curricula and management practices developed through consultation with India’s 29 states and 7 union territories. Within the broad national framework states are free to frame their own educational policies.

2.12.8 Supreme Court Judgements on Right to Education

In India the judiciary has shown its deep concern for providing free and compulsory education to all children below the age of 14 years. The right to free primary education has now been declared as a fundamental right by the Indian Supreme Court. The theory of the complementary nature of rights declared in Part III and Part IV and the harmonious interpretation of these rights has been the foundation for the realization of primary education being declared a fundamental right today in India. Supreme Court is the apex court of India. It is the guardian protector of fundamental rights. From 1950 to 2002, the education policies and schemes, have not made much change and in view of this state of affairs, the High Courts and Supreme Court of India, in their dynamism, have brought in a general fundamental right to education reading the fundamental right to life in Article 21. With regard to right of children to free and compulsory education the Supreme Court has delivered milestone judgements.

In the case of Mohini Jain v. State of Karnataka and others the Supreme Court observed that the directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III of the constitution. It

\[140\] Entry 25, List III, Concurrent list, VII Schedule of the Indian Constitution.

\[141\] 1976 SCC (2) 45.


\[144\] AIR 1992 SC 1858.
also stated that the fundamental rights under Chapter III shall remain beyond the reach of the large majority which is illiterate without making right to education under Article 41 of the Constitution a reality. The Court further held that right to life are basic to the dignified enjoyment of life which the courts must enforce and stated that right to life is the compendium expression for all rights. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The state is under an obligation to make endeavour to provide educational facilities at all levels to its citizens.

The issue of the scope and extent of right to education came up before the Supreme Court in Mohini Jain v. State of Karnataka. This case addressed the charging of capitation fees by professional colleges. The Court held that the charging of capitation fees was illegal and held that the right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education, and the fundamental rights guaranteed under Part III of the Constitution of India, including the right to freedom of speech and expression and other rights under Article 19, cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individual dignity.

Looking at the interdependence of the rights guaranteed in Part III and Part IV, the Court held that the Directive Principles, which are fundamental in the governance of the country, cannot be isolated from the fundamental rights guaranteed under Part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which all individuals can enjoy the fundamental rights guaranteed under Part III. Without making the right to education under Article 41 of the Constitution a reality, the fundamental rights under Part III shall remain beyond reach of a large majority which is illiterate. The fundamental rights including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless the citizen is educated and is conscious of his individual dignity. Therefore, the right to education is concomitant to the fundamental rights enshrined under Part III of the Indian Constitution.

145 Ibid.
146 Ibid.
147 Ibid.
Thus, the Supreme Court by its decision has elevated the right to education as part of fundamental rights and thus enforceable. In the case of *Mohini Jain v. State of Karnataka* the Supreme Court of India held that “The objectives flowing from the preamble cannot be achieved and shall remain on paper unless the people in this country are educated. The three-pronged justice promised by the preamble is only an illusion to the teeming – million who are illiterate. It is only education which equips a citizen to participate in achieving the objectives enshrined in the Preamble.” (Per Kuldip Singh J)

The enthusiasm demonstrated in the *Mohini Jain* case by the Court was clearly reflected further in the *Unni Krishnan* case. In the case *Unni Krishnan J.P and others v. State of Andhra Pradesh and others* it was observed that Article 21 is the heart of fundamental rights. The Supreme Court once again decided that the right to education flows directly from right to life guaranteed by Article 21 of the Constitution. The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the Directive Principles in Part IV of the Constitution. The Court held that “the effect of holding that the right to education is implicit in the right to life is that the state cannot deprive the citizens of his right to education except in accordance with the procedure prescribed by law”.

The Apex Court further held that while declaring the right to education as a fundamental right, it was not to be construed as an absolute right. The court further held that ‘the three Articles 45,46 and 41’ are designed to achieve the said goal. It is in the light of these articles that the content and parameters of the right to education have to be determined. It is held that the right to education of every child up to the age of 14 years and thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity”. It was ruled that since more than four decades have elapsed, it was high time

---

148 Ibid.
149 Ibid, Mr. Justice Kuldip Singh may be called as a champion in the field of right to education because earlier no judge could take such a bold step in the recognition of right to education as a fundamental right although many judges indirectly recognized the importance of education. See Jai S. Singh, (2010), *Expanding Horizons of Human Right to Education: Perspective on Indian and International Vision,*” Journal of Indian Law Institute (JILI), 52 (2010).
150 AIR 1993 SC 2178.
151 Ibid.
152 Ibid.
153 The financial condition of India at the time of our independence was also discussed in the Constituent Assembly Debates, Vol. VII, pp. 909 – 910. (1948 – 1949) wherein it was stated that, “In the directives we have provided that in fifteen years’ time there should be universal primary education. But no one knows whether the financial and other conditions in the country would permit of universal primary education to be
that the state must implement the Directive in Article 45. This was in the nature of waking up the state from hibernation so that it may be fully alive to its obligations under the Directive and provide an expansion of ‘life’ or ‘liberty’ in Article 21. The failure of the policy makers in implementing the provisions of Article 45 even after several decades made the thing more aggravated. Here the words of C. Rajagopalachari seem to be right which he wrote in his prison diary in 1922 that – “election and their corruption, injustice and the power and tyranny of wealth and inefficiency of the administration, will make a hell of life as soon as freedom is given to us. Men will look regretfully back to the old regime of comparative justice, and efficient, peaceful, more or less honest administration…. hopes lies only in universal education by which right conduct, fear of God and love will be developed among the citizens from childhood.” ¹⁵⁴

In this case, the Court took the support of the right to education as laid down in the UDHR and Article 13 of the ICESCR and for the first time articulated it as a ‘social’ right. By holding the right to free primary education up to the age of 14 years, the Court was thus reminding the state to endeavour to fulfil the obligation under Article 45 within a prescribed time limit, which had expired long ago. This has been one of the first judgments where the Court has employed ICESCR language for progressive realization of the right to higher education while declaring the fundamental right to free primary education. To this extent, the earlier decision of the Supreme Court in Mohini Jain case stood modified.

