

CHAPTER THREE

RIGHT TO EDUCATION: CONCEPTUAL EVOLUTION, HISTORICAL DEVELOPMENT AND KEY PROVISIONS OF THE 'RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION (RTE) ACT 2009 IN INDIA'

3.1 INTRODUCTION

The chapter primarily focuses on understanding different perspectives on rights and education and how is the idea of the right to education conceptualized in the normative discourse and policy arena. This discussion is essential as a thorough understanding of the idea of the right to education is required in order to analyze the implementation process of the RTE Act 2009.

The concept of the Right to Education is an amalgamation of two separate ideas- Rights and Education. Both these concepts serve as the conceptual basis for the Right to Education, particularly the Right to Free and Compulsory Education Act, passed in 2009 (hereafter referred to as RTE Act 2009 in the chapter). The concept of a 'right to education', which is

grounded in the framework of Rights, is a product of the conceptual thinking that underpins Rights, as well as the legal requirements and historical evolution of Rights with time. Additionally, during the course of history, the concept of 'Education as a Right' has steadily developed concerning the subject of education. After the introduction of the Right-Based Approach, it has evolved into its current form, particularly in India. For this reason, it is necessary to investigate both of these ideas in greater depth to acquire a more in-depth comprehension of the idea of the Right to Education.

In light of the above discussion, this chapter examines the theoretical foundations of the idea of the Right to Education. It includes discussions on the ideas of Rights and Education, as well as the historical development of the idea of 'Education as a Right', both on a global and a national level, theoretical arguments and institutional frameworks provided by the United Nations (hereafter referred to as UN) at global level, references to education and the right to have education in the Indian constitution and judicial interpretation of RTE in India. It is done to understand the historical process of evolution of the RTE Act and its conceptualization to the present day.

The chapter further analyses the contents of the Right to Education (RTE) Act of 2009 in India. In addition, this chapter emphasizes the 4As framework developed by Katarina Tomasevski since it provides a normative framework for achieving the objective of RTE in accordance with its original intent. Therefore, the researcher will analyze the most critical parts of the RTE Act 2009 with the help of this framework.

As a result, the primary purpose of this chapter will be to respond to the questions that follow:

1. How has the notion of RTE developed both globally and nationally?
2. What are the objectives and key provisions of the RTE Act in India?

3.2 Origin of Rights Tradition

The Rights legacy can be traced back to the political ideas of ancient Greek scholars and the theological writings of the early Christians and Jews (Wolterstorff, 2008). Gregory Vlastos

(Vlastos, 1977) provides an example of how the notion of "functional reciprocity"¹ might be used to understand Plato's dedication to individual rights. Like Sir Ernest Barker (Barker, 1906)), who felt that individuals must have rights in a society founded on 'proportionate equality,' Aristotle was an early proponent of individual rights. Many other academics besides Barker have argued that Aristotle is a proponent of individual rights, including Edward Zeller (Zeller, 1897) and Fred Miller Jr. (Miller. Jr, 1995).

However, there are many who contend that the Rights tradition only appeared in the late Middle Ages. According to Richard Tuck's account (Tuck, 1979), Jean de Gerson was the first to propose the concept of rights; nevertheless, Thomas Aquinas' "Natural Law" thesis is also seen as a foundational cornerstone of the rights discourse in Western legal philosophy. Michel Villey says that the concept of individual rights was first proposed by William of Ockham (Villey, 1922). By analyzing the canon law and analyzing judicial materials, Charles Reid Jr. (Reid Jr., 1991) concluded that a "sophisticated knowledge of rights" and a "system of rights" existed in Europe in the twelfth and thirteenth centuries².

All of these views have been called into question by several academics who contend that Rights are a relatively recent development and that the ancient concepts of 'dikaion' by Aristotle and 'ius' by Roman jurists reflect the idea of objective Rights in political theory³, where it referred

¹ Gregory is the one who first proposed the idea of 'functional reciprocity,' which states that "everyone has a claim to those, and only those, socially distributable advantages that will maximize his contribution independent of the ratio whereby the value of services supplied."

² The years 1140-1348 are sometimes referred to as the "classic age of canon law." This age covers the period of time. Canon laws are a set of laws that have been created within specific Christian churches via the exercise of authorized ecclesiastical authority to govern both the entire church and parts thereof, as well as the behaviour and acts of individuals within the church.

³ When Aristotle says that a society is "rightly arranged," which means that it demonstrates the appropriate framework for human relationships, he uses the term dikaion in a more objective

to something that was 'fair or just.' These individuals argue that Rights are a product of the Enlightenment rather than the Ancient Greeks and Romans (Finnis, 1980). MacIntyre (1981) says that rights are a "modern phenomenon." He bases this claim on the fact that the ancient or mediaeval language and the texts of Hebrew, Greek, Latin, or Arabic do not contain any expression that can be precisely translated to the term rights as they are used today. The articulation of rights is linked to the "rise of a market economy" and the "emergence of an unprecedented atomized individualism," and the claims of the seventeenth-century origin of rights tradition are often associated with the rise of the individualist philosophers of early modern England, most prominently John Locke and Thomas Hobbes. Ian Shapiro (1986) has argued that rights and justice evolved out of the contractarian tradition of the seventeenth century. In a similar vein, Thomas Hobbes was regarded as the pioneering rights theorist by C.B. MacPherson (MacPherson, 1962). He argued that the economic development of the 17th century led to the emergence of a new belief in the value and rights of the individual and that this belief found its expression in the natural rights philosophers of the 17th century, Thomas Hobbes and John Locke. Specifically, he believed that the economic development of the 17th century led to the emergence of a new belief in the value and rights of the individual. Leo Strauss (Strauss, 2022) has also claimed that the Rights tradition developed in the seventeenth century due to abandoning the major doctrines of an earlier philosophical tradition that originated in either the fourteenth or the thirteenth century. This debate over where the concept of rights came from is also connected to various interpretations of the word "rights."

The researcher contends that after the individual was elevated to the centre of political theory, the emphasis on rights as necessary conditions for an individual's survival began to take shape. It was following the development of liberal thought in the Middle Ages. The Industrial Revolution, Capitalism, the Reformation, and other developments brought changes that ushered in modernity and fuelled interest in individual rights. Before this, throughout the times

sense. Ulpian, a Roman jurist, uses the term 'ius' in the sense of justice as something that renders each person entitled to their rights (ius). Given a person's job or standing, what is "due" to them is considered their "right" in this context. The ancient Greeks and Romans understood the term "right" to refer to something that involved the proper assignment or relation of things to humans; nonetheless, this does not qualify as "subjective rights" as that term is understood in modern times.

of antiquity, classical scholars did not concentrate their attention on the individual. The individual was only deemed a component of the society or group and lacked his or her unique identity. This is also mirrored in the political ideology of the ancient world, which did not emphasize the individual's rights. Ancient political thinking does not include the idea of the individual as an upholder of rights or an individual legally entitled to rights. Instead, the concept of obligation was given more weight in ancient political philosophy. In the Indian tradition, this principle is reflected in the concept of Dharma, which is central to Indian political theory. Dharma can be understood in a variety of ways, and one of those ways is the concept of "obligation," which refers to the rules that an individual ought to observe, follow, and do. Dharma elucidated the overarching truth principles that apply to every person and that they are obligated to follow. Classical Greek intellectuals espoused comparable viewpoints, in which they placed a significant amount of stress on the obligations of citizens in the context of the state. Surprisingly, the entire treatise on building a just state and the strategies of politics in statecraft by Kautilya, Plato and Aristotle does not include a section on individual rights. It is because, in ancient times, the individual was not regarded as an independent entity in its own right but rather as a part of the whole society. As a result, to ensure the proper operation of the whole, each component was expected to carry out its duties successfully and abide by the established norms. The liberal concepts did not come into being until much later, which is why this assumption was not questioned until much later.

3.2.1 MEANING OF RIGHTS ⁴

Every individual has particular needs that must be met for them to continue living and progressing as a whole. Inherent values like safety, liberty, equality, and justice are included in this category of necessary circumstances. In addition, utilities such as food, water, a clean environment, health, and education are also included in this category. These required conditions can be thought of as the rights of individuals because they allow for the "largest

⁴ In the English language, Rights can be understood both in an objective and subjective sense. In its objective sense, the term comes close to the idea of correctness. In a subjective sense, it implies something that human beings possess. The focus of modern political discourse has mainly been on Rights in its subjective sense. The scope of the thesis also deals with the idea of 'subjective rights'. Hence, the researcher has omitted the discussion on objective rights.

possible development of the capacities of (their) personality" and because "they are secured and guaranteed to the biggest possible number of people by the state" (Barker, 1967). According to the reasoning of Harold Laski (1925), this system of Rights is "essential so that citizens of the state be assured of proper treatment and fair regard". He added that "without those rights, the citizen would not be free". As a result, people voice their requirements as claims against the authority of society and the state. It is done for the simple reason that a democratic state is obligated to satisfy its citizens' basic needs and requirements and provide them with the opportunity to make the most of their potential. Thus, rights can also be understood as claims of individuals against the state. Furthermore, since the democratic state guarantees these rights to all its citizens equally, without discrimination, it binds all the individuals in a chain whereby everyone has a duty or obligation to respect each other's rights. An individual's duty or obligation towards others can be understood as a claim justified based on "justice, law, or another similar norm" (Miller, 2009).

Wesley Hohfeld (Hohfeld, 1919) provided yet another insightful understanding of rights within the realm of law. According to Hohfeld, rights can be broken down into four categories: privilege, claims, immunities, and powers. Rights can be exercised as a privilege without there being any corresponding duty, while Rights as claims put a corresponding duty on theirs to respect that claim. Rights can be exercised as a privilege without there being any corresponding duty. The concept of rights as power allows one individual to change or even define the rights of others, but the concept of rights as immunities allows one to be exempt from the law. Similarly, according to Ronald Dworkin's theory (Dworkin, 2013), rights are "trumps" because people have certain moral rights against the government that can never be taken away, not even for consequentialist reasons.

It is evident that the discussion of rights is an essential component of political theory; consequently, numerous viewpoints on rights have emerged throughout the course of history, each providing a distinctive account of the concept's significance as well as its roots, evolution, and practical applications. It makes rights an essentially contested concept in philosophical and theoretical discourse. The fact that scholars cannot reach a consensus on numerous facets of the notion of rights, such as its definition, theoretical foundation, and application in specific contexts, contributes to the fact that rights are an immensely contentious idea (Miller Jr., 1996). All of these debates regarding rights have dominated modern political theory, and they are at the core of the theoretical and ideological incongruities within the field. Furthermore, Rights

are also concomitant to various other theoretical concepts such as obligation, freedom, citizenship, liberty, equality, and justice, all of which are essential in the process of shaping human history. Finally, rights also define the relationship between the individual, the state, and society in a significant way. The fulfilment of specific needs is necessary for an individual's development and growth. Some of these needs can be interpreted as intrinsic values such as freedom, security, liberty, equality, and justice, while others are presented in tangible forms such as food, water, a clean environment, health, and education. When individuals demand or claim that these needs be met, they are exercising their rights. Hence, rights can be understood as the social, economic, political, cultural, and legal conditions enabling individuals to fully develop their natural capacities and lead dignified lives. When individuals demand or claim that these needs be met, they are asserting their rights. As a result, rights, which may be understood as claims made by individuals against states, forge a powerful connection between the individual, the state, and society. It will also be correct to argue that this multiplicity of perspectives has not only turned rights into a dynamic concept but has also given rise to other significant concepts like the right to education in the theoretical and policy discourse. Because scholars understand rights differently, the idea of rights has been theoretically categorized in different ways in the debate on rights. It has developed several different schools of thought on rights, each providing a distinctive viewpoint on its meaning and relationship with other theoretical concepts. Thus, the subsequent section will discuss the main theoretical viewpoints on rights.

3.2.2 THEORIES OF RIGHTS

The idea of rights can be understood in several different ways according to the different schools of thought within the realm of political philosophy. Moreover, the idea of rights has vacillated between many distinct theories throughout history due to the varying opinions surrounding various characteristics of rights, such as their origin, scope, nature, recognition, and protection. Therefore, the primary approaches to the study of rights are discussed in this section.

3.2.2.1 THEORY OF NATURAL RIGHTS

The idea of natural rights may be traced back to natural law. The argument put up by supporters of the natural rights theory is that human beings, by virtue of the fact that they are human, are endowed with certain rights by nature. These rights are inalienable, meaning they cannot be taken away from him under any circumstances. According to the arguments of the social

contract theory, the state exists in the first place to protect the rights of man. Thus, the natural rights theory places the individual's rights on a higher pedestal than the state or authority. As a result, the theory does not consider it a necessary condition for the legitimacy of its claims that the state or any other authority acknowledges rights. Instead, it argues that man derives rights from nature and not the state.

In the theoretical discourse, the earliest reference to natural rights theory can be found in the writings of Aristotle (Barker, 1906; Miller Jr., 1996). After that, the concept underwent additional development in the political philosophy of thinkers and philosophers living during the 17th and 18th centuries. In their social contract theory, Thomas Hobbes and John Locke elaborated on the concept of natural rights and maintained that natural rights were rights that man in the state of nature possessed before the development of society. It is generally agreed that John Locke was a primary proponent of the natural rights doctrine during his time. He maintains that the natural rights of man, such as the right to life, liberty, and property, cannot be taken away from a man by any state authority. These rights include the right to have life, liberty, and property. They serve as the cornerstone of the nation-state and civic society. (Locke, 1980).

On the other hand, Hobbes interpreted the natural right as the right to "self-preservation" in the state of nature (Hobbes, 1904). In Thomas Paine's writings, the idea of natural rights is developed further and given additional expression. He argued that natural rights are the foundation upon which civil rights are built and that these rights are pre-existing in the individual because they are the intellectual rights or the rights of the mind, in addition to other rights that an individual utilizes to ensure his comfort. On the other hand, they must be careful not to violate the inherent rights of those around them. Thomas Paine contends that when individuals group to exercise their natural rights, it results in power and elevates everyone to a higher level of competence (Paine, 2008).

This idea of natural rights that people are born with inherent rights has been a significant factor in shaping the course of human history. Not only did it serve as an impetus for the American and French revolutions, as well as offer an early articulation of the liberal perspective on rights, but it also established the foundation for the early stages of the development of liberalism as it is practised today.

3.2.2.2 THEORY OF MORAL RIGHTS

Unlike the natural rights theory, the theory of moral rights contends that rights emanate from the human conscience since it is the values and principles that determine good and evil that constitute the basis of rights. The theory further argues that the historical processes of a society are a significant source of rights, in addition to the social practices and interactions that shape those historical processes. Rights are considered a consequence of this process (Green, 1986). Therefore, they are acknowledged and justifiable on ethical grounds rather than on legal grounds in and of themselves. T.H. Green's works (1986) are credited with introducing the idea of moral rights. Green argues that moral rights are fundamentally social and that the authority that recognizes rights is not the state but rather the moral consciousness of the community. Additionally, he denies the claims of natural rights, which are predicated on the ideas of consent and claims as a means of shielding individuals from the control of authorities (Cookson, 2001). He instead argues that rights are entitlements that belong to individuals since they contribute to the fulfilment of "moral agency" and, by extension, contribute to the "common good" of society (Green, 1986).

3.2.2.3 THEORY OF HUMAN RIGHTS

The discourse of human rights emerged following the conclusion of the Second World War. Human rights are fundamental rights that every individual is entitled to, regardless of their gender, race, nationality, ethnicity, language, religion, or any other status. Human rights cover a wide range of rights, such as the freedom from slavery and torture, the right to life and liberty, the freedom of speech, the right to a job and an education, among many more. All human beings are entitled to these rights universally without any discrimination. The concept of human dignity, which should be protected at all costs, is accorded a high level of importance within the framework of human rights theory. The theory of natural rights and the notion of moral rights provide the underlying ground upon which the modern theory of human rights is built. Today, discussions on rights are predominately centred on the concept of human rights, which has grown to incorporate many facets of human life, including but not limited to education, health, the environment, food, employment, and other related topics.

3.2.2.4 THEORY OF LEGAL RIGHTS

The majority of philosophers believe that to define a right and determine who is entitled to it; there must first be some legal framework or set of norms established by the state. Legal rights theory is conceived as a result of the focus placed on legal structures as a precondition for the

actualization of rights. The idea of legal rights contends that, in contrast to the natural rights theory, the origin of a right may be traced back to a legal structure or instrument established by the state. The writings of Jeremy Bentham (Bentham, 1996; Schofield, 2013) reflect this view. Wesley Newcomb Hohfeld (Hohfeld, 1919) has further elaborated the idea of legal rights by understanding them in the context of power, privilege, and immunity.

3.2.3 MAJOR LEGAL MILESTONES IN THE JOURNEY OF RIGHTS

In this part, the researcher concisely summarises the most significant legal landmarks in the history of rights. As was just mentioned, the concept of rights has developed progressively during the course of history. Nevertheless, a few significant turning points along this path added a new facet to the concept of rights. The first of these events occurred in England in 1215, when the Magna Carta, also known as the Great Charter, was signed. It is widely regarded as one of the most important legal texts and has been credited with playing a crucial part in the development of democracy in Britain. The Magna Carta was the first document that established the notion that no one was above the law. King John of England affixed his signature to the charter. Additionally, it included many other provisions, such as the right of the church to be free from the interference of the government, the right of all free citizens to own and inherit property and to be protected from excessive taxes, and the right of widows who owned property to choose not to remarry if they so desired. Additionally, it included measures that made it illegal to engage in official misconduct or accept bribes.

It was written by barons to safeguard their rights and property against the despotic authority of King John of England, who violated some traditional laws and practises. It played an essential role in restricting the King's absolute powers and bringing him under the jurisdiction of the rule of law, which was a significant achievement. In addition, the Bill of Rights, passed in England in 1689, was responsible for establishing a constitutional monarchy by delegating various responsibilities to parliament. Both of these documents are important because they laid the groundwork in England for democracy based on the rule of law, due process of law and equality before the law, and individual rights.

The second significant development in the legal history of rights was the passage, in 1791, of the Bill of Rights in the United States of America. This document guaranteed the people of those states their fundamental civil rights and privileges. The first ten amendments to the Constitution of the United States, known as the Bill of Rights, went into effect on December

15, 1791. These amendments restricted the federal government's powers in the United States and protected the rights of ordinary people in relation to their government. Hence, it is recognized as an essential piece of legal documentation in the annals of history. Furthermore, it contains several essential articles that preserve the rights of individuals, such as the freedom of speech and expression, the freedom to publish one's ideas, the freedom to practise one's religion, the right to keep and bear weapons, the freedom to petition, and the freedom to assemble and petition. In addition, it makes it illegal for the government to deprive any individual of their life, liberty, or property without first providing them with the appropriate legal process.

As a direct reaction to the atrocities committed against humanity during the Second World War, the United Nations General Assembly passed the Universal Declaration of Human Rights on December 10, 1948. This document is considered the third and most significant milestone in rights history. The Declaration of Human Rights lays forth thirty fundamental freedoms and rights universally held by all people, without exception. Additionally, it was the impetus for the commencement of a discourse on human rights, which has as its primary goal the protection of socio-economically disadvantaged people globally. Finally, due to its influence on many international and regional conventions, treaties, and regional and domestic laws of nations, the document is an essential basis for international human rights law. It has also led to achieving the objective of achieving freedom, justice, equality, and peace worldwide.

In addition to these happenings, all major revolutions (English, French, American, and Russian) have also made significant contributions to developing the rights discourse. In every contemporary revolution, the questions of rights and representation have been two of the most significant driving forces. These revolutions can serve as the basis for constructing an evolutionary model of rights. The French and American revolutions gave rise to the first generation of civil and political rights. In contrast, the Russian Revolution is credited with giving rise to the first generation of socioeconomic welfare rights. The third generation of rights, which has just appeared on the intellectual horizon, emphasizes contemporary problems and requirements facing humanity, such as environmental preservation, animal rights, cultural rights, and group rights.

It is interesting to note that, in contrast to the rights won by earlier revolutions, the rights won by the third generation were won by social movements. This trend of the development of rights demonstrates that rights are human needs that constantly adapt to new circumstances in

different parts of the world. Furthermore, during the contemporary era, the idea of Rights was further propelled forward by the ideologies of individualism, socialism, and liberalism. As a direct consequence, various distinct rights theories are conceived of, including the human rights theory, the socio-welfare theory, the natural rights theory, and the legal rights theory.

3.3 THE IDEA OF EDUCATION

Education is a living process; it is the product of protracted historical development and is still progressing now. It has been accorded a great deal of significance throughout the course of history, and it is frequently regarded as a device that may be utilized to achieve success, prosperity, and advancement. It also differs from the conventional belief system because it encourages the use of rational thought processes in examining everything else. This subsection explains the meaning, significance, and historical context of the philosophy of education, as well as an overview of how it has been articulated in various contexts. It also makes an effort to analyze how the educational system evolved over a period of time.

3.3.1 MEANING & SIGNIFICANCE

It is very challenging to define the term education. It can be viewed as a process and its final destination. It is a process that starts from the moment a child is born and lasts till the moment he or she breathes their last breath. Learning is a process that continues throughout one's entire life, beginning at the earliest stage of one's life and continuing in some form or another at every step. A child will study at school and home; as the child grows older, this learning will also occur at work, within the individual's peer group, and at various institutions and organizations with which the individual is affiliated. The acquisition of this knowledge is of the utmost significance since it enables a person to make the most of his or her skills and potential. It improves the quality of man's life to the highest feasible degree. As a result, education is regarded as a potent tool not only for the development of the person but also for the growth of the nation. In addition, the realisation of every other civic, political, economic, or social right is contingent upon attaining a level of education. According to political development theories, education is a crucial factor that must be satisfied for a state to complete its metamorphosis from a parochial, traditional society to a contemporary one.

The word "education" comes from the Latin word "educatum," which is composed of two parts: the prefix "e" and the suffix "d." Etymologically speaking, "education" comes from "educatum." In this context, "e" denotes movement from the interior to the exterior, while

"Duco" refers to growth and improvement. In addition, the word is frequently connected with the Latin word 'educare' or 'educere', which means to 'raise' or to 'nourish,' to 'bring out,' to 'draw forth,' or to 'propel from within to without'. Education can be defined as the formal process through which a society's knowledge base, which includes a society's values, conventions, and skill set, is passed down from one generation to the next. However, because education, both as a concept and a process, is inherently dynamic, its meaning and form have evolved over time.

The concept of education can be understood in both a specific and a general sense when it comes to academic discourse. In the narrowest meaning, it can be defined as teaching and learning activities that take place within the formal system of education such as schools, colleges, universities, and other training establishments. Hence, it is the most common usage of the term. In this setting, students receive their education through information and instructions teachers deliver through established classroom instruction protocols. The training is delivered within established institutions, which may be regional, municipal, or national in scope, as well as either public or private in nature. Literacy is the end goal of this education system, which does this by teaching students topics that are predetermined and covered in the curriculum using specific instructional strategies. Here, education is perceived as a tool that may be used to consciously shape and mould the character and behaviour of young people. However, the reach of education is limited since it is focused solely on transmitting information from the instructor to the student and the subsequent acquisition of information by the student as a result of this process.

On the other hand, educating oneself can be seen in a broader sense as the process of one's complete maturation as a person as a result of all the different factors that affect one from birth until death. It encompasses all activities that allow humans to transmit a body of knowledge, skills, a moral code, and social, cultural, spiritual, and philosophical values to succeeding generations. These things make it possible for a group to survive and effectively carry out the activities necessary for living.

This understanding of education incorporates not only the various stages of human life but also the various experiences that an individual has during the course of his life journey. Because of this, education is not a one-time event and is not limited to the formal teaching-learning process in educational institutions. Instead, education is an ongoing activity. This concept of education is reflected in the writings of Plato, who viewed it as a process that began in the first year of

childhood and continued until one's death. Its goal is to "develop all the beauty and perfection of the body and soul of human beings to the fullest extent that they are capable of" (Dhiman, 2008). Even Mahatma Gandhi believed that education should be considered an "all-round process" that should strive to develop the "body, intellect, and soul of a child and man" to their full potential (ibid). Thus, in a broader sense, education can be understood as an unceasing activity that is directed toward a specific goal and that develops the innate powers and skills of human beings through every experience that they have in life; it is a process that develops capacities in the individual that assist him in "controlling his environment and fulfilling his possibilities" (Dewey, 1916).

Furthermore, the idea of education has been theorized in contemporary times utilizing the framework of the 4 Hs, which consists of 'Head, Heart, Hand, and Health'. Therefore, to a greater extent than ever, education's function can be understood in various ways:

1. Education plays a significant part in the process of a child's cognitive development and the enhancement of his mental capacities, such as his imagination, reasoning, thinking, focus, creativity, and ability to solve problems.
2. Education plays a role in developing a person's emotions, including their capacity for sympathy and kindness.
3. Education helps people become more self-sufficient by enhancing their technical abilities.
4. It also positively impacts their mental, physical, and emotional health.

It is the all-encompassing definition of education, which takes into account every facet of a person's life.

3.3.2 PERSPECTIVES ON EDUCATION IN INDIAN AND WESTERN TRADITIONS: POLITICAL AND ECONOMIC DIMENSIONS

The conceptual understanding of education can be further derived from the writings of several scholars from both the Eastern and Western worlds. These scholars have contributed to developing the idea of education and articulated its importance in different areas.

In the context of developing a powerful state and economy, the significance of education has been brought to light by many philosophers and thinkers. In the east, particularly in the Indian context, this thesis discusses the ideas of several notable scholars like Kautilya, Swami

Vivekananda, Rabindranath Tagore, M K Gandhi, Sri Aurobindo, and Dr Sarvapalli Radhakrishnan.

Kautilya considered proper education important for training and effectively grooming the King for his role. He did not, however, explicitly outline a system of education, unlike Plato. Nonetheless, his works reflect his thoughts on the importance of education regarding the prince's education and training. He contends that the prince needs to be educated in various sciences, including philosophy, the three Vedas, economics, and the science of politics, to understand society, the economy, and government. He has also offered an exhaustive description of the prince's training programme. He will receive martial arts instruction in the morning using elephants, horses, chariots, and weaponry like an infantryman. He will listen to history later on in the day. He must prepare new lessons for the following day, review previous lessons, and listen to things several times if he needs help to understand them for the remainder of the day and at night (Rangarajan, 1992). Thus, according to Kautilya, intellect is the end consequence of learning, followed by yoga and then self-possession. Only a wise, disciplined King, committed to just governance of the subjects and constantly mindful of the wellbeing of all beings, could enjoy the world without opposition. He also argued that education is an ongoing process. A prince's education continues even when he reaches adulthood and marries. He should always associate with wise elders to strengthen his self-control because discipline has solid foundations only in them.

Besides Kautilya, Swami Vivekananda's views on education are also profound. Education, according to Swami Vivekananda, is an expression of the perfection that exists in every person. It can be achieved by the efforts of teachers and parents, who are responsible for promoting a culture of character development. He further strongly emphasized giving both men and women equal opportunities for education because they share the same Aatma and therefore have the same birth rights. He also stressed the importance of physical education because, in his opinion, strength is life, and weakness is death. Additionally, he stressed the importance of using one's mother language as the medium for instruction and believed that education might help foster national and international concord. Finally, he claimed that education can change a person's views and may be used to eliminate superstitions.

Another important scholar whose views on education are of importance is Rabindranath Tagore. Education, according to Rabindranath Tagore, is a means of self-expression. He believed children learn best in a natural setting and should have freedom while learning. As a

result, educators must develop and implement teaching strategies that allow for children's natural expression and freedom. He also believed that education must promote a child's holistic development, including intellectual, emotional, and activity-oriented growth, and that educators and teachers must consider this while developing curricula and lesson plans. Children should have the freedom to choose the subjects and delivery methods for their education that will best prepare them for success in the workplace. He claimed that using the child's mother tongue as the medium of instruction is not an option because the subject can be taught to them quickly and comprehensively. Teachers emphasized the need to instil self-discipline in their students and referred to it as a necessity so that it might be internalized by the students rather than compelled through sanctions. A child's intellectual and mental development depends on schooling for character development and a proper environment.

Besides Tagore, M K Gandhi also advocated education's importance in several works. According to him, literacy is neither the beginning nor the end of education. Education brings out the best qualities in a man's body, mind, and spirit. He also emphasized the importance of using one's mother language as a teaching tool because it makes learning by speaking, listening, reading, writing, and thinking easier. Importantly, he supported the notion that elementary education should be free and required for children aged 6 to 14. It will promote educational, economic, and social equality in the nation by enabling education for kids from all social classes. He also emphasized the importance of including crafts in teaching. Students will get motivated and develop their mental and intellectual skills using a tool like handicrafts, which will also help them become more independent. Learning can be intensive, relevant, and engaging only when learning is interwoven with life and is tied to real-world applications. Therefore, the teaching-learning process must be based on psychological principles. While developing a curriculum, one must consider the learner's profile, including age, interests, experience level, background, and ability. Citizens who believe in democracy possess an ethical character, have a sense of national pride which should be fostered through education, and emphasize the value of academic and physical growth. He held that character development is education's ultimate purpose and main goal and is more crucial than reading. At the All India Education Conference in Wardha, Maharashtra, in 1937, he even presented the Basic Education Policy, or Nai Talim, which emphasized the importance of making primary education free and mandatory for everyone, using the mother tongue as the instruction medium, making education self-sufficient and self-sustaining, and prioritizing the development of productive craft or industry.

Another notable educationist is Dr Sarvapalli Radhakrishnan, the former president of India. The country celebrates his birthday as 'Teachers Day'. For him, education went beyond simple literacy. Furthermore, he argued that human beings can be created through education. Thus, education must focus on developing a disciplined spirit, refined heart, and intellectual development. Empathy, kindness, trust, ethics, morality, harmony, cooperation, respect, and other virtues can be nurtured through education. Democratic ideals must be fostered in education. He further argued that students must be raised to be strong, capable leaders of our nation who can live up to their responsibilities. Therefore, it is necessary to instil democratic values through education. Student's cognitive, emotional, and constructive skills must be developed at school to foster a sense of civic responsibility. The environment in which we live, our nature, and the traits and requirements of nature must all be covered in the curriculum. It must also cover the actions we must take to meet the environment's and nature's demands.

Furthermore, another notable scholar besides Dr Radhakrishnan is Sri Aurobindo Ghosh. Aurobindo Ghosh is a revered educator, a renowned philosopher, and an accomplished yogi. He presented an integral philosophy of education. His life philosophy, founded on brahmacharya, yoga, and spiritual penance, directly influenced his idea of education. He argued that any education that incorporates all three elements would undoubtedly help fully develop man. Real education, in Aurobindo's view, is that which cultivates in a child a space that is free and conducive to creativity. In Aurobindo's opinion, real education fosters a child's interests, creativity, mental faculties, moral sensibilities, and aesthetic senses in a free and creative environment. They ultimately result in the growth of his spiritual abilities. According to Aurobindo, integral education is that which aids in bringing out all that is in each man, prepares him for every aspect of life, and assists him in establishing proper relationships with the life, mind, and soul of the group to which he belongs and with the greater whole life, mind, and soul of humanity, of which he is both a unit and his group or nation, a separate and inseparable member. Aurobindo divided people into five groups for the sake of integral education. The five developmental principles of human life are known as the five-fold, and integral education is the process through which the five-fold is integrally developed. The physical, the vital, the mental, the psychic, and the spiritual are the five main parts of education that must be present for it to be considered fully completed.

Lastly, in the Indian tradition, the views of J. Krishnamurti on education need mention. J. Krishnamurti was critical of the current conventional education system since, according to him,

it was ineffective at fostering independent thought processes and impaired a person's ability to understand who they are as a whole. And although it cognitively awakens individuals, it turns them into mindless, mechanical, enslaved people that lack creativity. He firmly believed that because each person is made up of several entities, the purpose of education should be to help those entities come together because, without it, life would be nothing but a succession of disputes and sorrows. He argues that the aim of education should be to develop integrated, intelligent humans and foster healthy relationships not only between people but also between people and society, rather than just knowledge acquisition, fact gathering, and correlation. He further emphasized that the right education is accepting a child for whom he is rather than trying to mould him into an ideal of whom we believe he should be. There should also be no coercion, as coercion cannot awaken sensitivity. Without coercion or threats, the right kind of education will promote empathy and consideration for others.

In the West, the writings of the ancient Greek philosophers Plato and Aristotle include the oldest references to education discovered in the Western world. Plato's book *Republic* is generally regarded as a treatise on education because of its substantial discussion of education. *Republic* demonstrates how a just man and state can be created by applying the appropriate educational and training practices (Cole, 2011). Plato believed that education was the most crucial factor in establishing the foundation for an ideal state founded on the principles of justice and ruled by a philosopher king. It was a "positive means" that could steer human nature in the proper direction, and by doing so, a condition of harmony might be brought into existence (Sabine & Thorson, 2018). As a result, Plato advocated for an education system controlled by the state and considered the state to be, first and foremost, an educational institution (ibid.).

According to Plato, the primary purpose of education was to produce a populace capable of meeting the requirements of the state, and it was education that developed the character of both an individual and a nation. For this reason, he placed significant attention on developing an effective educational system. His education plan called for educational instruction to be divided into two distinct parts: primary and secondary education. At first, the educational programme concentrated primarily on two facets: training for the soul via music and training for the body through gymnastics. As time went on and the youngster got older, more challenging academic courses were introduced to them. Plato desired education to build an ideal state that supports the values of justice through a consciously developed populace aware of its duty and duties. It is vital to highlight that Plato sought education to create an ideal state. Therefore, even though

ancient Greek society discriminated against people based on class and gender, Plato made education available to people of all classes and women. A great deal of discrimination marked the social order of the city-states of ancient Greece. Only the citizens, a select group that included males from the upper classes, were allowed to take advantage of all the rights and advantages. The rest of the population, including women, children, non-natives, merchants, and artists, were not permitted to enjoy the rights and responsibilities of citizenship. Plato's education plan is considered revolutionary because it challenged the established social order and made education accessible to everyone. It would further improve the odds of everyone participating in the business of the state since Plato employs his scheme of education to choose the best ruler or 'philosopher-king' to reign.

Additionally, this would promote the chances of everyone participating in the affairs of the state. Education is used as a tool in this context to break the shackles of discrimination and promote equality. It is also used to encourage everyone's participation in the affairs of the state, ensure that those who hold power are distributed based on merit and that those who enjoy it do so because they truly deserve it and not simply because of their birth. Additionally, it demonstrates the complex relationship between education and citizenship (Gutek, 2011).

In his well-known work 'Politics,' not only Plato but also Aristotle made mention of the importance of education. School questions comprise most of Book 7 and Book 8 of the Politics text. Aristotle, much like Plato, believed that education was one of the most critical roles the state could play. He is in favour of instituting a nationwide, obligatory public education system that would mould the character of the populace and build the perfect state. According to him, the quality of education is the primary factor determining the ideal personality of the people and the state. He believes that the fundamental role of the state should be to ensure that all citizens have access to an education that fosters excellence on all fronts (moral, intellectual, and physical). Since the state is seen as a moral agency, fulfilling its moral obligation to educate its citizens is one of its primary responsibilities. One of the primary goals of educational institutions should be to encourage the total growth and development of citizens across all domains, including moral, intellectual, physical, and civic life. He did not think of education as something that ended with childhood but continued throughout one's life. Therefore, the state should function as the citizen's primary educational institution. The educational philosophies of Plato and Aristotle are similar in several respects. Both utilize exercise and musical performance as vehicles for inculcating virtuous behaviours and moral principles in

their students. In addition, their educational system aims to produce responsible citizens, warriors, and administrators, all of which will contribute to developing an ideal state.

The perspectives of ancient thinkers on education are consistent with the political ideals that were prevalent at the time. The concept of individual rights did not prevail in the thinking of the ancient scholars, as was mentioned above in the section on rights. The advent of modernity resulted in the growth of the idea of the individual as a bearer of rights. As a result, this perspective is also discernible within the context of education. When ancient intellectuals wrote about education, they did not do so from the vantage point that individuals were entitled to a right to education. Education was not perceived as an asset for expanding and developing individual personality. Instead, education was perceived as a tool to establish an obedient citizenry and a philosopher king to serve the state. This idea is reflected in the writings of ancient Greek scholars. Both Plato and Aristotle considered education necessary, but not for individuals' personal growth and development; instead, they thought it was necessary to improve the state. Therefore, both thinkers emphasized the importance of the state control system of education, and moral education, to create an obedient citizenry and the best form of state ruled by the best ruler.

After the dawn of the modern era, the stature of education elevated into a transformational tool that can facilitate the growth and development of an individual. The views expressed in J.S. Mill's writings are consistent with this viewpoint. Mill maintained the social significance of education and advocated for high-quality public schools for children of all socioeconomic backgrounds. According to J. S. Mill's (1982) interpretation, a person's education consists of "whatever contributes to forming the human being; to make the individual what he is, or to impede him from being what he is not." He does not confine education merely to the classroom teaching-learning process but rather adopts a more holistic approach. He argues that education can be acquired through various sources, institutions, and affiliations, such as the family and society. The responsibility of educating students is more than just the instructor's domain. It is possible to get it from any intellectual, as well as from nature and the complexity of the surrounding environment. Students are, therefore, not the only people who can participate in education. It includes all people, regardless of gender, age, racial or ethnic background, or social group. The political philosophy of Mill (1982) is intricately intertwined with his beliefs on education. In his well-known article titled "The Subjection of Women", he ardently advocated for women's equality in three crucial areas: the right to vote, equal opportunities in

education, and employment. He also advocated for women's equality in the workplace. He linked citizens' access to education with their ability to exercise their right to vote, as he believed that education was a crucial factor in establishing a functioning democracy. He argued for compulsory education as a means of fostering people who were knowledgeable, capable, and autonomous magistrates. Mill was an early supporter of the idea that all children should receive an education because he believed it was essential to establishing a literate citizenry.

Aside from the field of political science, economists have also acknowledged the significance of education as a factor in economic success. Economists, like political philosophers before them, who saw the value in education, have also seen education as an essential aspect that contributes to the expansion and development of a nation. This view is in line with what political philosophers perceived. Adam Smith, David Ricardo, Thomas Robert Malthus, Nassau Senior, and John McCulloch were some of the classical economists who advocated for mass education and believed that education played an important part in the economic and social development of a society. They also argued that education played an essential role in the development of society.

Adam Smith gave education centre stage in his thinking. In his seminal work on the wealth of nations, he noted that the national education system dedicated to superior intelligence and orderly habits of people was vital for a good civil government, economic activity, and progress (Smith, 1976). He emphasized mass education and saw it as a social good. He asserted with reasons that all the acquired and useful abilities of inhabitants of a country are a part of the capital. Classical economists have followed a similar path treaded by Smith. For various reasons and due to the rise of Keynesian economics, which saw education mainly as consumption rather than investment, it is safe to say that the economic value of education does not find the due importance for some time in between. However, the renowned neoclassical economist Alfred Marshall acknowledged education as a national investment and that the most valuable of all capital is that invested in human beings (Marshall, 1961). He recognized education as a vital source of human capital formation and, thereby, the way to increase incomes. Marshall called it "knowledge is the most powerful engine of production" (ibid). Despite this acknowledgement, it was only in the 1960s that there was concrete economic analysis to explain education and human capital by their economic value because of measurement problems. Economics increasingly went on to identify the concept of capital with goods and material objects (Schultz, 1963).

Theodore Schultz and Gary Becker, economists at the University of Chicago, were pioneers of this approach; their work during the late 1950s and 1960s on this subject earned them the Nobel Prize in economics later on (Becker, 1975). At the Center for advanced study of behavioural sciences, while measuring capital and labour productivity, Schultz noticed some anomalies with the measurement; for instance, some productivity improvements were systematically left out by the calculation. In further research, he found out that this can be explained by the US citizens' increased investment in themselves as human agents, mainly investment in education which is influencing their productivity and economic growth (Schultz, 1963). Hence, he points out that the exclusion of acquired abilities and education as a means of improving production and as a product of investment has fostered a misleading idea where labour is seen to be capital free and that all that matters is the number of work hours. Taking cues from Gary Becker's work, Schultz notes that by investing in acquiring knowledge and skills, the labourers become capitalists, owners of their human capital, which has economic value. Therefore, he wanted human resources to be explicitly treated as a form of capital.

Furthermore, Schultz said that investment in man, like property investment, is a way of establishing additional sources of income. For him, education forms a substantial part of investment in human capital development (Schultz, 1971). Schultz and Becker's work developed an empirical theory of human capital and analyzed the rate of return to investment in education called the 'Human Capital Approach for Development'. In his 1960 presidential address to the American Economic Association, he coined the term 'economics of education' for a full-fledged discipline focused on studying the role of education in economic development (Schultz, 1963).

When he sought to examine what constitutes a good life, the economist-philosopher Amartya Sen pioneered a new approach to human wellbeing called the capabilities approach. It is centred around "freedom to achieve in general and the capabilities to function in particular" (Sen, 1994). He was, precisely, having the freedom and the range of options to choose from in deciding what kind of life to lead. He criticizes the theories of human welfare, like utilitarianism and also, to an extent, the human capital approach. In this context, he and his collaborator Jean Dreze chalk out the role of education in the development of capacities (Dreze & Sen, 1995). For Sen, education has a two-fold role; firstly, it can be a primary means of enhancing capacities and opportunities. Secondly, Education is a tool to develop the judgment to exercise capacities appropriately. He sees education as both an intrinsic and instrumental

value. He argues that the human capital approach conceives education-induced human capital in terms of commodity production. The human capability approach, on the other hand, focuses on the role of education in accumulating human capital and broadening human capabilities and capacities (Sen & Nussbaum, 1993). This broadening might be of many forms, from acquiring the ability to read, communicate, and argue to the ability to choose between various opportunities and possibilities in an informed way (Sen, 1999). Sen's capability approach is rich in implications for education and its potential public action.

3.4 EXAMINING THE IDEA OF THE RIGHT TO EDUCATION

This part primarily focuses on comprehending the significance of having a right to education within the context of a larger philosophical and policy discourse. To accomplish this objective, the researcher investigates the concept of a right to education from various vantage points, including the natural and human rights approach, the legal approach and judicial interpretations, and the A-4 framework developed by Katarina Tomasevski.

3.4.1 FORMULATING A CONCEPT OF THE RIGHT TO EDUCATION BASED ON THE LEGAL FRAMEWORK

The legal theory locates rights within the state structure and its legal framework. When viewed through this lens, the concept of rights shows the relationship between rights and obligations between the individual and the state. As was mentioned in the previous section, Hohfeld's fourfold classification of rights as claims, privilege, immunity, and power has added various dimensions to the interpretation of legal rights. The researcher will utilise these dimensions to investigate the right to education from a legal standpoint. Hohfeld's classification of rights as claims, privilege, immunity, and power can be found here.