In Mohini Jain case¹⁵⁵, the apex court pronounced that directive principles cannot be isolated from the fundamental rights. In Unni Krishnan Case¹⁵⁶, the court pronounced that basic education (education upto the age of 14 years) is a fundamental right of every child. The declarations of the right to education as a fundamental right, has been further upheld and confirmed by the eleven – judge Constitutional bench of the Supreme Court in 2002 in T. M. A. Pai Foundation v. State of Karnataka¹⁵⁷.

¹⁵⁵ Supra note 144.
¹⁵⁶ Supra note 150.
¹⁵⁷ AIR 2003 SC 355.
Right to education was observed to flow directly from Right to life which envisages protection of life and personal liberty. The judgements in the case of Mohini Jain and Unni Krishnan showed the importance of right to education and catalyzed the process of enacting the Act. At the same time Apex Court limited its scope to the targeted group of children until they complete the age of fourteen years. The supreme court has duly recognized the importance of education and opined that –

If really, Article 21 which is the heart of fundamental rights has received expanded from time to time there is no justification as to why it cannot be interpreted in the light of Article 45 wherein the state is obliged to provide education upto 14 years of age, within the time limit… The directive principles contained in Part – IV constitute the stairs to climb the high edifice of a socialistic state and the fundamental rights are the means through which one can reach the top of the edifice.

Further the Apex Court in India commented on the quality of the teaching many a time in its judgements. Allowing ill – trained teachers coming out of derecognized or unrecognized institutes or licensing them to teach the children of impressionable age, contrary to the norms prescribed, will be detrimental to the interest of the nation itself in the sense that in the process of building a great nation, teachers and educational institutions also play vital role. In cases like these, interest of individuals cannot be placed above or preferred to larger public interest.

The Supreme Court in Avinash Mehrothara v. Union of India held that “right to education attaches to the individuals as an inalienable human right. It also held that right to education is more than a human or fundamental right.” It also observed that “implicit in Article 21 – A is a reciprocal agreement between the State and family, which places burden on all participants of civil society. Unlike other fundamental rights, the right to education places burden not only on the State but also on the parents/ guardian. Articles 21- A and 51A (k) balance the relative burdens on parents and on the State for compulsory education of children, free from fetters of cost, parental obstruction or State inaction.” Justice Dalveer Bhandari and Lokeshwar Singh Panta, JJ observed that “education remains essential to the life of the individual as much as health and dignity and the State must provide it

---

158 Ibid.
160 2009 6 SCC (6) 398.
161 Ibid.
comprehensively and completely to satisfy its highest duty to citizens. Education is a tool for betterment of civil institutions, protection of civil liberties and path to informed and questioning citizenry.”162 “Education is one of the important functions of the State and that a true democracy is one where the education is universal, where people understand what is good for them and the nation and the right to education has to be determined.”163

The Supreme Court of India in Bandhua Mukti Morcha v. Union of India164 case held that the right to education flows from the right to life and is implicit in and guaranteed by Article 21. Thus, one of the transcendental importance in the life of an individual is the right to education has been recognized since thousands of years not only in this country but all over the world. The RTE Act, 2009 was challenged before the Supreme Court of India by the private school owners on the ground of violation of their fundamental right under Article 19 (1) (g), which gives all the citizens a right to practice any profession or to carry on any occupation, trade or business. In the case of Society of Unaided Private Schools of Rajasthan v. Union of India165 the Supreme Court discussed the constitutional validity of the Act. In the case of M.D. Chamarbaugwalla v. Union of India166 the Supreme Court also excludes the unaided minorities schools by holding that the RTE Act and in particular sections 12 (1) (c) and 18 (3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30 (1) of the Constitution of India and consequently applying the principle of severability the said 2009 Act shall not apply to such schools.

In the case of Francis Coralie v. Union Territory of Delhi,167 the court stated that Article 21 cannot be read in isolation and right to live under Article 21 is not restricted to mere animal existence.168 rather something including within its ambit the right to live with human dignity.169 An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him.170 The state was held duty bound to make endeavour to provide educational facilities at all levels. This was the landmark judgement on interpreting the right to life with the directive principles of state policy and

162 Ibid.
163 Ibid.
164 Election Commission of India v. St. Mary’s School, 2008 AIR SC 655. See also Election Commission of India v. State bank of India Staff Association, Local head Office Unit, Patna and others, 1995 SCC (2) 13.
165 1997 10 SCC 549.
167 1957 SCR 930.
168 1981 AIR 746; 1981 SCR (2) 516; 1981 CriLJ 306 SC.
169 Ibid.
170 Maneka Gandhi v. Union of India, 1978 AIR 597; 1978 SCR (2) 621.
advocating for right to education. The Supreme Court of India quoted the words of Ambedkar: “In enacting this Part IV of the constitution, the assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislature and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the assembly that in future both the legislature and the executive should not merely pay lip-service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country.”