The right to education meets the requirements to be considered a "claim right" because it places responsibilities on the state and the family to ensure its fulfilment. The right to education belongs to a subset of rights known as the socio-welfare rights of the second generation, which have a constructive bent. In contrast to the first generation of civil and political rights activists, today's activists recognise that to realise these rights fully; the state must take an active role. Education was included in part three of the Indian constitution, which is legally enforceable, and the Right to Education Act 2009 places a duty on the state to provide every child with free

and compulsory education until the age of 14 for as long as the child is under the state's jurisdiction. In addition, the provision of "providing opportunities for education to his child or ward between the ages of six and fourteen years" is included in the fundamental duties section of part IV-A of the Indian constitution.

The second concept included in Hohfeld's classification is the right to "liberty or privilege," which precludes the imposition of any particular responsibilities on anybody else. The right to education meets the criteria for both a liberty right and a privilege right as well, given that the person who holds this right, in this case, a child, is free to attend school and is under no obligation to the state not to do so. The child has no matching legal obligation toward the state from their perspective. Although this undermines the significance of the connection between rights and duties to foster harmony in society, "children along with animals and the imbecile" are certain "exceptions to this rule" because they "enjoy rights", but "attribution of duties to them is absurd" (Benn & Peters, 1959). The legal framework of the RTE Act of 2009 in India was also constructed along these lines. Although there is an element of compulsion in the right to education, this compulsion can be regarded as a "duty" on the part of the state to provide every necessary provision enables the child to go to school. In addition to this, Article 51-A of the Indian constitution puts the obligation on the parents to ensure that their wards regularly attend school.

The concept of immunity is addressed in the third criterion of Hohfeld's classification; nonetheless, this criterion does not constitute the Right to Education as a legal right. An exemption from the law that is bestowed upon a person is known as immunity, and this kind of privilege can be considered a form of a negative right. Whereas the right to education is considered a positive right, possessing this right does not confer any exemption from the law on the right holder. Instead, compulsory education makes it legally enforceable on both the right bearer and the provider of the educational opportunity.

Suppose the term "immunity" is not strictly interpreted in a legal sense, and a broad view is taken; in that scenario, the right to education does grant the children "immunity" from other aspects such as child labour, human trafficking, ignorance, and disease. It is, further, generally agreed that education is the most effective weapon to combat these vices.

The final point of Hohfeld's classification discusses right in the context of power relationships, which also defines the right to education as a legal right. Given that the right to education is a positive right, the state and families must play significant roles in ensuring this right is realised. The Right to Education Act of 2009 puts a moral and legal obligation on the state and the family to fulfil this right. If the state or the family fails to fulfil this obligation, they can be held liable for violating this right.

3.4.2 THE CONCEPTUALISATION OF RTE FROM THE PERSPECTIVES OF NATURAL RIGHTS, MORAL RIGHTS AND HUMAN RIGHTS

The concept of natural rights lends itself well to analysing the right to education. The natural rights theory states that individuals are entitled to rights from nature. Among these natural rights are the right to life, liberty, and property. (Locke, 1980). This idea of the right to life is the foundation upon which the right to education is built. The concept of having a right to life is not limited to merely existing; rather, it is understood broadly, which entails having the opportunity to lead a worthwhile life that upholds human dignity. In this light, the right to life encompasses everything necessary to have a life worthy of living. Education is considered a crucial criterion in determining whether or not a life is worthwhile. Obtaining an education not only makes it easier to gain access to other resources that are necessary for leading a fulfilling life as guaranteed by the right to life, but it also enables individuals to live their life to the utmost extent possible, according to their abilities (*Mohini Jain v. State of Karnataka & Ors.*, 1992 AIR 1858).

Examined further from this framework, the right to education is founded on the same natural and essential quality, whether spiritual or rational, shared by all human beings. It indicates that all individuals have the similar right to develop their capacities to the fullest extent possible, whether regarding their physical health, social life, or mental and spiritual well-being.

Education is the key to a person's ability to earn a living and enjoy other rights, entitlements, and privileges such as freedom, equality, and justice. Furthermore, education plays a significant part in developing a person's character. It inculcates a sense of civic responsibility in students and, as a result, helps them become more responsible citizens. Furthermore, education gives people better access to healthcare, which is also essential for living a good life. Thus, education is a crucial factor that plays a pivotal role in achieving one's full potential and making one's dreams a reality.

Furthermore, the concept of natural rights is inextricably linked to self-preservation, which, in the Hobbesian view of the state of nature, can mean protecting an individual's life (Sheridan, 2011). While taking a broader interpretation of this concept, education can also be considered a significant factor in protecting one's life. It is possible because education enables the development of life skills and values, both of which are necessary for the maintenance of one's life and, as a result, a precondition for safety.

In the same light, the contemporary discourse on human security also entails education as an essential criterion. The traditional conception of security, particularly concerning international relations, was only ever applied to the nation-state and its defence against external aggression. However, in modern times, our comprehension of the concept of security has expanded in scope, and it includes human beings in its ambit. As a result, the concept of human security has emerged. Human security encompasses all risks to human life, dignity, and survival and strengthens efforts to combat them. It represents the idea that humans should be able to live fully without fear of survival or dignity. Thus, human security is the protection and preservation of human "survival" and "daily life" (Sen, 2002)⁵. Because education eliminates illiteracy and innumeracy, which can further play an essential role in realising other legal rights of people and contribute to creating employment opportunities for people. Access to primary education is related to human security. It is because education eliminates illiteracy and innumeracy (ibid). The aim of human security is to safeguard people in all settings, such as their residences, workplaces, streets, communities, and surroundings, instead of solely concentrating on amassing weapons to protect national and territorial borders. Education can help achieve this objective. This insight was shared by Haq in 1995.

The right to education can be conceived further as a moral right as well, given that it originates from the moral conscience of society. The term "moral rights" refers to those rights recognised by all members of a society and are the result of deliberation and consensus among them. Education, as a method, dates back to the beginning of human civilisation. Everyone in a

⁵ See background paper for the workshop on "Basic Education and Human Security," jointly organised by the Commission on Human Security, UNICEF, the Pratichi (India) Trust, and Harvard University, in Kolkata, 2-4 January 2002.

community and within a family should try to educate their offspring and teach them a trade or two so they can reach their full potential as human beings. It is not just considered an investment in the child to provide them with better economic possibilities; it is done to mould them into law-abiding individuals. Compulsory education policies have, thus, been in practice since the times of the ancient Greek city-states. It was widely accepted that individuals' character and inherent values could be moulded through proper education, which further plays a vital role in shaping the character and destiny of a state. Hence, education in either formal or informal form has been part of human society.

Furthermore, the Human Rights Approach, which conceptualises the Right to Education as a civil, political, and socio-economic right, is one of the essential perspectives that may be utilised to understand the Right to Education. Because education is recognised as a fundamental human right, all people, including children, adolescents, youths, adults, and senior citizens, have the right to obtain a quality education. Furthermore, it indicates that states are legally and politically obligated to fulfil various responsibilities to make the right to education a reality for everyone in their respective jurisdictions. The idea of human dignity, seen as the most crucial facet to consider when analysing the dynamics between individuals and their respective states, serves as the philosophical foundation for human rights. The entire field of study devoted to protecting human rights is a response to the horrors and acts of violence committed against humanity during the Second World War. The concept of human rights emerged from a desire to safeguard individuals' rights, which preserves individuals' inherent dignity and worth as human beings within a legal framework. This idea took concrete shape with the establishment of the United Nations and the Universal Declaration of Human Rights.

The foundation of the human rights theory is the idea of protecting human dignity. The concept of human dignity is much nuanced and requires "recognition of a distinct personal identity and reflection of individual agency and responsibility" (Schachter, 1983). Education plays a vital role in enabling individuals to realise their potential and derive their identity fully; the Right to Education can play an essential role in realising human dignity. Education gives people the power to take responsibility for their own lives. Education enables people to obtain particular skill sets and knowledge, which in turn empowers them to avail themselves of employment opportunities, become aware of their rights, and exercise those rights. It does this by increasing an individual's capacity to make good decisions for themselves, which safeguards their autonomy. It has been acknowledged in many judicial pronouncements, as well, that education is a factor that facilitates an individual's ability to fully realise his right to life and lead a

dignified life. Therefore, education is a fundamental human right and a "multiplier right," making it an essential component in realising all other human rights (Tomasevski, 2006; UNESCO, 2020).

The demand for a right to education, outlined in the Universal Declaration of Human Rights, is universal in scope, arguing that all children should be allowed to receive an education no matter where they are in the world. In addition, along with the Universal Declaration of Human Rights, several other international covenants on Child's Rights, and the Millennium Development Goals (MDGs), the Sustainable Development Goals (SDGs) have mandated that the governments of all states include RTE in their legal and constitutional framework.

Following its inclusion in the UDHR, the right to education has since been incorporated into many different countries' constitutional and legal frameworks as a fundamental human right. The right to education aims to facilitate personal growth, increase respect for human rights and freedoms, enable individuals to engage actively in a democratic society and foster understanding, friendship, and tolerance. It includes access to educational services and the need to remove discrimination at all levels of the educational system, set minimum standards, and improve quality.

3.4.3 THE CONCEPTUALISATION OF RTE FROM THE PERSPECTIVE OF KATRINA TOMASEVSKI'S A-4 FRAMEWORK

The first Special Rapporteur on the Right to Education, Katarina Tomasevski (2006) referred to the right to education as a "multiplier right". It was because the right to education enhances the enjoyment of other human rights. Thus, it is imperative that people deprived of the enjoyment of rights and freedoms have access to primary education. Tomasevski (2006) outlined the responsibilities associated with the right to education in a 4-A framework—these 4-As were availability, accessibility, acceptability, and adaptability. The idea of 'availability' is the first step in the Tomasevski framework for determining who has the right to education. It refers to the availability of educational institutions at a distance considered reasonable for students to attend.

Additionally, it is connected to universal education, free of bias and discrimination and compulsory for all. The component of education that is free includes freedom from direct costs, indirect costs, opportunity costs, and other invisible expenses that prevent people from

receiving an education. In addition, it guarantees an educational environment devoid of indoctrination and the influence of ideological undertones.

The term accessibility refers to the requirement, both in law and practice, that educational institutions and education be available to everyone, particularly emphasising the most marginalised members of society. The educational institution needs to be within safe physical reach, and attendance needs to be possible at some geographical place that is adequately accessible. In addition, everyone needs to be able to afford their education. The right to education should be realised in stages. The first step is to make comprehensive, free, and compulsory elementary education accessible as soon as possible, followed by the next step facilitating access to secondary and higher secondary compulsory education, as time and resources allow.

The idea of acceptability refers to setting acceptable curricula that require consideration of parents' values and preferences towards their children's education, as well as the medium of instruction and the educational culture. In addition, the content of educational curricula and textbooks is increasingly considered from the perspective of human rights, thanks to the expanding understanding of children as subjects with the 'right to education' and with the 'rights in education'.

Adaptability is the last but certainly not the least requirement. It mandates that schools cater to the requirements of each student under the Convention on the Rights of the Child and make education responsive. Furthermore, it argues that it is not the individual's adaptation to the environment which is important but rather the environment's adaptation to the individual. Thus the idea of adaptability in education, as opposed to the traditional approach, prioritises a student's best interests and needs before adhering to the norms of the school and places the student's needs and interests ahead of those of the school first.

The concept of a right to education, as it exists globally, particularly under the United Nations framework, has been structured according to these four indicators. These indicators serve a dual purpose. Firstly, they serve as measures to gauge the implementation status of the right to education in countries. Secondly, they provide a theoretical framework for conceptualising the right to education and lend meaning to the concept. Katarina Tomasevski was the first person to design the 4-A Framework. It received subsequent endorsement by the United Nations

Committee on Economic, Social, and Cultural Rights (ICESCR) in its general comments. The framework does not claim to be the only rights-based method of instruction, nor does it purport to represent legal standards. However, it is a framework founded on the principles of non-discrimination, equal opportunity, and participation; these principles were developed through sixty years of international human rights discourse on the right to education.

3.5 HISTORICAL EVOLUTION OF RIGHT TO EDUCATION: ERA OF COMPULSORY EDUCATION

Before the concept of education as a right, education was viewed from an economic-instrumentalist perspective. As a result, states, particularly Western industrialised states, implemented compulsory education programmes in the aftermath of the industrialisation of their economies. While it served the demand for developing trained labour, on the other, it also catered to the need for nation-building.

One field in which the state has traditionally shown a great deal of interest is education. All the components of education, like the structure of the formal schooling system, the adoption of curricula, and the training of teachers, have all been designed and controlled by the states. Because education makes it easier to establish specific values, concepts, and ethos in people's minds, the state naturally has an interest in education. In addition, it is a singular medium or platform that allows for communication with many people. As a result, most states have adopted policies making education mandatory for all students.

Most Western nations had already implemented their compulsory education systems by the Enlightenment era. However, this did not translate into acknowledging education in the constitutional framework as a fundamental right of people. Liberal philosophy, which emphasised the importance of an individual's right to freedom, played a significant role in the development of most Western European and American constitutions in the 18th and 19th centuries. The function of the state was supposed to be restricted to ensure the continued existence of individual rights and liberties. As a result, the main focus of these constitutions was on protecting people's civil and political rights, commonly referred to as their 'first-generation' rights. However, education is not included in this category. Education, on the other hand, captured the attention of socialist regimes, which advocated for the concept of a welfare state founded on the ideals of social, economic, and cultural rights (Nowak, 1991).

The genesis of a government-run education system can be back to the Talmud, written in ancient Greece (Weymann 2014). Throughout history, nearly every culture has devised at least one method of educational provision (Craig 1981). The vast majority of early forms of education were only available to members of specific communities, such as males from the ruling class, military commanders, or clergy members. Most recipients were selected according to predetermined criteria to preserve the socio-political status quo and ensure that specific individuals retained their positions of authority (Boli et al. 1985). Education was used to mould the future elite (Weymann 2014). In addition, education was and still is inextricably linked to the culture of the community; one example of this is the Protestant Reformation (Ramirez and Boli 1987). Throughout history, religious customs and conflicts between social classes have significantly impacted the formation of state-regulated education.

Even before the two World Wars, people in the Western world viewed education as a panacea that could solve various social, political, and economic issues. To create a polis that was compatible with the hierarchical structure of society and a military that was capable of sufficiently following instructions, Prussia instituted compulsory schooling. In 1869, the Ottoman Empire made education mandatory for all citizens to create a cohesive Ottoman culture and populace (Cicek 2012). Similarly, under the influence of the pietist Puritan heritage, the fledgling nation of the United States of America initiated the practice of compulsory education on a state-by-state basis, beginning with the New England colony (Rickenbacker 2001).

On the other hand, several former colonial nations hastened to implement a compulsory education system after the wave of independence, and some did so even before they achieved legal independence. For example, even though Ghana did not achieve its official status as an independent nation until 1957, the Ghanaian legislative assembly in 1951 "decided that basic education to be free and compulsory for school-aged children" (Marlow-Ferguson 2002, p. 506). During this so-called "new era," people believed that education exemplified the ideals of a democratic welfare state. Thus, education evolved to become a fundamental human right while at the same time becoming an institutional obligation for nation-states.

3.6 EVOLUTION OF RIGHT TO EDUCATION AT THE GLOBAL LEVEL: MEANING AND PROCESS

The United Nations and its many organisations have developed several treaties that deal with various aspects of education over the years. The rights-based treaties of the United Nations about children and adults include education as an essential component. These conventions are significant in the process of formulating the nation's policy. As a result, this research aims to examine the meaning of education within the context of the United Nations. It has been discovered that the term "education" can refer to both a broader concept encompassing a variety of formal and non-formal education characteristics and a narrow concept focusing on specific aspects of education. This distinction is brought to light by the European Court of Human Rights, which defines education as "the entire process whereby, in any society, adults endeavour to transmit their beliefs, culture, and other values to the young, whereas teaching or instruction" (Beiter, 2006). While this definition of education gives a more comprehensive picture of the educational experience, defining education as the "transfer of knowledge and to intellectual development" constrains the scope of education. The broader meaning of education emerges in Article 1(2) of the UNESCO Convention against Discrimination in Education 1960 (UNESCO, 2006) which views education as a process encompassing the fullest development of human personality and dignity in all aspects. It also involves the development of respect for the human rights, as well as the promotion of understanding, peace, tolerance, friendship, and gender equality, among other things, and includes the development of respect for the natural environment (Nowak, 1991). This interpretation of education lends itself to a broader understanding of the concept.

In a similar vein, the word education appears in the initial paragraph of Article 1 of the UNESCO 1974 declaration recommendation titled "Recommendation concerning Education for International Understanding, Co-operation and Peace and Education related to Human Rights and Fundamental Freedoms" (UNESCO, 2016). Adopted in 1974, this is an important legal document that guides the member states to shape their education policies in line with a global perspective and a commitment to international solidarity. It was named after the United Nations Educational, Scientific, and Cultural Organization (Kumar, 2014). In this document, education can also be understood in a broad sense since it refers to the entire process of social life through which people, in their capacity and as part of a social group, master the skills, attitudes, aptitudes, and knowledge that is beneficial not only to them in their personal capacity but also to the national and international communities.

As a process, at the international level, the genesis of the idea of education can be traced right back to the development of the right-based approach, which emerged after World War II. The years following World War II's end were remarkable for many significant advances, including integrating human rights into international law. For example, Franklin D. Roosevelt, President of the United States, gave a speech titled "four freedoms" in the State of the Union address in 1941. This speech is widely credited with laying the groundwork for incorporating human rights into the world order after World War II.

In point of fact, the second half of the 20th century witnessed a widespread consensus on the idea of Universal Declaration of Human Rights (UDHR) and a universal acceptance of the values underpinning it. It turns increasingly apparent, as evidenced by the international charters and national constitutions drafted in the wake of World War II, that the sole way for peace to be sustainable not only within nations but also between them is for it to be founded on a basic respect for human rights and socio-economic equity. It is because the only other way for peace to be sustainable is for it to be based on justice. Consequently, the atrocities perpetrated during the Second World War ultimately culminated in the formation of the modern human rights movement and its subsequent acknowledgement.

On December 10, 1948, the General Assembly of the United Nations decided to officially declare the Universal Declaration of Human Rights in effect and put it into force. With the signature of this proclamation, which would eventually serve as the foundation for human rights, the United Nations achieved one of its most outstanding achievements, which led to the development of human rights. As a result, the United Nations Charter, approved in 1945, and the Universal Declaration of Human Rights, ratified in 1948, were the first instruments that accorded human rights an essential place in international law. The Declaration consisted of thirty articles, and its scope extended beyond civil and political rights to include economic, social, and cultural rights.

Subsequently, the concept of education as a right evolved in its normative framework on the global front in documents like - the Universal Declaration of Human Rights 1948, where education as a human right has been universally recognised; the United Nations Convention on the Rights of the Child, Universal Declaration of Human Rights (UDHR) where education as a right is given its legal basis, The International Covenant on Economic, Social, and Cultural

Rights (ICESCR) adopted by the United Nations in 1966, and the Millennium Development Goals (MDGs) where education as a right is further strengthened.

Education was initially acknowledged as a basic human right in a clause included in the Universal Declaration of Human Rights, passed by the General Assembly of the United Nations in 1945. It was for the first time that such a provision had been added in the history of humanity. Since 1948, each nation that exists on the face of the world has ratified at least one human rights treaty, and at least one of those treaties has guaranteed the right to education or at least some component of the right to education. In addition, many states have made steps to codify the right to education in their legal systems and constitutional frameworks.

Education is a fundamental human right, as Article 26 of the Universal Declaration of Human Rights states. It asserts that each person has the fundamental right to acquire an education. At the absolute least, free access should be granted to the educational stages that are regarded as being the most fundamental and foundational. Everyone should be required to finish their elementary school. Then, education of a more technical and professional kind will be made available to the general public, and education beyond the secondary level will be open to all individuals based on the merits of the individuals themselves.

According to UDHR 1948, education serves a dual purpose of not only instilling in students an appreciation for human rights and freedoms that underpin society but also helping them reach their full potential. To achieve this, education fosters an environment of mutual understanding, tolerance, and goodwill among different nations, races, and religions. Furthermore, education supports the United Nations' efforts to maintain peace. Parents bear the responsibility of ensuring their children receive quality education.

The International Covenant on Civil and Political Rights (ICCPR) does not recognise any rights relating to free and compulsory education within the framework of the United Nations. Instead, it may be found in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), along with other socio-economic and cultural rights, and all of these rights can be linked back to the socialist notion of human rights. It is possible to attribute the propagation of socialism on a global level to the socialist governments as being the primary driving force. The right to education was left off of the lists of civil liberties enumerated in domestic Bills of Rights that were proclaimed by most European and American nations in the late 18th and 19th centuries. These nations included the United Kingdom, France, the United States of America,

and the majority of the states in the United States. Even though compulsory primary education in Europe had already been lauded as a significant achievement during the period of Enlightenment in Europe, this was still the case. The fundamental rationale for its absence was because, under the liberal understanding of human rights, civil liberties were seen to be negative rights orientated against intrusion from the state. As a result, the liberal definition of human rights did not recognise these rights.

On the other hand, the socialist idea held that the right to education, along with the right to labour and the right to social security, were three of the most essential human rights. These rights were regarded as essential needs of individuals and thus demanded meaningful action from the state and society (Nowak, 2017).