The Apex Court in its verdict while upholding the constitutional validity of the Act mandates 25% reservation for economically weaker sections in private schools. The basic object of Government behind reservation is upliftment of the weaker sections. However, it has generated at national level a fierce debate. Multi-dimensional debates hovering around defining of weaker sections; learning by social inclusion; aided versus unaided schools; profit versus non-profit entities, etc. Regarding the contentious issue against 25% reservation is that it is curtailing the freedom of private institutes and subsequently it infringes their fundamental right under Article 19 (1) (g).

The Apex Court has responded to it in *P.A. Inamdar v. State of Maharashtra*. In this case Supreme Court declared that “If an educational institution goes beyond charity into commercialization it would not be entitled to protection of Article 19 (1) (g). Though education is an occupation, it cannot be equated with trade or business. In short, education is national wealth essential for nation’s progress and prosperity. This is considered to be a major debatable issue as nature of trade in education is different in the sense that education has externalities meaning thereby the utility derived through education either from private school or government schools not only serve the interest of human being himself but also gives his service to the other sections of society. Major argument for treating education as non-commercial is that weaker sections of the society should not be denied to take the advantage of education being a charitable good. The existing education system of India signifies that the state has dominance in providing the education in charitable form as the

---

172 Society of Unaided Private Schools of Rajasthan v. Union of India, supra note 165
173 2005 AIR SC 3226; 2005 SCC (6) 537.
75% children are enrolled in 80% government schools”.\textsuperscript{174} The Supreme Court held that “Article 21 A forms part of the basic structure of the Constitution, thereby no maneuvering could be allowed with its provisions”.\textsuperscript{175} The nine-judge constitution bench in \textit{Justice KS Puttaswamy (Retd) and Anr v. Union of India and Ors}\textsuperscript{176} unanimously held that right to privacy is a fundamental right. It is inherent and inalienable. It is a natural right. While interpreting Article 21 the apex court referred right to education as a fundamental right which emanated from Article 21 and explicitly incorporated as Article 21-A by way of constitutional amendment.

Following the judgments of the Supreme Court, a new Article 21-A has been inserted by the 86th Amendment to the Constitution and made primary education free for all children in the age group of 6 to 14 years. More specifically, Article 21-A states that “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the State may, by law, determine”.\textsuperscript{177} Further, this Amendment has inserted new clauses in Articles 45\textsuperscript{178} and 51-A\textsuperscript{179} of the Indian Constitution. Thus, even though the Directive principle of state policy was transformed into the fundamental right and inspite of the above dynamism by the Supreme Court and the Parliament, unfortunately even by 2012, India still remains a “home of 1/3 of world’s illiteracy with the largest illiterate population in the world.”\textsuperscript{180} The reasons stated are financial constraints, administrative inefficiency, lack of stake holders interest, corruption and the existing condition in school.\textsuperscript{181}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{174} Ibid.
\item \textsuperscript{175} M. Nagaraj v. Union of India, 2006 SCC (8) 212, 243.
\item \textsuperscript{176} Writ Petition (Civil) No. 494 of 2012.
\item \textsuperscript{177} Annual Report 2004–05, ‘Overview’, available at <www.education.nic.in/>, visited on 12/12/2016.
\item \textsuperscript{178} According to the 86th Amendment, Article 45 of the Constitution, the following Article shall be substituted, namely: 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.”
\item \textsuperscript{179} Part IV A of the Constitution talks about the Fundamental Duties from Article 51 A (a) to (j). This Part has been added to the Indian Constitution by the 42nd Amendment of the Constitution. By the 86th Amendment a new clause has been added in Article 51 A of the Constitution, after clause (j), the following clause shall be added, namely: “(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 and fourteen years.”
\item \textsuperscript{181} Supra note 124.
\end{enumerate}
\end{footnotesize}
Although the judiciary has made right to education a fundamental right, it is for the state to secure it to all the people. Therefore, the question of enforcement of this right is a significant part of the entire campaign to declare it as a fundamental right. With the Supreme Court declarations, and the recent constitutional amendment, the challenge on the ground level that remains to be seen is whether the state machinery is put to work to enforce the right, and also to implement the state level legislations which seek to provide free and compulsory primary education. Therefore, the issue would be one of enforceability and not one of justiciability. Without education, human rights cannot be secured to people and the basic objective set forth in the Preamble to the Constitution would fail.

2.12.9 Current Education System in India

The Indian school education system has been divided as follows:

The schools that are affiliated to International Boards (the International General Certificate of Secondary Education – IGCSE) or the International Baccalaureate cater to the needs of the highly privileged classes;

The schools that are affiliated to the Indian Council for Secondary Education (the Council for Indian School Certificate Examinations – ICSE) cater to the needs of rich intelligentsia, political and business class;

The schools that are affiliated to the Central Board of Secondary Education (CBSE) cater to the needs of bureaucrats and upper middle class;

The schools that are affiliated and recognized by the State Board as Private English Medium Schools cater to the needs of the children coming from the middle class;

The schools run by the state government, local bodies and the aided schools (schools substantially aided by the state) caters to the needs of lower middle class/poor masses; and