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was ratified in 1966 and includes provisions related to the right to receive an education. This implies that everyone has the right to education, as stated in Article 13 of the ICESCR. Education is seen as an essential factor in promoting human individuality, dignity, and respect for human rights and fundamental freedoms. In addition, it says that education will make it possible for all people to participate successfully in a free society; this will also foster improved understanding, tolerance, and friendship among all nations, as well as all racial, ethnic, and religious groups. And it will assist the United Nations in its efforts to maintain peace. The article 13 of the current Covenant obligates states that have ratified it to recognize that primary education must be mandatory and free for everyone. Additionally, all forms of secondary education, including technical and vocational secondary education, should be widely accessible through every appropriate means. In particular, free education should be introduced gradually. Therefore, the states that ratified the present Covenant recognise that primary education should be mandatory and free for everyone.

Adding to the general tone of the previous article, Article 14 of the present Covenant stipulates that every state that becomes a party to the Covenant is required to ensure that primary education is provided free of charge in its metropolitan territory as well as any other territories that fall under its jurisdiction within two years of joining the Covenant.

One of the most significant conventions on the right to education at the global level is the United Nations Convention on the Rights of the Child (UNCRC) 1989. As one of the most

widely ratified international treaties, the UNCRC outlines every child's rights in civil, political, economic, social, and cultural sphere, regardless of race, religion, or abilities. Every child has the right to basic fundamental rights, which forms the fundamental principle of the UNCRC. The right to education is emphasized in articles 28 and 29 of the convention. These articles require the implementation of the four core principles:

- non-discrimination
- prioritizing the best interests of the child
- maximizing the right to life, survival, and development of the child
- allowing children to express their views in all matters

It has 54 items that outline children's rights and how governments should cooperate to ensure they are available to all children. The signatory state governments must try to address children's fundamental requirements while also assisting them in realising their full potential. The UNCRC was ratified in 1992 by India.

In addition, many other agreements contain provisions linked to education. These provisions ensure that the scope of these conventions encompasses the vast majority of children, regardless of their socioeconomic status. For example, article 10 of the Convention on the Elimination of All Forms of Discrimination against Women, ratified in 1979, states that all Parties must adopt all essential steps to eliminate discrimination against women to ensure equal rights with men in education.

According to Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination, 1966, States Parties are required to prohibit and abolish racial discrimination in all of its forms and to guarantee the right of everyone, regardless of race, colour, or national or ethnic origin, to equality before the law. It also includes the enjoyment of the right to education. In addition, States Parties must prohibit and abolish racial discrimination in all its forms. The Convention on the Rights of Persons with Disabilities, adopted in 2006, acknowledges the right of individuals with disabilities to receive an education, as stated in Article 24. Similarly, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, passed in 1990, recognizes the right to education of children from migrant families under Articles 12.4, 30, 43-1, and 45-1. Additionally, this Convention upholds the right of parents and legal guardians, at least one of whom is a migrant worker, to

provide religious and moral education to their children according to their beliefs, regardless of their own migrant status. Children of migrant workers have the same entitlement to education as local children in the state where they live. It stipulates that there shall be no barriers in the way of a child's admission to public preschool educational institutions or schools due to the irregularity of either parent's stay or employment or the child's stay in the state of work. Furthermore, it is required that migrant workers have equal access to the following:

Educational institutions and services provide that these institutions and services have admission requirements and other regulations.

- Vocational guidance and placement services
- Vocational training and retraining facilities and institutions

Further, it is recognised by the States Parties to the International Covenant on Civil and Political Rights, 1966, that Article 18 acknowledges their responsibility to respect the liberty of parents and legal guardians to teach their children religiously and morally under their convictions. Furthermore, the Declaration on the Rights of Indigenous Peoples from 2007 includes provisions to protect Indigenous children in Articles 14, 17, and 21. It ensures that indigenous peoples have the right to develop and control educational systems and institutions by their traditional methods of instructing and educating students in the languages native to their communities. In addition, articles 1, 2, 3, 4, and 5 of the UNESCO Convention against Discrimination in Education, signed in 1960, contain provisions that guarantee compulsory education and provide that education shall be directed to achieve the full development of the human personality. These articles also state that education shall be directed to develop the human personality fully.

In addition, the right to education received additional impetus in 1990, when the world leaders gathered at Jomtien to create an agenda for guaranteeing that all children, regardless of their caste, creed, or affiliation, get at least a primary education. Education is a crucial element of human growth and every child is entitled to it. India committed to ensuring this right by signing the "World Declaration on Education for All" and the "Framework for Action To Meet Basic Learning Needs" in March 1990. These documents were adopted at the "World Conference on Education for All: Meeting Basic Learning Needs" in Jomtien, Thailand. This conference was jointly sponsored by the World Bank and three United Nations agencies - UNDP, UNESCO, and UNICEF. India was one of the countries that participated in this

conference. The global community reaffirmed its commitment in the Jomtien declaration to work toward realising the EFA's objectives by 2000. India was a signatory to the Dakar declaration in the year 2000 and is also an active participant in the worldwide campaign for education for all, which started in Jomtien in 1990.

In addition, the international community and the leading development institutions agreed to the Millennium Development Goals (MDGs) articulated in the Millennium Declaration. In the year 2000, all the member states of the United Nations established eight global development goals to be met by 2015. One of these goals was to attain universal primary education. These goals committed the member countries to ensure that by 2015, gender disparity is eliminated at all levels in the educational sphere and that all children complete primary education. In 2002, the international community formed the Fast Track Initiative (FTI) to provide financial and technical assistance to the world's most impoverished nations to facilitate their advancement toward the education MDGs.

Moreover, the Jakarta Declaration was created due to the international Conference on the "Right to Basic Education as a Fundamental Human Right and the Legal Framework for Its Financing," which occurred in Jakarta, Indonesia, from December 2–4, 2005. It highlights that the right to education is an internationally recognised right in its interrelationship with the right to development and that its legal and constitutional protection is necessary for its full realisation. Additionally, this highlights that the right to education is an internationally recognised right in its interrelationship with the right to development.

Education is a crucial part of the Sustainable Development Goals (SDGs), which consist of 17 interconnected objectives aimed at promoting peace and prosperity for both people and the planet. These goals strive to eliminate poverty, hunger, and gender inequality, while ensuring good health and well-being, quality education, access to clean water and sanitation facilities, affordable and clean energy, decent work and economic growth, industry, innovation, and infrastructure, sustainable cities and communities, responsible consumption and production, climate action, life below water, life on land, peace, justice, and strong institutions, as well as partnerships for the goals. By emphasizing sustainability as its central focus, the SDGs highlight the interdependence between environmental, social, and economic dimensions of sustainable development.

In 2015, the United Nations General Assembly (UNGA) developed the Sustainable Development Goals (SDGs) as a component of the Post-2015 Development Agenda. This agenda's goal was to establish a future global development framework to succeed in the Millennium Development Goals, which ended that same year. They were formally stated and endorsed in a United Nations General Assembly Resolution known as the 2030 Agenda, more commonly called Agenda 2030. The United Nations General Assembly passed a resolution on July 6, 2017, making the Sustainable Development Goals (SDGs) more actionable. The resolution specifies precise targets for each goal and gives indicators to monitor progress. Most goals are scheduled to be accomplished by 2030, while others do not have a termination date. The United Nations has established 17 Sustainable Development Goals, and one of them is Sustainable Development Goal 4, also known as Global Goal 4. This goal aims to ensure that all children have access to high-quality education throughout their lives. SDG 4 is composed of 10 goals, each measured by one of 11 indicators. There are seven "outcome-oriented targets" aimed towards improving education. These include providing free primary and secondary education, ensuring equal access to quality pre-primary education, offering affordable technical, vocational, and higher education, increasing the number of people with relevant skills for financial success, eliminating all discrimination in education, promoting universal literacy and numeracy, and encouraging education for sustainable development and global citizenship. Additionally, the three "means of achieving targets" include building and improving inclusive and safe schools, increasing the supply of qualified teachers in developing countries, and extending higher education scholarship opportunities for developing nations. Further, goal 4 of the Sustainable Development Goals aims to ensure that all children and young people have access to high-quality education and other chances to learn. Literacy and numeracy for all people is also one of the goals that it aims to accomplish. An essential part of acquiring new information and practical expertise is having adequate physical educational infrastructure. Because of this, there is an immediate need to construct additional educational facilities and also to renovate the ones that already exist to create learning settings that are effective, safe, and welcoming for everyone.

Apart from the above-mentioned international conventions, declarations and charters, many regional conventions include provisions concerning the right to education. These regional conventions include the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003), the African Youth Charter (2006), the Arab Charter on Human Rights 2004, the ASEAN Human Rights Declaration (2012), the Revised European

Social Charter (1996), the European Charter for Regional or Minority Languages (1992), and the Framework Convention for the Protection of National Minorities (1992).

3.7 RIGHT TO EDUCATION IN THE INTERNATIONAL PERSPECTIVE: EXAMINING THE EDUCATION SYSTEM IN THE USA, U.K., FINLAND, SOUTH AFRICA AND MEXICO

In an effort to ensure that every child has access to quality primary education, several states have amended their constitutions or passed new laws to ensure this fundamental human right. According to UNESCO's Education for All Global Monitoring Report, about 135 countries, including India, have constitutional provisions for free, non-discriminatory, and universal education for all. India has joined the ranks of about 20 other countries, including Afghanistan, China, and Switzerland, which have laws guaranteeing free and obligatory primary education for a period of 8 years, with the rollout of the Free and Compulsory Education Act 2009.

According to several U.N. and other international conventions, free primary education must be available for a minimum of 9 years and a maximum of 13 years. In most cases, children between the ages of 6 and 14 or 7 and 16 can take advantage of this free education, but in rare cases, the age range can go up to 18 years. When it comes to countries offering their children free education for a prolonged time (in this case, 15 years), Chile is at the top of the list. Several other Latin American countries also introduced a special education programme in the 1990s to boost their primary and secondary education sector. Similarly, the governments of Saudi Arabia, the United Arab Emirates, Iraq, and eight other Gulf countries all provide free public schooling for children under the age of 16 for a maximum of five years. The majority of countries on the Indian subcontinent have adopted this change. However, Sri Lanka and Pakistan are two notable exceptions.

In contrast to Nepal's five-year plan, which is the norm in most of the world, the minimum schooling requirement in Bangladesh and Myanmar is only four years. However, the constitutional provisions guaranteeing free education still need to be included in 50 countries, including the United States, South Africa, Malaysia, and most Sub-Saharan African countries. This section briefly discusses the education systems of the USA, UK, Finland, South Africa and Mexico and examines their historical evolution and important legislations and policies.

This study chose to study the countries mentioned above for several reasons. The United States has long held the title of superpower and hegemon in the global political economy. In addition to being one of the most economically and industrially developed countries, the USA is a large, multicultural nation. This diversity can significantly impede imparting education and devising effective educational policies. The USA, however, has been able to overcome this challenge. Because it is a federal nation, there is no single, integrated educational system, and the federal government is not in charge of education at any level. The states are solely responsible for maintaining the educational system; currently, it is directly under the control of all 50 states. The federal government, at most, can provide funding for education.

It is argued that the U.S. education system has aided the country's ascension to superpower status. The USA is also the most preferred location for tertiary education worldwide because it is home to some of the most recognised educational institutions in the world. The United Kingdom, like the United States, is an economically and industrially advanced nation with a reputation for high-quality education and top-ranking universities, making it an important case study. Furthermore, education is delegated to four jurisdictions in the United Kingdom: England, Northern Ireland, Wales, and Scotland. These regions have different educational systems, certifications, and laws and regulations. There are significant disparities between general and secondary education, resulting in each region having its credit structures and certificates. Despite these variations, the United Kingdom's education system is considered as one of the finest globally. Finland is also known for having one of the best education systems in the world. It is a classic instance of a country that was able to transition from a conventional educational system to a modern educational economy in a relatively short period.

The notion of education has played a significant role in its development process, and the nation has demonstrated that the power of education can be translated into a success of wealth. The attainment of the information-based economy, which the nation has witnessed as a dramatic transformation, has led to a marked acceleration of the nation's domestic knowledge generation process. Furthermore, South Africa and Mexico were chosen because their constitutions incorporated the right to education. These countries are also worth studying because they share a colonial history and are developing economies dealing with comparable difficulties as India.

3.7.1 UNITED STATES OF AMERICA

No specific constitutional provisions in the American Constitution guarantee free education. In the USA, it is mainly the parents and local and state governments that are in charge of education since the Constitution does not talk about education, and the 10th Amendment limits the federal government's role in that area. It is also reflected in the federal government giving less money to elementary and secondary schools than local and state governments.

Early American education was private and religious, focusing on learning to read and write so that people could read the Bible and the new laws for settlement. The Boston Latin School, established in 1635, was the first public high school run by the government. In 1642, the Massachusetts General Court made the first law about education. It said that parents and guardians had to teach their children about religion and the laws of the Commonwealth. Subsequently, the Old Deluder Satan Act of 1647 in Massachusetts said that towns with fifty or more families had to hire a schoolmaster to teach children to read and write, and Grammar teachers in towns with 100 families were hired to get children ready for Harvard College. A penalty was instituted as a measure, but there is no evidence of any community or group being impacted; in fact, the punishment's severity was more severe throughout later periods.

In contrast to the law of 1642, the latter emphasised the Reading and Writing practice. It was done because it was believed to strengthen people's understanding and protection of their religion from outside inferences. As a result, the latter law closed all loopholes left by the law of 1642. Following the successful application of the law in Massachusetts in subsequent jurisdictions across the country, other critical legislative expansions began to take place only a short time after. For instance, in 1650, Connecticut passed a law about education that was an exact transcription of the statute that Massachusetts passed in 1642 (Ramsey, 1985).

By the end of the seventeenth century, compulsory education was weakly enforced. The Indian wars and the family government fall were the leading causes. Indian conflicts caused economic distress, property ruin, and industry loss. Due to war and rising poverty, various Apprenticeship Programs were created. As the country entered the eighteenth century, compulsory education fell further. Vocational Education and Apprenticeship for lower-class youngsters became more critical. Religious instruction dropped, and ecclesiastical influence waned. Education reduced clergy dependence. During the American Revolution, the focus on compulsory education had stopped.

The most significant change occurred in the year 1787 with the passing of the Northwest Ordinance. The ordinance shaped American schooling and fostered education and schools forever. It defined the territory's immigrants and their social, political, and educational institutions. Like Article 10 of the Bill of Rights, this law left education up to the states. As all the new States adopted the ordinance, education expansion continued in the new nation.

Gradually, the demand for a standardised educational system emerged over time. However, the established educational system came under persistent attack in the early 19th century. As one of the most influential advocates for the common school, Horace Mann (the Father of American Education) was appointed to a state board of education. In 1840, he believed compulsory education was neither desired nor feasible. However, in the year 1847, he had a change of heart and conceded that it was necessary if there were individuals in the world who were indifferent toward their children's education (Mann, 1855).

After that, the reformers in the second half of the century compelled all states to establish public schools nationwide. The many local school boards, school districts, and teacher groups were coming together. At the end of the Civil War, southern states made it lawful for students to attend separate schools. By the year 1900, the majority of children aged 6 to 13 attended public elementary schools. Eventually, with the federal government joining the states in running schools, important legislation was passed, like the First Morrill Act of 1862 and the Second Morrill Act of 1890. In the year 1867, the first Department of Education was created. Compulsory education was gaining momentum, and by the year 1918, two-thirds of children were going to public schools, and all states made it mandatory for them to do so. At the beginning of the 20th century, a "high school movement", or second change in American education, made secondary schools bigger. Graduation rates increased when academic programmes were changed to include vocational training and essential subjects.

Crucial developments occurred in the 20th century, significantly impacting the American education system. The passing of the Smith-Hughes Act of 1917 and the George-Barden Act of 1946 gave the federal government a role in teaching high school students about agriculture, industry, and home economics. Further, in 1954, the Brown v. Board of Education ruling made it illegal for public schools to be separate. It became illegal to treat people differently because of their race, gender, or disability and ensure everyone has the same access to education. During the latter half of the 20th century, specifically in 1965, the Elementary and Secondary

Education Act (ESEA) initiated numerous programs, including Title I, which provided federal assistance to underprivileged children, and the Higher Education Act, which enabled students to receive support for their college education, including financial aid. In 1980, the Education Cabinet Agency was created. Even though some people, including President Reagan, wanted to eliminate the federal agency, it got more involved in elementary, secondary, and post-secondary education. In the second half of the century, the federal government got more involved in education, leading to critical educational developments, like the National Defense Education Act of 1958 passed by Congress, the first example of comprehensive federal education legislation.

3.7.2 UNITED KINGDOM

The Society for the Propagation of Christian Knowledge (SPCK), founded in 1698, is considered the progenitor of the education system in the United Kingdom. The society's mission was to help those with fewer opportunities obtain an education and to shape them into morally upstanding individuals with a firm foundation in the idea of faith. The group set up many free schools for kids between seven and eleven. During the 1800s, many groups and societies tried to help people experiencing poverty get an education. The Society for Promoting the Lancasterian System of Education for the Poor started in 1808 and later changed its name to the British and Foreign School Society. It was one of the most important organisations. This society mostly cared about children who came from different backgrounds and had different religious beliefs. The National Society for Promoting Education for the Poor was established in England and Wales in 1811. Its goal was to help poor people get an education in the Anglican faith.

In education, this traditional system of voluntarism was so strong in England that there were no public schools, and education was only required in the late 1800s. Before 1830, the government did nothing to help with things like education. (Rothbard, 1979, p. 32) However, after 1833, the state started giving money to poor people who attended private schools to help them get an education. The first time the government gave money to a group of volunteers, it gave them 20,000 euros. But these actions were all done out of kindness, and there was no sign of coercion (ibid).

In 1869, in Birmingham, a group called the National Education League was formed. It was an essential tool for development. The league fought for all children in England and Wales to get

a free, nonreligious education that was also required. Because of what the league did, the Elementary Education Act of 1870 was finally passed.

The Elementary Education Act was finally passed on February 17, 1870. William Foster, a member of parliament, wrote the act after the national education league pushed for it. The law was also called the Foster's Education Act, which came from the name of the person who wrote it. The act set the rules for schooling for children aged 5 to 12 years. This act from 1870 brought the idea of forcing people to go to school. As the act required the provinces to record who showed up, London province followed the rules immediately and did so for children ages 5 to 13. The rest of the provinces did the same (ibid). However, the rural provinces were hesitant about making attendance mandatory. At first, this was seen as a big step forward for education in the country. However, it was later discovered that the law did not require free and mandatory education and only met some of the needs of the national education league. So, the law should have worked better than it did and ended up getting less than it should have (Elementary Education Act, 1870; Mcculloch, 2020), which resulted in the enactment of the Educational Act of 1880.

Most people call the Elementary Education Act of 1880 an extension of the Education Act of 1870. The act was a power pump for the local education bodies since no other elementary education law gave them the right to make by-laws about school attendance. Instead, it made it compulsory to write by-laws and gave the central government the power to enforce them in places where the local bodies were not. The act was also called "Mundella's Act" because A.J. Mundella's education bill was a crucial part of making the act stronger and closing all the gaps that were still there (ibid).

So, the act of 1880 finally made it mandatory for all provincial school boards to make attendance compulsory and make sure it was enforced. So, in just ten years, compulsory education had taken over all of England. However, many other kinds of natural disabilities, like being blind or deaf, also made it hard to get an education. So, people worked to ensure everyone got the same education, leading to the Elementary Education Blind and Deaf Act of 1893. The act arose because of the need for a specialist to educate blind and deaf children. In addition, it required parents of deaf and blind children to ensure their kids got a good education, forcing schools to make better accommodations for these children (ibid).

These acts did not end efforts to help people with disabilities. In 1899, the Elementary Education (Defective and Epileptic) Act was passed. This law gave school officials the power to determine how many "defective" or epileptic children lived in their areas and make the right plans and efforts to help them get an education. The act also made it the parent's job to ensure these children get a good elementary education. The oldest child who could join was 16 years old. In addition, it made special education in public schools even more available (ibid). These laws were essential for elementary education in England and were made between 1870 and 1893.

Britain also passed many other important laws, such as the Education Act of 1902, which completely changed how education was run locally and resulted in the closure of the English and Welsh school boards. Instead, all of the power over education was given to local governments controlled by the provinces. The provinces also set up councils to look after education.

During the early 1900s, the British parliament implemented several laws that significantly improved and transformed the education system. In 1906, the British parliament decided that the government would give schools more money to help them meet the health requirements of the Education (Provision of Meals) Act. Under the act, the school had to give free meals to children whose families could not afford to pay. Also, in 1907, the government passed the Education (Administrative Provisions) Act, which showed that the government cared even more about children's health. The act said that the people in charge of schools had to ensure that all the kids under their care and supervision were getting regular medical checks. Finally, the Education Act of 1918 was one of the most important laws passed. It eliminated fees in elementary schools, making elementary school education free for everyone. It also expanded the Medical Inspection practice, an essential part of the 1907 Act. In addition, it made nursery schools and programmes for teaching people with special needs more widespread.

Later, in 1938, the Board of Education created the Spens Reports, written by Sir Will Spens. These reports were very important because they helped shape the country's future of high school education. The Education Act of 1944, also known as "Butler's Act," made putting the Spens Report into action easier. All children could get a free education because of the act, which was what had been asked for before. The age to drop out of school was also raised to 15, even though people wanted it to be 16 years old. It did not happen until 1972.

In 1988, the U.K.'s education system was changed in every way. As the Education Reform Act was enacted this year, it changed how people usually think about education and its problems. After that, the country took a more progressive approach to education development and passed the Education Act of 2002 and the Education Act of 2005. These laws were meant to give the education system more freedom and variety, raising the educational standards for everyone.

3.7.3 SOUTH AFRICA

A nation with a long history of discrimination, primarily based on the concept of race, South Africa is located on the southernmost section of the African Continent and is known as the "Rainbow Nation." When the country was colonized by British, the incidence of this form of discrimination reached its highest point. The European colonists in Africa discriminated against Africans based on their skin colour and race. It was primarily because of the widespread practice that led to the development of the apartheid regime in the country. Because of this, the regime had a significant effect on the structure of the education system in Africa. As a consequence, the education system in Africa became structured along racial lines to prepare students of various races to fulfil the expected roles in a nation that was already divided along racial lines (Nevondwe & Odeku, 2013, p.847).

This apartheid education system was accompanied by the Differentiation concept, meaning that different curricula were followed for different racial groups. In addition, there was a significant disparity in the amount of funds that were allocated to education, and higher education was discontinued for black people (Vandeyar, 2008).

This disparate treatment was not just restricted to the denial of access; it had a far-reaching impact that extended from the racial divide between whites and blacks to the divide between urban and rural areas. For example, the white students were given access to a variety of first-rate resources, such as swimming pools, laboratories, and textbooks, all of which were housed in the same building. In contrast, blacks living in rural areas traditionally had to travel great distances to attend school, where they were given fewer facilities, including a lack of adequate sanitation and lighting, among other things (Enoch, 2007).

After the country gained its independence, several rights to education were established. It was because education was seen as the only means by which the idea of discrimination could be

overcome, and a level playing field could be provided for all citizens. This differential history evoked the feeling for the creation of an equal environment for all and led to the formation of several rights regarding education. Article 17 of the African Charter on Human and People's Rights, adopted in 1981, states that "every person in the African region has the right to an education". The right to an education is further guaranteed under Article 11 of the African Charter on the Rights and Welfare of the Child, adopted in 1990 (Nevondwe & Odeku, 2013, p.848). The right to education was one of the aspects of the rights of vulnerable groups that were addressed by several institutional treaties. More specifically, Article 23 (3) and (4), 28 and 29 of the Convention on the Rights of the Child adopted in 1989 holds the provisions for the progressive implementation of the Right to education for the children and the purposes of education. South Africa is a signatory to UNESCO's Convention against Discrimination in Education (1960), which the country ratified in 1960. This convention, in essence, compelled South Africa to develop policies and legislations that would broaden the scope of the right of children to receive an education within the country's borders (Veriava & Coomans, 2005).

The Constitution of South Africa, under section 29, includes all laws linked with the Right to education. This clause needs to be enforced by the state and the people of the nation (Nevondwe & Odeku, 2013, p.849). This provision of the constitution is referred to as a "hybrid right" rather frequently since it combines elements of political, civil, and socio-economic rights. It is because the government intends to make education open and accessible to all citizens, as well as the freedom to select one of several languages to be taught in schools and start and run educational institutions (Arendse, 2011).

According to the Gauteng School Education Bill 1995 1996 4 BCLR 537 (CC), the Constitutional Court ruled that every individual has the constitutional right to receive primary education. The court further emphasized that this is not just a negative right to be free from obstacles, but also a positive duty to provide basic education to all. This was stated in a quote from (Nevondwe & Odeku, 2013, p- 849).

In the preceding judgement, the court agreed that the state must provide its citizens with primary education. However, the court did not detail the scope of this commitment or the details that were concerned. It was determined that the Right to Basic Education fell under the category of Unqualified Socio-Economic Rights since it differed so significantly from the Qualified

Socio-Economic Rights, which included the Rights to Health, Housing, Food, and Water, amongst others (Liebenberg, 2002).

In addition to this, the constitution includes Section 29 (3), which states that all people have the right to establish and further maintain their educational institutions as long as these institutions do not discriminate in anyway against people based on their race and are registered with the state. This provision is known as the "right to education." (Nevondwe & Odeku, 2013, p.856). The interpretation of similar clauses in the constitution was interpreted by the court, as was demonstrated by the School Education Bill of 1995. According to the court's decision in the Belgian Linguistic Case No. 2 (1968) SERIES A No.6 1 EHRR 252, the limit of the state's obligation to private educational institutions that are founded on a particular language and culture was specified by the court (Nevondwe & Odeku, 2013, p.856).

However, it is no single mention in the South African constitution that it is a right of an individual to demand the same thing from the state. Section 32(c) of the constitution does not state that an individual can demand from the state that it establishes schools based on a common language or culture, among other things. It simply denotes that every person should have the right to initiate the formation of such organisations. Further, the state is not obligated to support non-governmental organisations financially. According to subsection 29(4), the state is not obligated to provide financial support to these educational institutions. Therefore, it demonstrates a positive right and defends the interested people by breaking through the invasion by the state. However, it does so without imposing any requirement for the state to construct such institutions, so it does not make such requirements obligatory for the state (Nevondwe & Odeku, 2013, p.856).

3.7.4 MEXICO

Mexico, also referred to by its official name, The United States of Mexico, is a nation found in the southern region of North America. Throughout the course of the country's history, the idea of education has been interpreted and implemented in a variety of ways. First and foremost, the idea of education was acknowledged as one of the "Rights of Man" in section 1 of the constitution that was written in 1857. While Article 1 categorised the Rights of Man as the basis of all the social institutions in the nation, education was never referred to by its original term but instead regarded as "instruction" in the body of law. Under Article 3, instruction

(education) is free for all, and the concept of which profession requires what sort of licensing to exercise and what sort of requisites are required for the same would entirely be determined by the law (Branch & Rowe, 1917, p.2).

On the other hand, the "Right to Education" was incorporated into the first chapter of the newly amended constitution in 1917. The right referred to as "personal guarantees" was acknowledged here. These guarantees, which are granted by the Mexican constitution to each citizen according to Article 1, cannot be suspended or diminished by anyone in any way except in certain circumstances mentioned in the constitution. These circumstances are listed in the Constitution. (Branch & Rowe, 1917, p.2).

According to Article 3 of the Revised Constitution, "instruction (education) is free for all, but with the condition that the instructions should be secular in nature while being implied by any public institution, and primary instructions, whether higher or lower, should also be strictly oriented around the secular lines when provided by any private institution". In a similar vein, the article further adds that no religious leader or person belonging to a particular creed will be permitted to found or head any primary school in the nation, and that all primary schools that are privately owned will be subjected to stringent supervision by the state, while public institutions should also be "gratuitous" in their provision of primary education (ibid).

Therefore, in Mexico, having access to educational opportunities is regarded as an inalienable right of every child. Every child, regardless of their colour, financial background, or any other characteristic, has access to a free education because of the public school system, primarily funded and operated by the government. According to the rules of the General Education Law passed in 1993 in Mexico, the Federal Government will still be responsible for overseeing the general implementation of education. However, the states will be granted full authority for the administration of basic education. Even though there is no charge for tuition in elementary school or junior high school at a public school administered by the state, students' families are still responsible for providing uniforms, school supplies, transportation, and, in some cases, textbooks for their children for them to attend school. It may be impossible for a family with a low income to afford these expenditures, particularly having more than one child of school-going age.

3.7.5 FINLAND

The educational rights of children are protected and safeguarded to the greatest extent possible in Finland, which boasts the most comprehensive education system in the world. It places a considerably greater emphasis on the high standards and quality of education. The Fundamental Right to Education is protected under Finland's Constitution, Article 16, which may be found [here](#). Education guarantees are made available to all people, not just citizens of Finland.

The Basic Education Act mandates that all children between the ages of 7 and 16 are entitled to a free, general education that lasts for nine years when they are in the age range of 7 to 16 years old. After this period, everyone has the right to continue their education. In addition, students who have finished their primary education are entitled to enrol in an optional additional year of schooling (grade 10), which lasts one calendar year.

Beginning in the 1980s, educators in this country began to place a greater emphasis on the concept of education as a tool for mitigating the effects of pervasive social inequality, providing students with access to free lunches at school, ensuring that they have access to adequate medical care, and, as a final step, ensuring that they receive adequate counselling and individualised guidance. Providing an atmosphere conducive to collective learning lies at the heart of the system of education in Finland. Another remarkable aspect of the system is that it only makes provisions for children's education once they reach the age of seven. It means that children are free to enjoy their childhood without having any limits imposed upon them by the compulsory education system. A system of compulsory schooling lasts for nine years, and every person is required to complete it. However, immediately following the ninth grade, pupils are released into the ideal world and given complete freedom to choose their paths in life. Finland has freed itself from the shackles of the prescribed ideal and is instead educating its children to prepare them for life.

3.8 HISTORICAL EVOLUTION OF EDUCATION AS A RIGHT: PERSPECTIVES FROM ANCIENT, MEDIEVAL AND MODERN INDIA

This section focuses primarily on examining the development of education in India. It will explore the transitional journey of education, from being a privilege enjoyed by a select few in the Vedic times to being proclaimed a fundamental human right of all in modern times.

3.8.1 VEDIC PERIOD

In India, the idea of receiving an education is not novel. It is as old as its history and can be traced back to the Indus Valley Civilization, which existed approximately three thousand years before the beginning of the Christian period with the birth of Jesus Christ. Not much information is currently available about the educational system that was in place during that period. However, considering the level of development that the civilisation had achieved in various areas, it is presumed that the people who lived in the Indus Valley civilisation did have some form of education and a system used to educate others. (Ghosh, 2007). There was a strong emphasis placed on the concept of transmitting information from one generation to the next. It is evidenced by the various descriptions carved into the stones, copper, and leaves that store the holy, sacred wisdom.

During the Vedic age, which followed the civilisation that flourished in the Indus Valley, religion was an essential component of both individual life and society as a whole. Religion served as the cornerstone upon which the entire society was built, and this foundation extended to the educational system. The ashramas, or stages of human life, were broken up into four distinct parts. The first phase was known as 'Brahmacharya,' and it meant leading the life of a student. The second phase was known as 'Grahastha,' and it meant leading the life of a worldly and married adult. The third phase was known as 'Vanaprastha,' and it meant leading the life of a retired adult. Finally, the final phase was known as 'Sannyasa,' which included leading a life of renunciation.

In the student phase, also known as the "Brahmachari" phase, the individual spent twenty-five years with his teacher studying the Vedas and leading a life characterised by self-control. The "gurukul" educational institution was the cornerstone upon which the entire educational framework was constructed. The priests were the ones who were responsible for providing the education, which consisted of lessons on numerous topics relating to religion, such as spiritual understanding, warfare, and ethics. The sacred old Vedic literature was the primary source of education. This literature included the four Vedas, six Vedangas, four Upavedas, four Brahmanas, one hundred and eight Upanishads, six different philosophical systems, the Bhagwad Gita, and three Smritis (Aggarwal, 2008). Vedic literature aims to achieve "moksha," which can be translated as "liberation," by fusing one's self with God. In addition to this, knowledge of all areas was required. One of the most notable aspects of the educational system that was in place at this time was that there was no discrimination based on a person's gender

within the upper caste society when it came to acquiring an education. All of the women who belonged to the Brahmin, Vaishya, and Kshatriya varnas were allowed the same access to education as their male counterparts (Chauhan, 2005).

But on the other hand, discrimination prevailed against the Shudra caste, who were not granted the right to receive education. Since the caste system was the primary means of dividing society, the educational system led to certain castes gaining a dominant position in society. In contrast, others were left behind in the process.

The overall effect of religion on education during the Vedic times was to make it more difficult and structured, which contributed to the development of two different religions: Buddhism and Jainism (Kocchar, 1981). The development of Buddhism and Jainism brought about significant changes to the educational system that had been in place until that point. Not only did these religions reject all of the rituals and ceremonies that had previously been practised, but they also abolished the caste discrimination that had been associated with education by making it available to everyone.

Monasteries were the primary educational setting for Buddhist children when that religion's educational model was used. The establishment of Viharas that included living quarters served to educate students at a higher level. During that time, the Viharas of Nalanda, Vikramsila, Taxila, Odantapuri, and Jagaddala were among the most renowned in the world. They were responsible for the births of renowned intellectuals such as Prosenjit, Jivaka, Panini, and Kautilya. The primary focuses of education in these schools were the study of the Vedas, as well as the sciences, medicine and surgery, archery, and agricultural practices. Nevertheless, this particular method of Buddhist instruction only lasted for a short time. Many factors brought about the collapse of Viharas; however, the most significant were corruption (Gupta, 2006) and the invasion of Turko-Afghanistan (Banerjee, 2010).

Although the Aryan civilisation placed a significant amount of value on education and their educational system took a holistic approach, taking into account all facets of life, this notion pales in comparison to the contemporary notion of the right to receive an education. Because the old Gurukul system distributed education according to caste, the Aryan educational system could not fulfil its goal of providing education as a fundamental human right to all people (Kumar, 2012). Therefore, even though it provided education to females, the Shudras were not

included in the educational system. It violated the first principle of "accessibility" of the right to receive an education.

3.8.2 MEDIEVIAL PERIOD

The Islamic invasion of mediaeval India came from Persia and Asia Minor, and it led to the control of Mahmud of Ghazni in A.D. 1001 and Muhammad Ghauri in A.D. 1175. Both of these rulers ruled India for more than a century. After that, Muslim dominance spread throughout the region after the foundation of the Mughal dynasty. They were responsible for the destruction of educational institutions belonging to the Hindu and Buddhist religions and the planting of the seeds for a Muslim education in India while they were in power. On the other hand, the education provided during the time of Muslim control was comparable to the education provided during the time of Vedic rule in one respect: it likewise had a theological basis supporting it. In the Maqtabas and Madrassas, the students were instructed in verses from the Quran and other courses.

Although education was accorded a great deal of significance in both the Islamic faith and philosophy, the concept of education as a right that should be extended to all people was yet to be prevalent during this time period. As a result, some women were unable to receive an education. Only the daughters of wealthy households could receive an education in this society.

3.8.3 MODERN TIMES ⁶

3.8.3.1 THE CHARTER ACT 1813

The first move toward modernising India's traditional educational system was taken in 1813 when the Charter Act was passed. It marked the beginning of the process. Because it stipulated that a sum of not less than one lakh rupees⁷ should be utilised for educational purposes in

⁶ Charles Grant is frequently called the "father" of India's modern education system. The process of modernising the Indian education system began after the establishment of British rule in the country through the East India Company, and Charles Grant is often referred to as the "father" of the modern education system in India.

⁷ "It shall be lawful for the Governor General in Council to direct that out of any surplus which may remain of the rents, revenues, and profits arising from the said territorial acquisition, after

British-acquired Indian territory⁸, the Charter's Act of 1813 is considered to be of the utmost significance to the educational system (Saini, 1980). Furthermore, it urged that Christian missionaries be granted permission to run educational operations in India.

Because it required the East India Company to assume responsibility for education in the country, the Charter Act of 1813 is credited with bringing about significant development in the education system in India. The event was a significant moment in India's education history. It is noteworthy as it was during the British East India Company's reign that education became the state's responsibility towards its people. This marked the first time education was directly under the state's control and authority. It set up an indirect line of communication between the people, the state, and the educational system. Hence, this is also being hailed as the first piece of law that officially recognises the right to education (Jayapalan, 2001; Reprint, 2005).

Although the Charter Act of 1813 did make education the responsibility of the state, it did not contain all of the grounds on which the concept of the modern right to an education is based. The current understanding of the right to education does not simply mean that the state should be obligated to provide education to its citizens. Instead, it subscribes to the larger philosophical concept that education is a fundamental right that everyone enjoys. Aside from that, the contemporary concept of the right to have education also incorporates additional issues connected to the quality of education, such as making education accessible, available, adaptable, and acceptable to everyone, irrespective of their socio-economic background. Therefore, it is argued that although the Charter's Act may have established the initial expression of education as a state responsibility, it did not establish education as a right of every citizen in its true spirit. It is because the Charters Act laid down the initial expression of education as a state responsibility.

3.8.3.2 MACAULAY's MINUTES 1835

framing the expenses of the military, civil, and commercial establishment and paying the interest of the debt, in manner in the future provided, a sum of not less than one lakh of rupees in each year shall be set aside and applied to the revival and improvement of literature and the arts. (Aggarwal J. C., Reprint 2013)

⁸ According to Aggarwal S. (1991), the primary reasons for allotting the sum of one lakh rupees were to revitalise and advance the field of literature; to support and inspire the educated people who were already living in the country, and to introduce and spread scientific understanding among the people living in British territories in India.

The minutes written by Thomas Babington Macaulay, more commonly referred to as 'Macaulay's minutes', were an additional significant step forward in the history of Indian education. It is generally agreed that Macaulay was responsible for establishing English as the primary language of instruction in the country. He advocated vehemently for introducing Western philosophies and values into the country's educational system to replace the current indigenous method of instruction used there. However, he was not solely focused on changing the medium of instruction in the schools from vernacular to English but instead had a more expansive goal in mind. By employing English as a medium of communication, he aimed to facilitate what Ghosh (1995) refers to as "cultural transmission" in the country.

As a result, he recommended that the Persian language ought to be replaced with English as the official language. English should serve as the language of instruction across the board for educational institutions. He believed that it was required since the English language has the entirety of the vast intellectual information that has been accumulated over the years by the nations that have the most experience and wisdom. Once the Indians become proficient in English and familiar with European knowledge and science, they will easily translate it into their native language. It will boost the vernacular literature in the country once the Indians have become well-versed in English and thoroughly acquainted with European knowledge and science. According to Ghosh (1995), the use of the English language would result in the transformation of native Indians into individuals who have Indian heritage and appearance, but English preferences, beliefs, ethics, and intelligence.

Subsequently, in the year 1835, Governor General Lord William Bentinck announced a policy in which it was declared that the objective of state aid to education would be to promote the study of European Literature and sciences, so the financial aid would be devoted to the spread of English education. This announcement was a response to the recommendation that was mentioned earlier that was made by Macaulay (Ghosh, 1995).

This policy was the beginning of a new era in the history of education in India because it changed the previously existing indigenous education system based on vernacular languages by establishing English as the country's official language. This policy also marked the beginning of a new era in India's education history. Even though Macaulay successfully brought about the necessary reforms in the educational system, it is essential to note that he was one of many people to argue for promoting English education in the country rather than vernacular education. Charles Grant, popularly called the "father of modern education in India,"

had also proposed a plan to alter the Indian society as a whole and particularly its moral, social, and mental fabric through the medium of the English language-based Western education system and the values of Christianity (Krishnaswamy & Sriraman, 1994).

3.8.3.3 AGE OF LORD DALHOUSIE, THOMASON'S PLAN & EDUCATION DISPATCH OF 1854

During the time that Lord Dalhousie was serving as Governor General of India, he was responsible for implementing several changes throughout the country, most notably in the education sector. The most prominent amongst these initiatives was the restoration of vernacular education based on Thomason's concept, the emphasis on women's education, the focus on primary education, and the facilitation of the education dispatch of 1854.

James Thomason, the Lieutenant Governor of the North-Western Provinces, had already taken several significant steps in 1845 and 1846 to improve the educational status and standard of the natives before he presented Lord Dalhousie with his plan to promote vernacular education in the provinces. It was done before James Thomason presented Lord Dalhousie with his plan. Thomason had voiced his concern about the low standard of vernacular education and urged for ways to enhance it in the circular letters that he had issued to the revenue collectors. These letters were circulated to the revenue collectors. He conceived education as a crucial component in forming an essential foundation for defending one's rights (Ghosh, 2007). In addition, in response to the depressing figures regarding the state of education in 1846, Thomason recommended many solutions to enhance the education system in the provinces, such as establishing a school in each village and tehsil. In addition to this, he suggested "creating a powerful agency for visiting all of the indigenous schools, for furnishing the people and the instructors with counsel, help, and encouragement, and for honouring those school masters who may be judged to be the most meritorious" (Ghosh, 2007). Thomason also proposed the implementation of administrative safeguards, such as the designation of a Zillah Visitor for each district, in addition to Pargana Visitors and a Visitor-General, to carry out adequate monitoring and oversight of the plan. Because he prioritised ensuring that the plan was executed in a manner that did not compromise its integrity as a whole, he proposed that the positions mentioned above be filled with employees who worked in the company's civil service.

James Thomason's proposals to improve the educational system in the provinces had an impact on Lord Dalhousie. As a result, he suggested them to the Board of Directors so that they might receive their approval, which was quickly granted. During his time in office, he took many actions that demonstrated his dedication to fulfilling his promise to improve the educational opportunities available to indigenous people in the provinces. He approved establishing an educational institute, which had been submitted to the Board of Administration for the province of Punjab. However, he recommended that a school be established rather than a college, stating that "more general enquiries and full information about the state of education in Punjab were needed before any general and leading institution like college" (ibid). He broadened Thomason's plan by implementing it in additional regions, including the North Western Provinces, Bengal, and Bihar, where native people were educated in their original language. However, the most significant contribution that Lord Dalhousie made was the first time in the country that official support was given to female education. He believed that teaching women would be beneficial in removing many social ills from the community. Therefore, even though he did not make education a right of all people, he took the first step toward education for all because he encouraged women to receive an education in a traditionally conservative and orthodox society.

The Education Despatch of 1854, sometimes called the "Wood's Despatch", was a significant educational advancement. The term "Magna Carta of Indian Education" has been given to describe this document (Richter, 1908). The Court of Directors tasked the President of the Board of Control, Charles Wood, with formulating a general comprehensive education policy applicable across British India. While Despatch acknowledged that providing education is a sacred duty, it did not recommend free and compulsory education. Instead, it sought to expand access to education nationwide by instituting a grant-in-aid system.