The Non – Formal Education (NFE) centers and Education Guarantee Scheme (EGS) under Sarva Shiksha Abhiyan (SSA) cater to the needs of children coming from marginalized and poorer class.
According to recent statistics, the total number of government schools imparting elementary education in India is 10,78,407 in 2011 – 2012 and that constituted an overall share of 76.36 percent of the total number of schools imparting elementary education in India. The number of private schools imparting elementary education was 2,99,357 in 2011-2012 and that constituted a share of 21.20 percent of the total number of schools imparting elementary education in India.\(^{182}\)

(E) RIGHT TO EDUCATION IN TAMIL NADU

2.13 Education in Tamil Nadu

Tamil Nadu is the eleventh largest state in India by area. Tamil Nadu is one of the 29 states of India. It occupies an area of 130,058 sq.kms and the population of the state has crossed over 6 crores. According to the Human Development Index in 2011 the state is ranked sixth among states in India. It is the third largest state economy in India with 13,842 billion (US$220 billion) in gross domestic product after Maharashtra.\(^{183}\) Based on the “Multi-Dimensional Index” of 2013, published by the Reserve Bank of India, which is a new index for measuring the development of states, Tamil Nadu has been one of the top seven developed states in India.\(^{184}\) Its official language is Tamil, which is one of the longest – surviving classical languages in the world. Tamil Nadu is rich in natural resources. In addition, its people have patronized classical arts, classical music and classical literature. The state is also home to a number of religious sites and historic buildings including Hindu temples of Dravidian architecture, multi religious pilgrimage sites, beautiful hill stations and eight UNESCO world heritage sites.\(^{185}\)

2.13.1 History of Education in Tamil Nadu

In India education was considered as a private affair before the advent of the British. The East India Company did not recognize the promotion of education among the natives upto 1813. Sir Thomas Munro, the Governor of Madras Province, was responsible to

\(^{182}\) National University of Educational Planning and Administration, Elementary Education in India Progress towards UEE: Flash Statistics – DISE 2011 to 2012 (New Delhi: NUEPA and MHRD, 2013) at 1 and 2.

\(^{183}\) Inequality adjusted Human Development Index for India’s States 2011, United Nations Development Programme The Hindu 18/05/2016.


establish the Board of Public Instruction in 1826. This period is considered as the origin of the Education Department. In 1854 Wood’s Despatch on education laid the foundation of the present Indian educational system. It came to be considered as the Magna Carta of English education in India. A department of public instruction in the state was established by the Madras provincial government in accordance with the recommendations of the Dispatch. The rules and regulations were designed to assist the indigenous institutions to improve themselves and to give some assistance. In 1855 the first set of grants for aided schools was issued. A considerable portion of indigenous institutions had become aided schools and thus they moved from the category of private to public schools by 1881.186

Local boards were constituted and empowered to open schools and get subsidy from the government under the Local Boards Act, 1871. For advancement of elementary education, the Madras Elementary Education Act, 1920 enabled the local bodies to levy an educational cess on land or property tax. Education was taken from district boards and entrusted to taluk boards and municipalities in 1920. The power of according recognition to aided elementary schools was transferred from the education department to the district education councils. In 1934, the taluk boards were abolished and elementary schools’ administration was entrusted again to the district boards. District education Councils were also abolished and the power to recognize elementary schools was restored once again to the education department in 1939.187

Tamil Nadu is one of the most literate states in India.188 In terms of literacy growth Tamil Nadu has performed reasonably well during the decade 2001 – 2011. At present also, Tamil Nadu’s performance is on the higher scale. It is to be noted that in 2011, the state’s literacy rate is 80.33% which is above the national average. As per the survey conducted by the industry body Tamil Nadu is ranked top among Indian states with about 100% gross enrolment ratio in primary and upper primary education. One of the basic limitations for improvement in education in the state is the rate of absence of teachers in public schools. Pratham which is one of the largest non- governmental organisations in India by an analysis of primary school education in the state shows a low drop – out rate but poor quality of state education compared to other states.

188 The Times of India, 14/05/2003.
In the history of School Education Department of Tamil Nadu, the following are the landmark events that happened from 1826 to till date. They are given chronologically:

1. 1826 - Board of Public Instructions established
2. 1841 - First High School opened in Madras
3. 1849 - High Schools for Girls Opened
4. 1854 - Directorate of Public Instruction established
5. 1892 - Madras Educational Rules enforced
6. 1910 - Board of Secondary Education established
7. 1911 - SSLC Public Examination conducted for the first time
8. 1921 - Madras Elementary Educational Rules enforced
9. 1924 - Compulsory and Free Education introduced in some selected places
10. 1955 - Pension Scheme for Teachers introduced
11. 1956 - Midday-meal programmes implemented
12. 1957 - Directorate of Technical Education established
13. 1960 - Scheme for Free supply of Uniforms for School Children organized
14. 1964 - Introduction of Free Education up to high school level
15. 1965 - Directorate of Collegiate Education established
16. 1969 - Tamil Nadu Text-book Society established
17. 1972 - Directorate of Public Libraries established
18. 1973 - Directorate of Government Examinations and SCERT established
19. 1976 - Directorate of Non-formal and Adult Education established
20. 1978 - Higher Secondary Education (10+2) introduced
21. 1981 - Teachers in Panchayat Union Schools become Government Employees
22. 1982 - Nutrition Meal Scheme introduced
26. 1990: Directorate of Teacher Education Research and Training established.
27. 1995-96: Introduction of revised syllabus for classes I-XII
28. 1997: The separate Department of School Education was formed in 1997, after bifurcation from the Education, Science & Technology Department under the administration of Principal Secretary to Government at Secretariat

29. 2001: Directorate of Matriculation School formed.