The most significant contributions that Despatch made were that "it opened an era of Anglo-Vernacular educational epoch in the history of Indian education" (Ghosh, 2007) and that it laid down administrative framework like - the establishment of the Department for the Superintendence of Education; appointment of Director of Public Instruction with inspectors in all provinces; appointment of Committee for framing scheme for establishing universities; and, laying down provisional rules to regulate the grant-in-aid institutions which would guide the local government.

3.8.3.4 HUNTER COMMISSION: DECENTRALISATION OF EDUCATION

The Hunter Commission, which was the first Indian Education Commission and was established in 1882, had a total of 20 members, and William Hunter served as the Commission's Chairman. Although the Education Despatch of 1854 made recommendations to improve primary education in the country, elementary education was in a deplorable state. It led to the appointment of the Hunter Commission, which was tasked with investigating complaints regarding the non-implementation of the Despatch, assessing the current state of elementary education in British territories, and providing recommendations for its further extension and improvement.

The Hunter Commission report, which was submitted in 1883, included various recommendations for modifying the overall framework of implementing basic education in the country. Its primary effect was to absolve the government of any obligation to educate the general populace. Instead, it encouraged local boards and private organisations to participate in educational endeavours by recommending the gradual transfer of the responsibility for education's actual implementation to those organisations. The Local Self Government Act, which was authored by Lord Ripon and passed in India, established local boards that were modelled after the county councils found in England. The Hunter Commission recommended the devolution and decentralisation of the education system in the country. It meant the local district and municipal boards would manage primary education, including the indigenous education system. It was a new addition to the previously established education system in the country.

Moreover, in the case of indigenous educational institutions, this meant the freedom to establish their curriculum and to autonomously regulate the teaching and evaluation that took place in the school without interference from government schools. Regarding finances, the commission held that the monies necessary to run the education system were to be raised by Indians, with the assistance provided by the generous grant-in-aid system serving as a supplement (Ghosh, 2007). It suggested that the government would no longer be directly involved in developing and giving education to the general populace. The commission also implemented several additional reforms. These included encouraging education among women and Muslim community members by introducing special education facilities, promoting education among the masses through creating employment opportunities for literate individuals, and linking education and curriculum to the practical aspects of real-world situations. The Hunter Commission has made a substantial contribution to the country's school system by

concentrating on specific aspects of education that have been ignored up to this point. The first is the standard of the education that is made available. The commission concluded that the overall educational system model's success rests on the instructors' shoulders. In light of this, it suggested that educators receive the appropriate training, devise a test covering both aspects of theory and practice of education, and mandate the establishment of permanent work possibilities for qualified individuals inside educational institutions. It also focused on making education acceptable and adaptable to the local people by recommending that each province develop its curriculum suiting the local needs of its people. It meant including subjects that dealt with the practical needs of people, such as "book-keeping, menstruation, arithmetic, natural and physical sciences with their application to agriculture, health, and industrial arts" (Ghosh, 2007).

3.8.3.5 THE COMPULSORY EDUCATION ACT OF THE STATE OF BARODA

During the reign of Maharaja Sayaji Rao Gaekwad of Baroda, compulsory education started in pre-independent India. Baroda was the first princely state in British India to implement a compulsory education policy on a trial basis in the Amreli district of the state in 1893. After receiving parliamentary permission in 1906, it was eventually implemented over the entirety of the state. In the year 1916–1917, there were 3,199 schools in Baroda. In the school year 1926–1927, there were 2996 schools. In the school year 1936–1937, there were 2,552 schools. In the school year 1937–1938, there were approximately 2,327 primary schools, along with 58 aided institutions and 57 unaided institutions (Naik, 1941). The following are the key features of Baroda state's compulsory education programme:

- i) The law mandated that children between the ages of seven and twelve years old and children aged seven and eleven years must attend school.
- ii) The guardian of the kid was required to pay a fee of 2 annas if the child belonged to this age group and was away from school for more than ten days in a row or fifteen days in any given month.
- iii) Children who were ill or lived more than one mile away from any established school were exempt from attending; so were girls who did not have any special provision for Purdah or who were breastfeeding a baby; and the only son of a poor cultivator or of one who was unable to move about were also exempt from attending (Dutt, 1905).

Sayaji Rao had devised innovative practices and policies to ensure the state's successful implementation of the Act. These practices and policies included conducting periodical enquiries to assess the progress, examine the difficulties in the process, and suggest changes in the overall model. And, Sayajirao's efforts were successful.

To investigate the implementation of the compulsory education plan, the years 1909, 1916, and 1926 each saw the establishment of a separate commission. Finally, in 1934, the Maharaja invited Mr Littlehailes, the Education Commissioner for the Government of India. The Maharaja wanted Mr Littlehailes to conduct a study on the entire education scheme and its implementation in the state and give any necessary recommendations.

The Deputy Education Inspector was tasked with the responsibility of conducting an exhaustive study of each village once a year and submitting a report on issues related to the details of children who attend school, the reasons why children do not attend school; the grounds on which exemption is applied for and granted; the reasons why pupils withdraw from school; the effect of compulsory education on the literacy rate among the communities in the village; the perceptions of parents regarding the education system (Naik, 1941).

The state of Baroda had developed an innovative strategy for the implementation of the compulsory education scheme, which included the following: the preparation of a census of children currently enrolled in school by village Patels, teachers, and revenue officers; an emphasis on the three Rs of education; and a separate investigation of each student by the officer for irregular attendance, absenteeism, and the reasons behind it; investigating in depth the same villages that were researched ten years before and comparing the changes for a deeper understanding.

The Baroda Compulsory Education Act was a revolutionary piece of legislation, given that it was enacted when education was considered a privilege reserved for those who belonged to the higher castes. It did this through the medium of education, which not only posed a major challenge to the pre-existing social hierarchies but also served as a catalyst for other princely states and governments to follow in its footsteps. The Act aimed to ensure that all members of society, especially girls and children from lower castes, had equal access to educational opportunities. The state of Baroda addressed the problem of gender inequality in education by implementing a compulsory schooling plan and an ordinance to prevent marriages between

children (Naik, 1941). Compared to the other provinces, Baroda had the largest number of female students enrolled in schools for every one hundred male students.

Table Source: Naik, 1941

Province	No. of boys enrolled in primary school in 1937-38	No. of girls enrolled in primary school in 1937-38	No. of girls in schools to every 100 boys (1937-38)
Baroda	1,47,991	1,06, 527	61.2
Madras	19,93,410	8,81,549	44.3
Bengal	19,05,126	6,83,426	35.9
Sindh	1,19,611	42,306	35.0
Bombay	8,87,359	3,04,150	34.3
Assam	3,96,117	80,590	26.4
Orissa	2,32,368	57,801	25.0
Punjab	7,87,494	1,70,052	23
Central Provinces	3,56,055	79,731	22.5
United Provinces	11,93,760	2,04,709	17.2
North-West Frontiers	59,864	7,001	11.6

3.8.3.6 GOKHALE's SCHEME OF COMPULSORY PRIMARY EDUCATION

Only approximately 6% of the Indian population had acquired a literacy level after 150 years of British rule in India (Mondal, 2017). Because of this, the British Raj was subjected to heavy criticism from all quarters. After observing the successful implementation of a compulsory education scheme in Baroda State during the reign of Maharaja Sayajirao Gaekwad and the Compulsory Education Bill introduced in England in 1902, Gokhale proposed a resolution in the Imperial Legislative Council in the year 1910. It came after Gokhale witnessed the introduction of a similar bill in England in 1902. The following are the primary components of Gokhale's bill:

- i) Primary education should be required of all male children between the ages of 6 and 10, starting when they are young.
- ii) Expenditures borne jointly by local and central governments, in a ratio of one to two.
- iii) To ensure that the plan is carried out properly, a standalone position with the duties and responsibilities of a secretary will be established.

On the other hand, once the government made assurances that it would give education the significance it deserves, the motion was withdrawn. After that, a Department of Education was established, and the recommendation was made to use Imperial Grant. Gokhale moved a private bill in 1911 "to provide for the gradual introduction of the principle of compulsion into the elementary educational system of the country". However, since nothing concrete came out of it even after a year of the assurance given by the Government, Gokhale moved a bill "to provide for the gradual introduction of the principle of compulsion into the elementary educational system of the country" (Ghosh, 1995). The new education legislation would take effect in regions where an established minimum percentage of children (male and female) were already enrolled in schools when the government passed it. This percentage would apply to both boys and girls. After receiving prior agreement from the central government, the local bodies were authorized to carry out the Act's enforcement throughout the territory that fell under their purview. The parents of wards between the ages of six and ten (including boys and girls) were required to enroll their children to school, and if they did not, the parents could be punished. In addition, local governments are authorised to levy an educational cess. The state will cover expenses equal to two-thirds of the total amount.

However, after much discussion, the government decided against passing the bill, citing that there was no popular demand for compulsory schooling in the nation, that it was premature and superfluous, and that the "conditions were not ripe for it" (Manjrekar, 2017).

3.8.3.7 REPORT BY THE HARTOG COMMITTEE

A comprehensive report focused on the state of education was presented by the Hartog Committee in 1929. The British government had created the Hartog Committee as an auxiliary committee of the Simon Commission on Education to investigate the Montagu-Chelmsford Reforms. Concerning primary education, the committee drew attention to the fact that there was a significant dropout rate in schools; specifically, out of every 100 boys who were accepted to Class-I in 1922-23, only nine were still attending school in Class IV in 1925-1926. It was cited as evidence by the committee (Ghosh, 2007). This high rate of dropout was considered by the report to be a waste, which was attributed to the absence of a proper system for providing adult education; the non-availability of schools in villages with less than 500 population the uneven distribution of schools; the under-utilisation of existing schools; the absence of separate schools for boys and girls; the absence of a proper teaching method, suitable curriculum for all, and no inspection staff; and the absence of a provision for compulsory education.

The Committee went on to notice that because the majority of the population in India resides in villages, additional factors such as poverty, illiteracy, the traditional values held by families, and the participation of children in agricultural tasks were also responsible for the problem (Ghosh, 2007). Therefore, the Committee came up with the following recommendations and proposed concentrating on the qualitative parts of education rather than the quantitative aspects:

1. the primary school curriculum must be completed in at least four years.
2. modifications to the curriculum, school hours, and holiday schedules were suggested to accommodate the local requirements and needs.
3. an emphasis on children from the lowest social classes to reduce the incidence of abandonment
4. frequent training, conferences, and refresher courses for instructors, in addition to salary
5. rebuilding work in village schools was required, increasing the number of inspection staff members
6. Finally, the committee made the most significant proposal: make primary education mandatory, turn it over to local bodies, and keep a careful check on it (ibid).

3.8.3.8 WARDHA CONFERENCE

In a series of articles titled "Harijan," M.K Gandhi elaborated at length on his thoughts regarding the educational system in India. He proposed a system of education that would be obligatory for all children between the ages of 6 and 13 years old, and it would be given in the child's native language. In addition to this, he suggests including subjects of a vocational nature in the curriculum of schools. He contended that students should be given the option to participate in vocational training since it not only enables them to earn money but also enables them to support themselves financially while they are still in school. It would enable youngsters to sustain themselves financially. As a result, he referred to the plan as the fundamental education system.

In Wardha, on October 22 and 23, 1937, Gandhi presided over the first meeting on national education, which resulted in the adoption of the following four resolutions:

- i) Education must be provided for free and be required for all children in the country for seven years.
- ii) Instruction must be delivered in the student's first language.
- iii) The educational process should include some form of hands-on, labour-intensive production, such as handicrafts.
- iv) This method of educational provisioning should cover teachers' remuneration.

3.9 DEVELOPMENT OF EDUCATION AS A FUNDAMENTAL RIGHT IN INDEPENDENT INDIA: CONSTITUTIONAL AND JUDICIAL PERSPECTIVES

Between 1950 and 1993, when Unnikrishnan's Case was decided, several significant changes to the law and new policy viewpoints emerged. A review of these matters gives us an understanding of the historical process that led to the elevation of the right to education from the status of a directive principle to that of a fundamental right. This sub-section will look at the various efforts made by the Central Government of India after the year 1950 to make primary school education free and compulsory, as well as to incorporate the right to education as a fundamental right in Part III of the Constitution.

3.9.1 CONSTITUTIONAL PERSPECTIVE

When the Constitution of India was written, there was no unanimous opinion amongst the constitution makers that the people of India should have a fundamental right to education. It is despite the fact that during the fight for independence, there was a consistent demand for education as both free and mandatory. Numerous serious debates and discussions were held to establish the place of the right to education in the Constitution of India. However, the right to education was not given a place in Part III (which contains the fundamental rights) of the constitution when it was written or ratified in 1950. It was protected under Part IV (which contains the Directive Principles of State Policy) of the constitution, which shielded the state from legal action if the right to education was not enforced.

The provision for free and compulsory education enshrined in the Constitution in Article 45 of the Directive Principles of the State Policy (as it stood before the 86th amendment to the

constitution, which stated that The State aims to ensure that all children receive free and mandatory education until they reach the age of fourteen within ten years of the start of this Constitution. Furthermore, Article 41 of the constitution mandates that the government, within the bounds of its economic capabilities and progress, must ensure access to employment, education, and public aid in situations of unemployment, old age, illness, disability, and other forms of poverty. This provision must be made within the limits of its economic capacity and development. It instructs the state to establish appropriate provisions for safeguarding the right to work and the right to education for all individuals within the limits of the state's economic capabilities and development. Furthermore, Article 46 ensures that the socially and economically disadvantaged members of society, like the Schedule caste, Schedule tribe and others, would receive additional support in their pursuit of education and economic advancement.

These provisions were enshrined to ensure that free and compulsory education was provided to all children until they reached the age of fourteen. However, since it was a Directive Principle, it could not be legally enforceable⁹. Education being included in the Directive Principle of State Policy implies that it is a set of guidelines to be followed in spirit. However, if these guidelines are violated, the government cannot be held accountable in court. These articles served as guiding provisions that provided the fundamental framework for national policies in education before education was proclaimed a fundamental right. Consequently, in India, the task of educating children was handed over to the state rather than being considered a fundamental right that belonged to the children themselves.

In addition to part IV, the constitution contains several other articles that either directly or indirectly deal with issues pertaining to education. Article 28 guarantees individuals the right to attend religious services of their choice while attending educational institutions. Equal access to learning opportunities is guaranteed under Article 29 of the Constitution. In the spirit of the provisions of Article 30, members of minority groups are granted the authority to start and direct educational institutions Article 337 makes a unique provision for educational subsidies

⁹ In the Indian Constitution, there are two distinct categories: Fundamental Rights and Directive Principles of State Policy. While Fundamental Rights are unchangeable and legally binding, Directive Principles of State Policy are policies that the state must strive to implement when creating new laws. Even though these principles cannot be enforced in a court of law, it is the state's responsibility to follow them. According to Article 37 of the Indian Constitution, DPSP is viewed as a sacred duty of the state, even if it cannot be legally enforced.

that are intended for the benefit of the Anglo-Indian community. Finally, article 350-A addresses the provision of opportunities for primary school students to receive instruction in their mother tongue. All three articles guarantee collective freedoms to individuals and communities in various aspects related to education.

When viewed from the administrative point of view, education is a shared responsibility of both the state and the centre. It is reflected in the division of legislative powers in India, which are laid out in the seventh schedule of the Indian Constitution and are divided into three distinct categories. The union, state, and concurrent lists are the names given to these three distinct groups of items. Earlier education was included on the state list, but it was moved to the concurrent list due to the 42nd Constitutional Amendment Act of 1976.

The Union list contains 99 items; the following entries are connected to education. The purpose of Entry 13 is to foster educational and cultural exchanges with other nations. In entry 62, it is said that the institutions were referred to as the National Library when the Constitution was enacted. The Indian Museum, the Victoria Memorial, the Indian War Memorial, and any other relevant memorials should all be recognised as institutions of national significance under the law. According to entry 63, this constitution began when the BHU, AMU, and Delhi University, amongst other universities, were designated by law to be institutions of national importance by parliament. The institutes of scientific and technical education designated by statute to be institutions of national importance, such as IITs and IIMs, are referred to in Entry 64. According to Entry 65, Union agencies and institutions are responsible for providing I) Professional, Vocational, or Technical Training, which also includes the training of police officers. II) Encourage specialised research and academic study. III) The use of scientific or technical knowledge in detecting and investigating crime. Coordination and determination of standards within institutes of higher education, research and scientific and technical institutions are mentioned in Entry 66.

The state list consists of 62 items, and a few of them pertain to education. According to Entry 12, the state controls all libraries, museums, and other comparable organisations and finances or controls them. The concurrent list contains a total of 52 items. There are some economic and social plans for education, according to entry 20. According to entry 25, education, including technical education, medical education, and universities, is subject to the provision of articles 63, 64, 65, and 66 of the list (union list). The entries for newspapers, books, and printing presses can be found in entry 34.

3.9.1.1 IMPORTANT COMMITTEES AND COMMISSIONS

In the subsequent years of India's attainment of independence, the country's political, economic, and social authorities realised that education would play an essential part in the nation-building process and the transformation of India. Hence, several initiatives were taken by the government to improve the state of education. This sub-section discusses the important committees and commissions formed to examine various aspects of education in the country¹⁰.

One of the important commissions is the University Education Commission, established in 1948, and Dr. S. Radhakrishnan served as its chairman. The commission's primary goal was to reorganise the country's higher education system. In its report, the commission held that the learning opportunities should not just be confined to the elite section of society; rather, it should be accessible to all members of a democratic society who enjoyed the status of a citizen of the country, which was both a privilege and duty. Hence, the commission's view that "education is not a class privilege; rather, it is a fundamental human right" (1948-1949, Volume -1, p.43) was a crucial step in the journey of the right to education.

Another significant step was the establishment of the All-India Council of Elementary Education (AICEE) in the year 1957. It advised the Union, State, and local governments on primary education, evaluated Union and State Government proposals, and proposed primary education reforms.

¹⁰ In post-independent India, the government took numerous initiatives related to education which are not discussed in this thesis like the CBE's January 1944 report titled "Post-War Educational Development in India", which outlined the country's educational development and estimated the cost of educational programmes and stages; the All India Education Conference and CBE's 14th Meeting in 1948 which discussed the future education programme; the Hon. Minister for Education, Maulana Abul Kalam Azad, held an All-India Education Conference in 1948, to review the state of education and its issues; In 1948, the Government of India created the "Committee on the Ways and Means of Financing Education Development in India" under the presidency of Shri B. G. Kher, Chief Minister of Bombay which recommended sufficient funding for educational development.

However, another crucial step towards compulsory education was the introduction of the Delhi Primary Education Bill in 1960 by Dr K. L. Shrimali, the Union Minister of Education. Its main goal was to provide a compulsory education law for the Delhi Union Territory. However, it also incorporated important measures for compulsory attendance enforcement that States might use to update their laws. Some state governments also amended their compulsory education legislation based on the Delhi Primary Education Act of 1960. Several states have such laws. 18 States and 2 Union Territories have compulsory primary education laws. However, these Acts were not enforced. Acts remained in papers (Sharma, 2011, p. 7).

In 1964, Mr M.C. Chagla, then the Union Education Minister, named Dr D.S. Kothari to serve as Chairman of the Education Commission. It was the first commission to examine the question of elementary education in India set up by the government. The commission's mandate was to provide the government with recommendations about establishing a national education system. Following the submission of the commission report in 1966, which included recommendations for significant alterations to the pre-existing educational system, the newly independent government of India developed a resolution for the First National Policy of Education in the following year, 1968. The commission's primary recommendations included the establishment of a common school system of education that is open to all children regardless of their socio-economic status or cultural background; the inclusion of national and social service as part of the curriculum to instil in students a strong character, sense of social responsibility, and dignity of manual labour; the creation of national consciousness in schools; a change in the educational structure; and the inculcation of moral, social, and spiritual values in the curriculum (Kothari, 1964).

In addition to the suggestions discussed previously, the most significant contribution that the Kothari Commission made was that it popularised the concept of making education free and obligatory for all students. According to the report, it is mandatory to provide free and compulsory education to every child up to the age of 14 years as per the constitution. To meet this directive, effective education for five years should be provided to all children by 1975-1976. This is crucial to ensure that every child receives proper education as per the constitutional mandate. It went on to say that to achieve this objective by 1985–1986, students would need to complete seven years of a beneficial and efficient education.

In the year 1968, the Government of India came out with a national policy on education, and it was based on the suggestions that the Education Commission had given in the years 1964-

1966. Along with fostering a sense of national integration among the populace and endorsing the significance of education and the necessity of its "radical reconstruction", the strategy advocated for education's contribution to socio-economic and cultural advancement. The new education policy placed a primary emphasis on free and compulsory education; status, emoluments, and the education of teachers; the development of languages using a three-language formula; the creation of equal education opportunities; talent development; scientific research and education; agriculture education; technical education; books production; examinations; secondary education; university education; part-time education and correspondence courses; mass literacy and adult education (National Policy on Education, 1968). The policy, however, on the other hand, did not make any recommendations regarding the inclusion of education as a fundamental human right. In addition, it did not provide specific criteria for free and compulsory education for all children. The policy called for developing appropriate programmes to decrease wastage and stagnation in educational institutions¹¹.

After passing of two decades, in the year 1986, the Government of India introduced its second National Policy on Education (NEP). Its primary goal was to expand access to education across all strata of society, with a special emphasis on women and members of traditionally oppressed groups such as scheduled castes, scheduled tribes, and other backward classes who had been denied educational opportunities for decades. To accomplish these goals, the NEP 1986 emphasised the creation of new schools and colleges, the provision of fellowships for the economically disadvantaged, the provision of adult education, and the recruitment of teachers from oppressed groups. Providing pupils with a primary education was the primary objective of the policy. The Indira Gandhi National Open University was founded in Delhi as further evidence of the government's commitment to open institutions. Education for individuals living in rural areas was one of the policy's recommendations, and it was intended to be consistent with the Gandhian ideology. In addition to opening up the field of technical education to a very

¹¹ After NPE 1968, another significant development in the education system occurred when the central government placed primary education under the "Concurrent List" in the 42nd Constitutional Amendment in 1975. Now both the union government and state governments could legislate on education-related matters.

significant degree for the involvement of private industry, it also laid the groundwork for introducing information technology into the classroom.

While reiterating the objective of providing elementary school education to all children in the country, the National Education Policy assured that "effective steps will be taken in the direction of the Common School System advocated in the 1968 Policy" (NPE, 1986, Para 3.2). But, again, this policy document did not discuss or aim to alter the legal status of Free and Compulsory Education in India; as a result, free and compulsory education remained a non-justifiable Directive Principle of State Policy. In other words, the legal status of Free and Compulsory Education in India did not change.

In 1990, the government of India appointed Acharaya Ramamurti to preside over a commission established to re-evaluate the effect of the provisions of the National Policy on Education and provide recommendations. The Ramamurti Committee Report titled "Towards an Enlightened and Humane Society –NPE 1986-A Review" was the first official document to criticise the government for ignoring the right to education. It argued for recognising the right to education as a fundamental right. After that, the Central Advisory Board of Education was established with N. Janadhana Reddy to review NEP. The committee's findings, submitted in 1992, became known as the National Programme of Action.

Following the suggestions made by the Ramamurti Committee in 1992, the National Policy on Education (NEP) that the parliament had established in May of 1986 underwent another round of revisions in 1992. The National Education Policy (NEP) endorsed the role of education in promoting the social and cultural identity of the country, realising the "goals of socialism, secularism, and democracy as enshrined in our constitution" and addressing the issues of "access, quality, quantity, utility, and financial outlay" in the education sector. Our objectives encompass achieving the principles of socialism, secularism, and democracy as outlined in the constitution. The policy went on to emphasise the role that education plays in reducing the country's population through the literacy of women, as well as in lessening the disparity between urban and rural areas by establishing employment possibilities for the youth through education (Annual Report of the Department of Education, 1986).

The NEP placed a particular emphasis on breaking down barriers of class, caste, creed, gender, and location to ensure that everyone has the same opportunities to receive an education. In addition to this, it emphasised the necessity of eliminating educational inequalities and creating

equality of opportunity to education for everyone, with a particular focus on those people who had been denied this opportunity in the past, such as those who were born into a Scheduled Caste or Scheduled Tribe, women, minorities, or who were physically disabled. In addition, people who live in places with challenging topography, such as mountainous regions, deserts, or remote and inaccessible regions, would be eligible for additional financial benefits. The primary contribution made by the policy was its emphasis on universal access and enrolment, universal retention up to the age of 14, and better educational quality.

After that, several shifts at the political and policy level determined the direction that free and compulsory education would take going forward. Following the nation's participation in the World Conference on "Education for All" in 1990¹², there was greater attention on the country's actions towards providing free and compulsory education internationally. In the same year, 1992, India became signatory to the United Nations Convention on the Rights of the Child. However, the breakthrough in the journey of education becoming a fundamental right of children in India was achieved in the two landmark judicial decisions discussed in the subsequent section.

3.9.2 JUDICIAL PERSPECTIVE

The progression of RTE from a directive principle of state policy to a fundamental right of children is marked by a few concrete judicial rulings that have contributed to the constitution's recognition of this right. *Mohini Jain vs State of Karnataka* (1992 3 SCC 666) and *Unnikrishnan vs State of Andhra Pradesh* (1993 1 SCC 645) are two cases that have significantly contributed to making education a fundamental right in the country.

A major ruling was made by the Indian Supreme Court in the *Mohini Jain v. State of Karnataka* case. The Court confirmed that the right to education is a fundamental right according to Part III of the constitution. Additionally, the Court declared that every citizen has the right to education, which is derived from the right to life and personal liberty guaranteed under Article

¹² Jomtien Conference. Its details are discussed in the section "Evolution of RTE at global level."

21 of the Constitution. The Court explained that primary education is necessary for a dignified life and to realize other rights.

The court further ruled that human dignity cannot be violated and the state is under obligation to respect and safeguard the same. The education that a man receives contributes significantly to the development of his dignity. The drafters of the Constitution of India were well aware that more than seventy per cent of the population at the time was illiterate, but they still went ahead and wrote the document nonetheless. They were also optimistic that after ten years, there would be no more cases of illiteracy everywhere in the country. Articles 41 and 45 of the Constitution were inserted into Chapter IV of the document expecting this to happen. It is only possible to guarantee the human dignity of an individual once that person has developed his or her personality, and the only way to accomplish this is via education. The Constitution acknowledges the right to education of every individual in Article 41 of Chapter IV. It states that the State must provide effective provision for securing this right, within the limitations of its economic capabilities and development. Even if a citizen has no power to enforce the directive principles outlined in Chapter IV of the Constitution, these provisions were not meant to be treated as just ceremonial proclamations of religious belief.

The fundamental rights outlined in Chapter III will remain out of reach for most people in the country who cannot read or write because Article 41 of the Constitution does not guarantee them the right to education. Therefore, the right to education is concurrent with the other essential rights in Part III of the Constitution. The constitution requires the state to provide citizens with all levels of educational facilities. These facilities must be operated for the benefit of the citizenry. Limiting access to educational opportunities solely to affluent members of society is unacceptable. According to the Indian Constitution, the right to education extends to every citizen. To ensure that its citizens can exercise their right to quality education, the state must commit to establishing educational institutions. The state can fulfil this responsibility by establishing educational facilities that are either state-owned or state-recognised. When a state government decides to recognise private educational institutions, it simultaneously establishes an agency to fulfil obligations outlined in the constitution. Because the constitution recognises the students' right to education, they can enrol in educational institutions, regardless of whether or not the school is state-owned or state-recognised. The practice of charging a capitation fee as a prerequisite for admission to educational institutions violates the Constitutional right of every citizen to receive an education free of charge. The capitation fee is just a price charged

for the sale of education. The idea of "teaching shops" is entirely antithetical to Indian tradition and heritage, and it also runs counter to the design of the constitution that governs the country.

The right to education is a compendious expression that encompasses all the rights the court must uphold since they are fundamental to the dignified enjoyment of life. The right to life is the source of all other rights, including education. Article 21, and an individual's inherent worth and dignity, cannot be protected in the absence of a concurrent right to get an education. Hence, it is the primary responsibility of all the state governments to make every effort to ensure that its residents have access to appropriate educational opportunities at every level (Mohini Jain Vs State of Karnataka, 1992).

Hence, in the case of Mohini Jain, the court concluded that every citizen has a right to education under the constitution. The government is responsible for providing education to its citizens as a fundamental right. This can be done through state-owned or state-recognized educational institutions. In cases where private institutions are recognized by the government, an agency is created to ensure the government's obligation to provide education is fulfilled according to the constitution. However, charging a capitation fee in consideration of admission to educational institutions was a patent denial of a citizen's constitutional right.

Another landmark case related to education as a right is the Unnikrishnan vs State of Andhra Pradesh case. In this case, the Supreme Court ruling stated that Article 45 of Part IV should be viewed in harmonic construction with Article 21 (Right to Life) of Part III of the Constitution since the Right to Life is Meaningless in the absence of education. Although the right to education is not specifically listed as a fundamental right, it is closely connected to the right to life, which is protected under Article 21 of the Constitution. Therefore, the right to education is a natural extension of this right and should be considered in conjunction with the Constitution's Directive Principles to fully understand its importance. As per the provisions of Articles 45 and 41, it is a fundamental right of every child and citizen of this country to receive free education until they attain the age of fourteen. Subsequently, their access to education is constrained by the state's economic capacity and its progress.

In addition to this, it was mentioned in the verdict that "education is a fundamental right that is guaranteed to all people living in this country". Article 21 is the source of the rights as mentioned above. This right, on the other hand, does not constitute an absolute right. Therefore, it is necessary to consider Articles 45 and 41 while determining their contents and the

parameters that govern them. In other words, up until the age of fourteen, every child who is a citizen of our nation has the right to get an education that is completely free of charge. But, after that, his entitlement to education is contingent upon the limitations imposed by the state's economic capacity and level of development. (Unnikrishnan, J.P. And Ors. Vs State Of Andhra Pradesh And Ors., 1993).

3.9.3 REALISING THE GOAL OF THE FUNDAMENTAL RIGHT TO FREE AND COMPULSORY EDUCATION IN INDIA

Article 45 of the Indian constitution's directive principles of state policy stipulated that the government had a moral obligation to provide free and compulsory education for all children in India until they reached the age of 14, which was to be achieved within ten years following the country's independence from British rule. However, the state will be unable to do so for the next five decades. Hence, the decision in the Unnikrishnan Case served as a spur for political activism and public discourse. Following this landmark judgement of the Supreme Court, activists and non-governmental organisations pressured the executive and legislature into taking action on elementary education. The discussion around India's primary education system inspired a coalition of children's rights organisations to call for the government to uphold the right to education. The government responded by appointing two commissions - the Saikia Commission and the Tapas Majumder Commission to examine the desirability of amending the constitution to include education as a fundamental right.

Following the court verdict, in 1996, a Common Minimum Programme (CMP) with the long title "Common Approach to Major Policy Matters and a Minimum Programme" was developed by the 14-party United Front Government (UFG). To attain universalisation of primary education by the turn of the century and enforce it through relevant legislation measures, the CPM proposed to declare free and obligatory education for children up to 14 years of age a Fundamental Right.

It was further reviewed at the Conference of State Education Ministers and State Education Secretaries. As a result, it recommended that the government consider the proposal's financial, administrative, legal, and intellectual ramifications in light of the proposed Constitutional amendment's historical significance. It further recommended establishing a Committee of State Education Ministers to study these ramifications. As a result, the Committee of State Education

Ministers was established by the Ministry of Human Resource Department (Department of Education), with Mukhi Ram Saikia as its head.

Concerning the proposed change, the Saikia Committee said, "The Constitution of India should be changed to make the right to free basic education until age 14 a fundamental right". Also, the constitution should make it clear that every citizen's fundamental duty is to ensure that all children up to the age of 14 have access to elementary education. Hence, changes should also be made to Article 45 of the Constitution, which lays out the Directive Principles of State Policy. The Committee also added that there is no need to pass a Central law that makes elementary education mandatory in a federal system like ours. There are significant differences in how schools are run within and between states and where the states are the primary providers of elementary education. To make the proposed constitutional changes happen, the states should either change their current laws or pass new ones that are similar to what was done with the 73rd and 74th constitutional amendments. The Central Government should put out instructions that lay out a clear plan for how new laws on primary school enrollment should be made. Before the rules are put in place, the state and local governments should be consulted.

The Committee also agreed with the report's claim that Universal Elementary Education (UEE) can be reached without forcing people to attend school.

As a result of the Saikia Committee Report, a bill to change the constitution was made and put on the table in 1997. It proposed adding a new Article 21A that said, "The state shall provide free and compulsory education to all citizens between the ages of six and fourteen in such a way as the state may, by law, designate". This 83rd Constitution Amendment Bill (1997) was introduced in the parliament by the United Front Government, HRD minister Shri. S. R. Bommai in July 1997. The Bill proposed a constitutional amendment by inserting Article 21A and removing Article 45. It also included a financial memorandum detailing the expenses of making education for 6 to 14 years a fundamental right for 10 years.

This bill was further referred to the Parliamentary Standing Committee on Human Resource Development for review. The Committee, in its report submitted in the year 1997 proposed that the bill be enacted with amendments. The committee recommended retaining Article 45 for 0-6-year-olds and deleting Clause (3) of the proposed Article 21-A on private institutions. Moreover, it recommended that the Centre Government enact a fundamental law with a framework to show its financial contribution, and the States can define the details.

This journey towards the fundamental right to education received further impetus from the Law Commission Report 1998. Having regard for both the Directive Principles of the Constitution of India and the decision of the Supreme Court of India, the Law Commission of India decided to investigate the topic of free and compulsory education for children. Hence, the commission drafted a Bill for central legislation as well as a comprehensive report on free and compulsory education for all children. Both documents prepared by the commission recommended that as a subject under entry 25 of the concurrent List of Seventh Schedule to the Constitution of India, a Central Legislation proposed by the commission would not require State Legislature ratification. It was because Article 254(1) states that a law made by parliament on a concurrent subject shall prevail over a law made by the State Legislature on the same subject, regardless of whether it was made earlier or later. It also found that 19 States/Union Territories had already enacted compulsory elementary education policies. The commission, hence, emphasised the need for immediate central legislation on the right to education in the country.

Another significant development took place in June 1997. Acting upon the recommendation of the Saikia Committee report, the Department of Education, Ministry of Human Resource Development, formed a group of experts, including Prof Tapas Majumdar, to assess states/U.T.s financial needs. This group submitted its report titled "Expert Group on Financial Requirements for Making Elementary Education: A Fundamental Right" in 1999. In its report, the Majumdar Committee stated that after the Unnikrishana Judgment, universal elementary education had become the legal right of every Indian child. The state cannot delay constitutional rights. The state must prioritise the justiciable entitlement over other substantial claims to reallocate resources. It may require restructuring all government spending, forcing the state to cut even essential non-constitutional fundamental rights spending. The Committee further estimated a 10-year investment of Rs.1,37,000 crores to enrol all out-of-school children (not parallel streams) and finish elementary school. This average annual investment of Rs.14,000 crores was 0.78 per cent of GDP in 1999, or 78 paise out of every Rs.100 India earned (Sadgopal, 2003).

The revised Constitution Amendment Bill was drafted by the Ministry of Human Resource Development in the year 2001 after taking into consideration the recommendations made by the Parliamentary Standing Committee on Human Resource Development, the advice given by the Ministry of Law, and the suggestions made by the Law Commission of India. As a result,

the Constitution (83rd Amendment) Bill, 1997 was revised and reintroduced in the parliament in 2001 as the Constitution (93rd Amendment) Bill with the following provisions:

A new Article 21-A has been added, which mandates the provision of free and compulsory education to all children aged 6 to 14 years. The state will determine the exact manner of implementation through legislation. The proposed change is to replace Article 45 in the constitution, which requires the state to provide early childhood care and education to all children until they turn six years old. This change also involves modifying Article 51A of the Constitution.

As a result of the Indian Parliament debating and ultimately passing the 93rd Constitutional Amendment Bill, 2001, on December 12, 2002, it became the Constitution (86th Amendment) Act, 2002. This Act resulted in the deletion of the previously existing Article 45 and the addition of additional articles. The Constitution (86th Amendment) Act, 2002, which was notified on December 13, 2002, in the Gazette of India, aimed to make three amendments to the Constitution of India.

A new article has been added to Part III (Fundamental Rights), which is the Right to Free and Compulsory Education, according to which the State is required to provide free and compulsory education to all children between the ages of six and fourteen years, as determined by law. This implies that the State is obligated to educate all children under the law.

In Part IV (Directive Principles of State Policy), Article 45 (Provision for Free and Compulsory Education for Children) will be replaced by a new provision related to early Childhood Care and Education for children below the age of six years. Therefore, the State will put in efforts to provide early childhood care and education to all children until they reach six years old.

Furthermore, a new clause (k) will be added to Article 51A (Fundamental Duties), stating that every citizen of India with parental or guardianship responsibility for a child or ward between the ages of six and fourteen years must provide educational opportunities for them.

The aforementioned amendment established, as a fundamental right, the right of all children in India between the ages of 6 and 14 to get an education that is both free and mandatory for them to attend. Children under six years are entitled to receive early childhood care and education from the state, which will make every effort to meet this obligation. However, the issue concerning children younger than six years old is not justiciable, which means that no one may

seek to enforce it. In addition, it is the responsibility of every Indian citizen to make sure that their children, who are between the ages of 6 and 14, have access to educational opportunities. It is also clear from Article 21 A that the state was obligated to offer free and mandatory education for its citizens and that for this particular purpose, the state was obligated to decide the means by law. Although the constitution was revised in 2002, it took the government more than seven years to consider implementing these changes. The constitution (93rd) Amendment Bill, 2001 became the 86th Constitution Amendment Act after it obtained the President's approval on December 13, 2002, making it the 93rd overall amendment to the Constitution (December 12 2002)¹³.

Furthermore, on July 6, 2004, the Indian government reconstituted the CAGE to discuss critical Right to Education legislation issues. With MHRD approval, a CAGE Committee on Free and Compulsory Education Bill and Other Issues Related to Elementary Education under Shri Kapil Sibal was formed. Hence, the CAGE committee recommended the following provisions of the Right to Education Bill of 2005.

- 1) Right to Education means every child has a right to (a) full-time education of satisfactory and equitable quality in a formal school that meets at least specific criteria and (b) completion of primary education.
- 2) The state must remove social, economic, academic, linguistic, cultural, and physical barriers to elementary school success.
- 3) The right to education should be used to promote equality, justice, democracy, secularism, and social cohesion.
- 4) Non-State Schools must offer free, high-quality education to disadvantaged students. 25% of such children must also be educated.

¹³ The Free and Compulsory Education for Children Bill 2004 was reintroduced in the parliament in 2004 with a new title, "Free and Compulsory Education for Children Bill 2004."

5) Decades of delivery system dysfunction have prevented universal basic education. The Committee's proposed legislation emphasises decentralisation and accountability to help the delivery system meet the challenge.

6) The Committee evaluated the major Early Childhood Care and Education (ECCE) programme, Integrated Child Development Services (ICDS), and recommended convergence to the extent possible (GoI, MHRD, 2005, pp. 4-7).

The UPA-I government, in June 2005, introduced the Right to Education Bill, as drafted by the Constitution (86th) Amendment Act, 2002. It was shared with states for their comments and received comments from 16 states. It mandated 25% disadvantaged group reservation in private institutions was criticised. Indian Law Commission recommended 50% seat reservation. The CABE Sub-Committee believed this clause was essential to democratic egalitarianism.

Subsequently, in November 2005, Prime Minister Dr Manmohan Singh established the High-Level Group (HLG) to examine the constitutional, legal, and budgetary implications of the Right to Education twice (January 2006 and November 2007). The first HLG meeting supported state legislation model bills. In 2006, Central laws were repealed, and the States were told to frame their bills based on the model Right to Education Bill 2006.

Another significant development took place in the following year with the submission of the Sachar Committee report in 2006. On March 9 2005, a committee under the chairmanship of Justice Rajendra Sachar was constituted to prepare a Report on the "Social, Economic and Educational Status of the Muslim Community of India". The committee submitted its report in June 2006, bringing out the educational deprivation experienced by the Muslim community. The report stated that "access to education is critical for benefiting from emerging opportunities that are accompanied by economic growth, and a sharper focus on school education is desirable". Hence, the Sachar committee further boosted the right to education in India by recommending free and compulsory education up to the age of 14 and calling it the state's responsibility. Furthermore, it added that fulfilling this obligation is critical for improving the educational conditions of Muslims, in fact, of all socio-economically deprived children. (GoI, 2006, Report para. 3.1, pp. 243)

In the following year, National Knowledge Commission submitted its report stating that since the state governments are also responsible for school education, any policy changes must ensure their full involvement and participation. It added that access to quality school education

is a prerequisite for India's knowledge society. Therefore, the union government must implement the necessary legislation as promised in Constitutional Amendment Article 21A. While citing flaws in the earlier model bill, the report recommended that the legislation must be enacted taking into consideration the financial commitment, time frame, standardisation schedule, specification for teachers, justifiability & redressal mechanism to provide universal schooling to all children through central legislation (GoI 2007 NKC Report: p 45-47).

Subsequently, in February 2008, the union government convened a conference to write a central right-to-education law and introduce it in the parliament's budget session. A working group was formed to examine the central legislation of 2005. Based on the state government's feedback, the working group amended the legislation and submitted it to ministries/departments for inter-ministerial consultation. As a result, the legislative department drafted the Right of Children to Free and Compulsory Education Bill, 2008, for cabinet submission based on ministry/department observations and comments. The Union Cabinet approved the Bill for Parliamentary presentation on October 30 2008. Moreover, on December 15, 2008, the Rajya Sabha proposed the Right of Children to Free and Compulsory Education Bill 2008, implementing the 86th Constitutional Amendment Act, 2002.

Upon its introduction in Rajya Sabha, the chairman referred the bill to the Department-Related Parliamentary Standing Committee for further review. As a result, the Committee released its Draft Report in January 2009 on the Right of Children to Free and Compulsory Education Bill 2008. It was presented to both houses of parliament in February 2009.

The report stated that the Right of Children to Free and Compulsory Education Bill 2008 is a sequel to the 86th Constitution Amendment Act passed in 2006, which provides free and compulsory education to all children between 6-14 years. This Bill aims to give primary education to all children, including those who dropped out of school before finishing their elementary education. So far, 18 States and 2 Union Territories have compulsory primary education laws. However, the Committee noted that these states' legislation needs to be better administered and mostly remained unimplemented. Hence, the Committee raised concerns about whether the central law had sufficiently considered these states' and U.T.s' experiences and whether the current legislation should address the issues and shortcomings in implementing the State laws. The Committee also emphasised the role of community participation and involvement in the implementation process.

Finally, Rajya Sabha passed the bill on July 20 2009 and by Lok Sabha on August 4 2009. It received the President's assent on August 26 2009, and it was published in the Gazette of India on August 27, 2009, for general information. However, the bill took nearly six years to get cabinet approval after the amendment¹⁴.