2.13.2 Objectives of Education in Tamil Nadu

The present system of education in Tamil Nadu is on the basis of Tamil Nadu Uniform System of Education Act, 2010. The following are the main objectives:

1. To provide elementary schools in hamlets where there are no schools
2. To provide free and compulsory education for all children of age group 6-14.
4. To provide five years of schooling all children before 2007.
5. To provide eight years of schooling for all children before 2010.
6. To eradicate dropouts before 2010 fully.
7. To improve the basic amenities in schools.
8. To improve and enrich the syllabus.
9. To improve the quality of education from the pre-school to higher secondary school level.
10. To ensure minimum levels of learning.
11. To impart refresher training to teachers.
12. To eradicate illiteracy
13. To maintain the confidentiality of public examination and release the results to the entire satisfaction of the user community.
14. To recruit well qualified teachers through written examination.
15. To distribute quality textbooks at fair price in time.
16. To open village libraries where there is a population of 5000 and above.
17. To give importance to vocational training schools.
18. To encourage health education in schools.
19. To involve the parents in the management of schools to a great extent.190

189 Supra note 187.
2.13.3 Primary Education

The state of Tamil Nadu was first to break the ice by legislating compulsory primary education in 1994. There are a number of initiatives at national and regional levels aimed at realization of the child’s rights to education.\textsuperscript{191} The state is aiming at ‘compulsory free education for all’ by achieving universal retention. It also aims at attaining quality education by developing the personality, talents and physical abilities of students. To ensure the quality of education, basic infrastructure facilities, capacity building of teachers, monitoring learners and assessment have been emphasized. The Child centered Activity Based Learning in the State encourages the children to develop their creativity and collaboration along with joyful learning. ‘To attain the Millennium Development goal of Education for All, the State offers welfare schemes like Free Supply of Text Books, Free Uniforms to all, the Noon Meal Scheme beneficiaries and free bus passes to all the students from Standard I to XII’.

2.13.4 Privatization of Education

Over the last 15 years, encouraging and fostering privatization of education at different levels towards a government policy has been a strongly perceptible trend. Going by government statistics unaided schools are high in number than the government schools. Matriculation schools had sky rocketed from mere 144 in 1984 – 85 to 1641 in 1999 – 2000.\textsuperscript{192} There has been an uncontrolled growth of thousands of primary schools with their craze for English medium education which made a mockery of any meaningful educational policy by the government.\textsuperscript{193} “The number of primary schools by 2003 were 14.18 million and the upper primary schools were 50-65 million. But looking to the population explosion in India it is too unmatching comparable number.”\textsuperscript{194} 89 percent of the primary schools are in public sector and only 10 percent are in private sector, however in this sector there are large enrolments, satisfactory attendance and minimum dropouts.\textsuperscript{195} This shows that such schools are in great demand. The state of Tamil Nadu showed the highest concern for the primary education by giving aid to private schools – 5.0 at the same time it had the highest number of

\textsuperscript{190} Ibid.
\textsuperscript{192} Policy Note on Education 2000 - 2001
\textsuperscript{193} Ibid.
\textsuperscript{194} Source: 8\textsuperscript{th} All India Education Survey (NCERT) 2002; See also Rajya Sabha Debates, Dec. 18, 2006. (All figures are in million).
\textsuperscript{195} Educational Statistics at Glance – 2005 to 2006, Min. of HRD, Govt. of India 2008.
unaided private schools – 5.1. It was also found that in the year 2008 – 2009, Tamil Nadu has 65.76% of government schools and 65.44% of private schools of the total schools and it is also seen that 34.24% of government schools and 34.56 % of private schools was there in the year 2009 – 2010. It is found that Tamil Nadu is the second leading state which tops the state wise distribution of schools index in India having proportionately more private schools of 7.4% and significant presence of private schools is observed in par with government schools.**197** As per the state wise enrolment for elementary education in India for year 2009 -2010 it is observed that Tamil Nadu’s enrolment in government schools is 44.9%, 23.7% in private aided managements and 31.3% in private unaided managements. Around one third of the state’s total enrolment is in private unaided schools. The higher enrolment level in private aided and unaided schools is suggestive of the fact that people in Tamil Nadu is conscious of quality education.**198** Tamil Nadu enjoys relatively greater access of private schools having better ranking in the 3rd place among the states.

In terms of teachers index the figures suggest that Tamil Nadu is one among the best performing leading states. On the front of output index Tamil Nadu is ranked first. In composite index for primary level Tamil Nadu is ranked 4th having better position in this index among others. In terms of attendance rates, Tamil Nadu is ranked second best performing state using data from three different sources such as Central Statistical Organisation, National Sample Survey Organization and National Family Health Survey at different points of time.

2.13.5 Public Expenditure on Education in Tamil Nadu

Recent trends in the State Government’s approach to education, especially on matters of budget allocations, have been quite disturbing. Whereas 30 years ago nearly 36% of the budget was earmarked for education, the allocation has steadily declined to less than 18%. The long-term trends are indeed far from encouraging. In addition, in terms of universally accepted standards, national and international, the picture surely raises serious questions! Studies done on average growth rates of public expenditure on education in real terms are very revealing. While Tamil Nadu showed growth rates of 9.0% in 1980-85 and 12.5% in

**196** Ibid

**197** Source: NUEPA (2011), Elementary Education in India Progress towards UEE, National University of Educational Planning and Administration.

**198** Ibid

1985-1990, the growth rate had fallen substantially over the 1990-1995 period. In terms of policy perspectives, allocation as percentage of Net State Domestic Product (NSDP) is a more crucial indicator. The Expert Committee on Expenditure in Education, in its report to the Central Govt. in 1999, has strongly recommended that at least 6% of GDP should be spent on education in the public sector and has demanded that the target be reached by 2007 at the latest.

UNICEF calculates that public expenditure on education in Tamil Nadu fell from 11.5% of GDP in 1990 to 5.5% in 1998. The educational outlay of Tamil Nadu fell from an already low level of 4.1% of NSDP in 1992-94 to even further down to 3.8% in 1995-96. The allocation to primary education is another crucial policy instrument to be followed. In Tamil Nadu, the share of primary education to the general education budget is 49.80%, and all through the 1980’s and 1990’s, this has been the level. A point to be emphasized is that in the present composition of primary education expenditures, nearly 97.1% goes towards salary and wages and only 2.9% towards other development expenditures. Further, most of the increased allocations are more due to the effects of pay commission increasing staff expenditures.

Studies all over the world have shown that accelerated economic and social development has been possible only in countries that have managed to correct such imbalances so that at least 10-15% of expenditure is spent on inputs that go to raise the quality. As percentage of NSDP, the expenditure on primary education in the State works out, for 1995-96, to be merely 1.9%. Studies have shown that an effort to bring about universalization of primary education would demand this to be raised to about 3.0-3.5%.

2.13.6 Educational Structure

The structure of education in the state is based on the national level pattern with 12 years of schooling consisting of eight years of elementary education (i.e.) five years of primary and three years of middle school education for the age groups of 6 to 11 and 11 to 14 years respectively.

---

201 Supra note 187.
202 Ibid.
2.13.7 Enrolment Ratio

There are 97,97,264 students in primary, 18,73,989 in secondary and 11,84,232 in higher secondary classrooms. Hence the total number of children comprises of 1,28,55,485 children enrolled across the state as of 2010.203

2.13.8 Medium of Instruction

Tamil and English are common medium languages. The medium of instruction in most private schools is English while the medium of instruction for the government run schools are primarily Tamil medium. There are peculiar cases in which the Kendriya Vidyalaya’s are run by the central government have a dual medium of instruction - English and Hindi.

2.13.9 Accreditation

All recognized schools belong to any one of the following accreditation systems:

1. Central Board of Secondary Education - for all years of study
2. Tamil Nadu State Board - for all years of study
3. Indian Certificate of Secondary Education - for all years of study
4. Matriculation System for classes 1 - 10 and automatically rolled over to Tamil Nadu State Board for classes 11 and 12.
5. Tamil Nadu Anglo-Indian School Leaving Certificate for classes 1 - 10 and automatically rolled over to Tamil Nadu State Board for classes 11 and 12.

Exceptions to the above rule include a few schools that follow the Montessori method, International Baccalaureate, IGCSE or the American system.204

2.13.10 Directorates of Education in Tamil Nadu

The Minister of Education, who is a member of the state legislature, is in overall charge of education in the state. The following Directorates implement those education aspects which are under the control of the School Education Department.

203 Ibid.
204 Ibid.
1. Directorate of Elementary Education
2. State Project Directorate, District Primary Education Programme and SSA
3. Directorate of School Education
4. Directorate of Matriculation Schools
5. Directorate of Government Examination
6. Directorate of Teacher Education, Research and Training
7. Directorate of Non-formal and Adult Education
8. Directorate of Public Libraries
9. Teachers Recruitment Board
10. Tamil Nadu Text-book Corporation

2.13.11 Schemes of The Government of Tamil Nadu

Some of the schemes introduced by the Tamil Nadu government in school education are:

1. Mid-day Meal Scheme
2. Early Childhood Care and Education (ECCE)
3. Girls education
4. Computer education
5. Integrated Education for the Disabled (IED)
6. National Programme of Education for Girls at Elementary Level (NPEGEL)
7. Kasturba Gandhi Balika Vidyalaya (KGBV)
8. Educational satellite (EDUSAT)
9. Distribution of free text books
10. Distribution of free uniforms
11. Distribution of free bus pass

---

205 Ibid.
206 Ibid.
2.13.12 Role of Secretariat

The overall charge of education in the State is the Minister of Education who is a member of the state legislature, subject to the joint responsibility of the State Cabinet. The chief executive officer who assists the education minister in all functions related to school education in the State including planning, budgeting and administration is the principal secretary of the school education department. The principal secretary is assisted by a Joint secretary, four deputy secretaries and six undersecretaries.\textsuperscript{207}

2.13.13 Functions of the School Education Department

The functions assigned to the School Education Department includes

1. Overall control of education department,
2. Policy formulation,
3. Finalization of the annual budget relates to school education
4. Administrative sanctions for various projects and programmes
5. Advice to other departments in education and training aspects.\textsuperscript{208}

2.13.14 Advisory Boards and Committees

Some advisory bodies and boards for strengthening educational planning and administration in the state have been set up by government of Tamil Nadu. Composition and Functions of some important boards and committees are as follows:

State board of school examination\textsuperscript{209}, Board of matriculation schools\textsuperscript{210}, State level empowered committee for SSA, Committee on the functions of Matriculation Schools\textsuperscript{211}, Committee on Codification of educational rules\textsuperscript{212} and Committee on Nursery and Primary Schools.\textsuperscript{213}

\begin{itemize}
\item \textsuperscript{207} Ibid.
\item \textsuperscript{208} Ibid.
\item \textsuperscript{209} G.O.Ms.No.26 School Education dated 16.02.2001.
\item \textsuperscript{210} G.O.Ms.No.239 School Education dated 18.12.2001 and G.O.(2D), No.15 School Education dated 06.03.2002.
\item \textsuperscript{211} G.O. (2D), No.15 School Education dated 06.03.2002.
\item \textsuperscript{212} G.O.Ms.No.177 School Education dated 14.11.2002.
\item \textsuperscript{213} G.O.Ms.No.81 School Education dated 29.03.2000.
\end{itemize}
2.13.15 Acts and Rules

The Constitution of India provides the basic legal framework for the legislative authority between Union and constituent States. The 42nd Amendment of the Constitution has placed education in the concurrent list, making it a joint responsibility of the center and the states. In order to implement educational policies and plans effectively, both the central and state governments enact laws from time to time. In Tamil Nadu the following Acts, Codes and Regulations provide the legal foundation in the state. 214

2.13.15.1 Acts

1. Tamil Nadu Elementary Education Act, 1920 (Repeated in 1998)
2. Tamil Nadu Recognised Private Schools (Regulation) Act, 1973
3. Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974
4. Tamil Nadu Compulsory Elementary Education Act, 1994. 215

2.13.15.2 Rules, Codes and Manuals

1. Tamil Nadu Education Rules, 1892
2. Code of Regulation for Nursery & Primary Schools
3. Code of Regulation for Matriculation Schools
4. Code of Regulation for Anglo-Indian Schools
5. Grant-in-Aid Code, 1956 (Inspection code). 216

2.13.16 Educational Development Index (EDI)

Educational Development Index of different states calculated by the District Information System on Elementary Education (DISE), Ministry of Human Resource Development (MHRD) on the basis of three different criteria including access, infrastructure and teachers states that the outcome index which shows the efficiency and effectiveness of the teacher – learning process in the year 2009 to 2010 the third leading position was held by

214 Supra note 187.
215 Ibid.
216 Ibid.
the state of Tamil Nadu and for the year 2010 to 2011 Tamil Nadu, topped first in ranking in
the index.\textsuperscript{217}

(F) RIGHT TO EDUCATION IN CHENNAI

2.14 Education in Chennai

One of the most prominent districts in the state of Tamil Nadu is Chennai. Chennai
originally called ‘Madras Patnam’, is situated in the then province of Tondaimandalam, an
area between the North Pennar river of Nellore and the South Pennar river of Cuddalore.
Chennai is the capital city of Tamil Nadu state and it itself is a district. It is more than 350
years old with a rich heritage of its own. It is also one of the metropolitan city in India and
serves as the gateway of the culture of South India. Majority of the people in Chennai are
Tamil speaking people. It plays an important role in the cultural, historical and intellectual
development of India as well by gradually emerging as a cosmopolitan city. This district still
represents the distinct components of the Dravidian civilization. The area also holds out an
interesting aspect of Dravidian architecture, dance, drama, music, sculpture and other arts and
crafts. Chennai was the capital of the entire British Madras Presidency until 1774. The city
corporation founded in 1687 was the first such governing body to set up outside Europe. The
British left India on fifteenth of August 1947 but Chennai remained as a standing monument
of the influence of the British over India.\textsuperscript{218}

2.14.1 Demographic Features of Chennai

Chennai is located on the stretch of the Coromandel Coast in the Indian state of Tamil
Nadu. It is situated 60 meters above the sea level. It is the fourth largest city of India and has
population of around 6.4 million people. The district of Chennai spreads over an area of 426
square kilometers.\textsuperscript{219}

2.14.2 Corporation of Chennai

The corporation of Chennai is the second oldest corporation in the world and the
earliest such organisation in British India, grew out of the early East India company
administration of the Fort and the Town.

\textsuperscript{217} http://www.indiastat.com/education/6370/educationaldevelopmentindex/.../stats.aspx, visited on 04/05/2017.
\textsuperscript{218} www.chennaicorporation.gov.in, visited on 06/05/2017.
\textsuperscript{219} Ibid.
2.14.3 Municipal Administration

The Commissioner of the Corporation is the chief executive. He has office in the Ripon building. The Commissioner is assisted by three Joint Commissioner, one deputy commissioner from Indian Administrative Service, two chief engineers and seven superintending engineers. For the sake of administrative convenience, the corporation area is divided into ten zones and each zone is headed by a zonal officer.\textsuperscript{220}

2.14.4 Objective of Education Department of Chennai Corporation

The objective of the Chennai corporation is to improve the enrolment rate and to reduce the dropout rate. Schools in Chennai are run by the Tamil Nadu government, or by private organisations, some with financial aid from the government. The medium of instruction in government schools is English and Tamil. Private schools offer English medium education. Private schools are usually affiliated to the Tamil Nadu State Board or the Tamil Nadu Matriculation Board. A few schools are affiliated to the national CBSE Board, ICSE Board, NIOS Board, Anglo – Indian Board and the Montessori system. A few schools also offer the International Baccalaureate and the American systems. Elementary school education to children is from 6 to 14 years of age.\textsuperscript{221}

2.14.5 Administration of the Education Department

Chennai schools fall into two administrative categories – Government schools run by the government and corporation schools run by Chennai corporation. There are other schools run by private bodies. Private schools fall under the following categories: schools with Central Board syllabus, schools with State Board syllabus, schools with Matriculation Syllabus, schools with Anglo Indian syllabus and schools with oriental syllabus. From the academic year 2011, the Government of Tamil Nadu has brought in “Samacheer Kalvi” syllabus.

Education is the key that unlocks the door to modernization. Organized education in general and education of children in particular is sine qua non of a nation’s development. At the global level committee of nations by establishing international organisations and agencies constantly endeavour to establish educational institutions and impart education to the people.

\textsuperscript{220} Ibid.
\textsuperscript{221} Ibid.
Developed countries were pioneers in establishing educational institutions at the grass root level and offered compulsory education to their children. Developing countries also followed the same. Education is relevant irrespective of the ideological commitment and constitutional framework. It is observed that consequent to international covenants and conventions across the world member countries have taken efforts in providing compulsory education to its young citizens.

In Asia also, it is found that countries like China and Japan provide compulsory education to its children. In SAARC countries right to education as a fundamental right to children has been provided in all the SAARC countries except Nepal. Providing educational right as a fundamental right is one thing and translating the same into reality is a different thing. Of course, in SAARC countries the level of implementing and providing right to education to children vary widely. All the organs of the state irrespective of their commitments take initiatives in providing right to education.

In India education has a long history. In its tradition of the four ashramas, brahmacharya is the first one meant for pupilage. Unfortunately, education was not uniform and not offered equally to all. It was a monopoly right of one section of the society. This tradition was kept intact for a long time. It is the British who had shaken this tradition and facilitated access to education to all people irrespective of caste and creed. During independence leaders encouraged education including education of children. Corresponding changes occurred in the domain of women education which was considered as an anathema. The republican constitution introduced right to education as a popular directive of Part IV of the constitution. Directives being obligatory and non–enforceable it was not taken seriously. However, the proactive judiciary by interpreting Article 45 in the light of Article 21 and derived right to education as a fundamental right. Consequent to this landmark judgement of the Supreme Court, Indian Constitution was amended and introduced Article 21 and other corresponding amendments in fundamental right to education of children as an explicit fundamental right.

Article 21 A provides an enabling provision wherein it empowered the parliament to enact the right of children to free and compulsory education Act, 2009. This Act empowered the appropriate governments including the government of Tamil Nadu to make Rules for the effective implementation of this Act. The state of Tamil Nadu implemented this Act.
The then Madras presidency was one of the three pioneer presidencies. The then Madras was its administrative headquarters. The city of Madras ever since its establishment in 1639 has been expanding geographically and developing social and economically. After the introduction of the republican constitution and the formation of the linguistic state Madras was renamed as Tamil Nadu. The state of Tamil Nadu has several distinctions including linguistic and cultural variation. The city of Madras was renamed as Chennai. Chennai city itself has expanded so rapidly and widely to claim the status of a district. Being the capital of the State and having cosmopolitan culture there is a vast diversity in its population. As per 2011 census Chennai city has the population of 4,646,732. It has 3 M.P constituencies and 11 M.L.A constituencies. Its population being diverse there is a wide variation within the regions of Chennai in its social and economic factors.

Northern part of Chennai is mostly populated by workers, daily wages and people in the lower rungs of the society. Central part of Chennai has been occupied by people who are better rich and resourceful, well educated and belong to the upper rungs of the society. Southern part of Chennai is an expanding peripheral area where people of all categories reside. Education till 1976 was under the state list. It is the 42nd Amendment that moved it to the concurrent list. In Tamil Nadu administration of education was under two broader divisions namely elementary education and higher education. Originally the Department of Public Instruction (DPI) administered both but subsequently separate departments have been created. With reference to right to education the Department of elementary education is vested with the power to administer. Besides this department, Chennai being a corporation it is under the administrative control of Chennai corporation. Elementary education of Chennai is under the Chennai corporation for all its corporation schools. There are other educational institutions like KV, CBSE which are affiliated to the central government. In Chennai city there are certain aided private schools funded by the state government and are under the control of the department of elementary education. Other set of educational institutions are unaided private schools but recognized and affiliated to the department of elementary education.

It is evident that the elementary education setting of Chennai city is under different authorities namely state government, Chennai corporation and central government. Some schools are fully aided while some others are unaided.
Education system of the Chennai city is part and parcel of Tamil Nadu education system with all its variations. It has undergone changes from time to time based on the policies initiated by the Government of Tamil Nadu and the Union Government. Article 21-A has been introduced by way of an amendment based on the Supreme Court judgement which mandated that compulsory free education shall be imparted to children from 6 to 14 years of age. To comply this mandate the RTE Act and its corresponding regulations have been introduced. This Act and Statute substantially altered the structure and function of elementary education system in Chennai city so as to enable the children to undergo compulsory education till 14 years of age. It is both a right as well as a duty found in the statute. The forth coming chapters would deal with the functioning of this Act and Statute with specific reference to discharging the duties of various stakeholders empirically.