3.10 THE RIGHT TO FREE AND COMPULSORY EDUCATION ACT 2009

Article 21-A was added to the Constitution of India by the Eighty-sixth Constitutional Amendment Act, 2002. Its purpose is to guarantee, as a Fundamental Right, the "Right to Free and Compulsory Education" for all children between the ages of six and fourteen in a manner that the State may, by law, determine. According to the Right of Children to Free and Compulsory Education (RTE) Act, 2009, every child has the right to full-time elementary education of a "satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards" (GoI MHRD, 2009).

On April 1, 2010, both Article 21-A and the RTE Act were officially enacted. The Act incorporates the idea of both 'free and compulsory education. The idea of free education denotes that no child, except for a child who has been admitted by his or her parents to a school that is not supported by the appropriate government (private school), shall be liable to pay any kind of fee or charge or expense that may prevent him or her from pursuing and completing elementary education. This Act covers children between the age group of 6 to 14. The government and local authorities are obligated to implement this Act. The idea of compulsory education refers to the obligation placed on the state to ensure that all children aged six to fourteen are admitted to school, attend classes, and complete their primary school education.

3.10.1 THE UNIQUE CHARACTERISTICS OF THE RTE ACT

¹⁴ It should be noted here that the 2005 CABE bill introduced the word "right," which was absent from the preceding two iterations. The central legislation was shelved in 2006 in favour of state legislation based on a token model bill draught for the repeating "lack of central resources" argument, but intense public pressure based on independent financial projections revived and brought back the central legislation in 2008.

- Under Act guarantees the right of children to receive an education that is both free and compulsory until the elementary level at the school in their neighbourhood.
- The Act stipulates that it is the responsibility of the appropriate government and the local authorities to ensure that children between the ages of 6 and 14 are provided with elementary education. This obligation lies with the local authorities.
- It creates provisions for a child who has dropped out or never been to school before to be admitted to a class appropriate for their age group.
- It details the role and responsibilities of government officials, local authorities, school management, teachers, community members and parents in delivering free and compulsory education.
- It details the distribution of financial and other responsibilities between the Central and State Governments.
- It specifies the norms and standards relating to several aspects like pupil-teacher ratios (PTRs), facilities and infrastructure, school-working days, and teacher-working hours, among other things.
- It provides for the rational deployment of teachers by ensuring that the specified pupil-teacher ratio is maintained for each school rather than just as an average for the State, District, or Block, thereby ensuring that there is no urban-rural imbalance in teacher postings.
- It prohibits the deployment of teachers for activities unrelated to education, except for the decennial census, elections to the local authority, state legislatures, and parliament, as well as disaster assistance.
- The Act emphasises the employment of teachers who are both trained and qualified. It allows for the appointment of instructors with the necessary training level, which means that teachers must have the required entry qualifications and academic degrees.
- The Act forbids the use of physical punishment and mental harassment.
- The Act forbids the use of screening processes for the entrance of children, the charging of capitation fees, the provision of private tuition by instructors, and the operation of schools without official authorisation.
- The Act allows for the development of a curriculum that is as per the values that are enshrined in the Constitution. This curriculum would ensure the child's complete development by expanding on the child's existing knowledge, potential, and talents, as

well as releasing the child from fear, trauma, and anxiety through the implementation of a system of learning that is child-friendly and child-centred.

- Students from disadvantaged backgrounds, students with lower socio-economic status, and students with disabilities are eligible for a 25% reservation in private unaided schools.

3.11 SECTION-WISE ANALYSIS OF THE RTE ACT 2009

The Right of the Children to Free and Compulsory Education Act 2009 consists of seven chapters and 38 sections.

The first chapter of the Act, which contain the first and second sections, mainly deals with the definitions of various terms employed in the Act. Terms like 'appropriate government, capitation fee, child, a child belonging to weaker and disadvantaged section, elementary education, guardian, local authority, National Commission for the Protection of Child Rights, notification, parent, prescribed, schedule, school, screening procedure, special category and State Commission for the Protection of Child Rights' are defined here. This definition helps identify the various actors and understand their roles and responsibility as outlined in the subsequent sections of the Act. It also defines the scope of terms used in the Act.

The second chapter of the Act contains the third, fourth, and fifth sections. It primarily concentrates on the Act's objectives and provisions. For example, according to Section 3, which commands the state to make this provision, every child between the ages of six and fourteen has the right to a "free and compulsory education" in a "neighbourhood school" until the completion of their primary education. Neighbourhood schools are institutions that provide an inclusive learning environment for children from all castes, classes, and genders, according to the Ministry of Human Resource Development (MHRD).

This section also implies that no child is compelled to pay any price or charge that would prevent them from attending primary school, which is another meaning of the word "free education" (as cited by MHRD in the section wise clarification of the Act).

Section 4 addresses concerns about children older than six who have not been admitted to any schools or who, although being admitted, have not been able to complete their primary education due to unusual circumstances. Additionally specified in this part is the child's

entitlement to enrollment in a school and placement in an age-appropriate class to complete their primary education (as cited by MHRD in the section wise clarification of the Act).

The Act allows students to exercise their right to request a transfer from any institution, including government or government-aided schools, to another school of the same type to complete their elementary education. This right can be exercised through the issuance of a transfer certificate. In addition, section 5 requires eliminating all procedural barriers (as cited by MHRD in the section wise clarification of the Act).

The third chapter of the Act comprises sections 6–11. This chapter is important because it explains the responsibilities of the state in the context of the implementation of the Act in its various capacities, such as those of the local authority, the state government, and the central government. Section 6 expressly addresses the provision of access to primary education, and this provision demands that necessary schooling facilities be situated within a reasonable distance of the learners. According to the reasoning behind this rule, people might be less inclined to enrol in school or see their education through to completion if schools are not located close to their homes (as cited by MHRD in the section wise clarification of the Act).

According to the requirements of Section 7, the Central Government and the State Governments are liable for paying any expenditures incurred as a result of putting the provisions of the proposed Act into action. It provides a breakdown of the proportional contributions made by the state and central governments in this area (as cited by MHRD in the section wise clarification of the Act).

According to Section 8 of the law, the appropriate government is obligated to pay for the cost of an individual child's education if that child is enrolled in a school that was either established, owned, or controlled by that government or a local authority, or that received a significant amount of funding from that government. It is expected that this refund will be made on an annual basis. The tasks that fall on the shoulders of the local administrations are laid down in Section 9. These obligations include the supply of infrastructure, the acceptance of children from migrant families, monitoring admissions, attendance, and graduation rates from primary school, and formulating policies regarding discrimination (ibid).

In Section 10, parents and guardians are given directives that instruct them to enrol their children in elementary schools and ensure their children are not denied their constitutional right

to get an education. These directives are meant to ensure that children do not have their constitutional right to be denied.

Sections 12 to 28 comprise Chapter 4 of the Right to Education Act. This chapter mainly emphasises how schools, instructors, and the School Management Committee are implementing the RTE legislation. In addition, it describes their job duties and other information important to the execution.

All government schools must provide free and required education to all children between the ages of 6 and 14 under Section 12. Additionally, it says that 25% of the places in unaided schools must be set aside for pupils from underprivileged or excluded groups. According to Section 12, the government would be required to reimburse schools "on the basis" of the cost per student. Children from a socio-economically underprivileged group can be admitted under RTE section 12 to private unaided schools. This clause aims to give organisations the professional capability they need to meet the intellectual and emotional requirements of kids from different backgrounds. With the help of this Act's provision, it is hoped that children from disadvantaged families will have access to high-quality education and interact with children from different social groups, thereby bridging existing social gaps. According to the RTE Act 2009 Rationale by MHRD, section 12 is significant for ensuring social cohesion in the country through the education system. Inequitable and unequal schooling reinforces existing social and economic hierarchies and makes educated people less concerned about the problems of low-income people. The RTE Act says that poor and disadvantaged children can start school at the first level, which includes preschool and Class I. With these children advancing to the next grade and new children coming in every year, the school will have a more diverse mix of kids in all classes over time. Diversity helps people learn and grow, while segregation makes all classrooms worse places to learn and grow. Admitting 25% of children from disadvantaged groups and weaker parts of the neighbourhood is more than just giving them a chance to get a good education. The main goal is to give children a place to sit, eat, and live together.

Nevertheless, many studies have demonstrated that this provision still needs to be fully availed by the children. "Bureaucratic hurdles and corruption, lack of transparency, limited access to information, and lack of e-literacy" among the targeted group are some of the primary reasons that are pointed out by these studies as being some of the primary reasons why they struggle to obtain the "required information, certification, and clearances" (Mehendale et al., 2014; Sarin et al., 2015; Dongre et al., 2017).

In some schools in India, pupils are admitted without having to contribute to the institution's infrastructure fund. These so-called capitation fees are prohibited by section 13 of the RTE. The section specifies the necessary sanctions for educational institutions like schools that disobey this rule. Children cannot be denied entry if they do not have their age certificate, according to Section 14. Parents frequently struggle to secure children's age evidence because pertinent documents like birth certificates, marriage licences, and death certificates are frequently difficult to obtain.

Schools are required by Section 15 of the RTE Act to admit students, regardless of when in the academic year admission is requested. Children should ideally be admitted at the beginning of the academic year, but schools must accept children at any time in difficult situations like migration and labour displacement. Section 16 of the Civil Rights Act prohibits schools and institutions from detaining or expelling children until they complete primary education. This section's justification is that forcing a youngster to repeat a grade or subject lessens their desire to continue their education. In order to protect kids from the trauma of failure and encourage teachers to emphasise their learning and performance, the RTE instructs schools to implement a continuous, comprehensive evaluation system that will be non-threatening. Schools are strictly forbidden from using physical punishment or verbal abuse. Preserving their dignity and freedom of speech ensures that the potential of children is allowed to thrive. Physical and psychological abuse has the unintended consequence of making children even more defiant and rebellious than they already are.

According to Section 18, private schools cannot be founded or run without obtaining a certificate of recognition, which is only given to institutions that meet the requirements. These requirements, which all public or private schools must follow, are subsequently defined in Section 19. In addition, within three years of the Act's start date, schools must renovate their physical facilities. Section 20 of the Act allows the central government to change the norms and standards schedule.

Section 21 details creating and structuring a "school management committee" (SMC). The creation of a school development plan (SDP) by the SMC is encouraged by Section 22. The SDP is extensive and covers every aspect of the school, including inclusion, infrastructure, teacher availability, classroom interaction, and protecting children's rights. The requirements for teaching regulations are covered in Sections 23–26. These conditions for school teachers' qualifications and employment are included. The National Council for Teacher Education

(NCTE) is the supreme teaching credential authority. These parts also call for lower maintenance of the pupil-teacher ratio in schools and provide recommendations for teachers' responsibilities.

Additionally, no more than 10% of the school's total instructor strength should be vacant. The teaching community is subject to the constraints outlined in Sections 27 and 28, which discourage the use of instructors for non-academic activities. They can participate in decennial population counts, disaster relief efforts, and tasks associated with municipal government, state legislatures, and parliamentary elections. Teachers are not allowed to organise private lessons and are barred from ever using their position to further their financial interests.

The fifth chapter of the act contains sections 29 and 30. Both of these sections outline the curriculum rules and regulations and the completion of primary education by children enrolled in schools. This section also introduces a new actor known as "academic authority," who will be appointed by the appropriate government to lay down the curriculum and evaluation procedures for elementary education under the values enshrined in the constitution. These sections also state that no child shall be required to pass national examinations until the end of primary school, as national examinations have caused stress and anxiety in children. This chapter aims to provide children with a holistic education that will improve their physical and mental abilities and lead to their overall development. It is argued that this is one chapter in the Act that has focused on children's rights in education¹⁵. Every child has the right to an education that will enrich their lives and fulfil their potential. This education should enhance the child's holistic development by covering all aspects of development, including the child's physical, moral, and intellectual development. The ability to fully develop one's potential and maintain one's dignity, as well as the capacity to contribute meaningfully to one's community, are among the goals of education. The 'right to education,' guaranteed through legal provisions and

¹⁵ Reference to this idea can be found in Thapliyal, N. (2012). Unacknowledged Rights and Unmet Obligations: An Analysis of the 2009 Indian Right to Education Act. *Asia-Pacific Journal on Human Rights and the Law*, 13(1), 65–90. <https://doi.org/10.1163/138819012x13323234709820>.

outlining the duties and responsibilities of various state and non-state actors towards the realisation of this goal, has been the primary focal point of the other sections of the Act.

Sections 31–34 of the Act are located in the sixth chapter of the Act. Because they detail the procedures for monitoring and the grievance redressing system, these parts are significant from an administrative point of view. Protecting children's rights is the responsibility of the National Commission for the Protection of Child's Rights and similar organisation at the state level, which is mandated to exist due to Section 31's provisions. These agencies are also responsible for monitoring children not enrolled in school and should strive to make access and participation easier. In addition, they are advocating for creating a grievance redressal mechanism for children's rights under the legislation being presented. The formation of state advisory councils is made possible by Sections 33 and 34 of the Act, allowing for expert advice regarding the Act's implementation.

The provisions of sections 35 to 38 make up the final chapter of the Act. Section 35 specifies the recommendations that will be provided by the central government and the directions that will be given to local authorities regarding how to carry out an efficient implementation of the Act. This clause also gives appropriate governments the power to give directives to local authorities by providing those authorities with those directions. Sections 36–38 deal with the prosecution of offences and grant the competent governments the authority to take action in good faith and provide protection against legal processes. A goof in the Act is found in section 37 of this chapter. It states that the Central or State Government, NCPCR, SCPCR, local authority, SMC, or any person cannot be sued for any actions taken in good faith or with the intention of following this Act. This means that legal proceedings cannot be initiated against them. The previous sections and clauses of the Act have lauded the concept of a right to education and outlined the responsibilities of various state and non-state actors. However, section 37 of the Act appears to render all these accomplishments pointless. Even though the RTE Act of 2009 has been written into part III of the constitution through the insertion of Article 21-A, which is justiciable under Article 32. This justiciable nature of fundamental rights as well as the spirit of the RTE Act itself, are both violated by section 37 of the RTE Act. The Act, on the one hand, has removed the legal obligation from the state by removing section 37. However, on the other hand, it has made education a fundamental right of children and placed this obligation on the state to ensure it is fulfilled. This obligation was placed on the state because the Act made education a fundamental right of children and put this obligation on the

state to ensure that it was fulfilled. This may explain why education in the country is in such a deplorable state, particularly concerning the Act's implementation.

3.12 ANALYSIS OF THE RTE ACT 2009 USING THE A-4 FRAMEWORK

"For education to be a meaningful right, it must be available, accessible, acceptable and adaptable" – Katarina Tomasevski

The Right to Education is a state obligation because one way to look at rights is in the form of obligations. Individual rights are claims that demand corresponding obligations/duties from the state towards individuals. As a result, if education is a right of children, the state has a corresponding obligation/duty to fulfil this obligation. Several international conventions (discussed earlier) have also made the state the primary responsibility for ensuring a child's right to education. The A-4 framework is an important paradigm for examining state obligations in the context of the Right to Education. Katarina Tomasevski, the former UN Special Rapporteur on RTE, developed the 4-As framework, which divides states' obligations into four major categories: availability, accessibility, adaptability, and acceptability. It also serves as a theoretical foundation for examining Right to Education legislation worldwide.

Further, the A-4 indicators, closely linked to international human rights law, incorporate both the right to education and the rights in education and have thus become a popular tool among scholars and policymakers to assess RTE-related legislation globally and nationally (Thapliyal, 2012). The researcher uses this framework to examine the RTE Act 2009 legislation, which will be discussed in this section. The use of a normative framework in analysing the Act is vital because it helps evaluate the Act's compliance with the human rights treatise on child rights.

3.12.1 AVAILABILITY

The fundamental focus of the idea of educational availability is on the responsibilities that governments have toward their citizens to supply them with access to educational opportunities that are both free and appropriate. In general, it encompasses a wide range of obligations falling under the purview of the state, including those that are civil, political, social, and economic. As recognised by international human rights law, community members have the right to establish educational institutions that meet state standards to ensure that everyone has access to high-quality education (Tomasevski, 2001). In this regard, the Right to Education is both a civil and a political right, which obligates the state to both permit the establishment of

educational institutions by non-state actors and maintain the appropriate measures for the goal of protecting the integrity of the educational system (Tomasevski, 2001; Thapliyal, 2012). The right to Education under a neoliberal framework entails freedom for community members to engage in the education process by establishing educational institutions and freedom for parents to choose the school their children attend. Education is a social and economic right, and the state is obligated to fulfil this obligation by either establishing educational institutions itself or funding existing educational institutions and using any other means at its disposal. Since education is a right, it can be provided in one of two ways: the state can either establish educational institutions itself or fund existing educational institutions.

In addition, the idea of availability involves various operational factors, including the distribution of monetary and material resources and the provision of physical infrastructure. The state must ensure that sufficient educational infrastructure facilities such as classrooms, playgrounds, libraries, drinking water, toilets, and computer labs are built and developed within schools in all areas so that the state can guarantee that there will always be access to education. It is necessary so the state can guarantee that there will always be access to education. On many different levels, the aforementioned tangible and material components have a significant and impactful effect on the educational process. For example, as established by many studies, there is a significant correlation between the absence of a restroom designated for female students and their choice to withdraw from school altogether. Providing educational opportunities in their broadest sense requires more than just the supply of the necessary physical infrastructure; as a result, the state is obligated to make accessible, appropriate financial resources. In addition, for the state to ensure that children of all ages have access to adequate quality education, the state must invest in its human resources. It is advised to consistently follow the established procedures for recruiting teachers. There should be regular opportunities for educators to engage in professional development, and they should also have unlimited ability to organise into unions and associations. It would help better defend the rights of educators.

The concept of availability of education is both present and missing in the spirit under the RTE Act of 2009. The Act satisfies the fundamental principle of educational availability by offering free elementary education to children between 6 and 14 years in a local school. Furthermore, the RTE Act's definition of a "neighbourhood school" does not limit a child's ability to apply for admission to a school that may not be in the similar area as their home. Therefore, the youngster does not need to apply for admission exclusively to schools in his or her

neighbourhood (MHRD, 2009). The Act requires a GIS mapping system to be carried out in collaboration with BISAG to identify the neighbourhood school and to monitor the distance of nearby schools from habitation to ensure the availability of schools per the neighbourhood standards established by the RTE Act of 2009. With the aid of the available fundamental data, school by school, District, Block Resource Center (BRC), Cluster Resource Center (CRC), and local-level authorities can conduct gap analyses for the purposes of decision-making and micro planning.

However, to only include children aged 6 to 14 shows an insufficient commitment from the state to all school-aged youngsters. There is no educational basis for excluding children younger than six or older than fourteen. Article 24 of the Convention on the Rights of the Child guarantees children the right to care for themselves before age eight. Early childhood education is essential to children's development and future success in life. Similarly, the Act does not assist families whose children cannot attend school beyond Class VII due to financial hardship. A certificate verifying completing an eight-year elementary school education will not be as respected as one proving passage of the Class 12 finals. Instead, it reinforces the economic discrimination that girls and other minority groups face. Finally, the Act's definition of economically weaker and disadvantaged children (Section 2(d) and (e)) is too vague to account for the myriad types of exclusion that contribute to children's social and academic disadvantage. Tomasevski, for example, identified 32 groups of children who have been historically marginalised, including those who have been abandoned, those who have sought asylum, those who work in hazardous occupations, those who have given birth outside of wedlock, those who are delinquent, those who are disabled, those who have been displaced, those who are domestic servants, those who use drugs, those who are girls, those who are HIV-positive, those who are homeless, and those who are incarcerated (Thapliyal, 2012). All these children are found in India, but the narrow interpretation of the idea of the 'socially and educationally disadvantaged category' has failed to make a serious attempt to make education available to them.

The financial and monetary provisions for putting the law into effect are also included in the concept of availability. The RTE Act's Section 7 outlines the financial and other obligations of the Central Government and the State Governments for implementing its provisions. For implementing the Act, the funding will be split 65:35 between the Central and State Governments. The fund-sharing plan for the States in the North East Region will be a 90:10

split. However, more is needed to guarantee that the Act is implemented correctly. The absence of any financial agreement indicates much about the central government's commitment—or, in this case, lack thereof—to democratic principles and education rights. Because of political and implementation considerations, the financial commitments that accompany social policy legislation play a significant role (Thapliyal, 2012). Furthermore, the lack of a financial agreement permits the federal government to burden underfunded states unfairly¹⁶ (Tilak, 1989).

In addition, to guarantee the availability of educational opportunities, it is necessary to make the necessary infrastructure improvements. The children will not be able to receive an education if there are no schools, which means there will be no classrooms, bathrooms, or teachers. In this regard, the Act's emphasis on constructing physical infrastructure, measures linked to teacher training, and teacher recruitment requirements is commendable and should be applauded.

3.12.2 ACCESSIBILITY

The concept of accessibility emphasises the elimination of discrimination and barriers during the process of providing educational opportunities to individuals. This strategy's primary focus is removing administrative, monetary, and legal obstacles. However, access to education can be hampered by various factors, including physical, social, economic, and cultural factors. When it comes to barriers to education, the most significant obstacles are faced by disadvantaged members of society and girls. As a result, to make education available in its complete sense, there needs to be a change in society. The government may also need to pass related legislation, such as the prohibition of child marriage and child labour, amongst other related laws.

¹⁶ We can learn from Brazil here, a nation with comparable educational and social inequality levels, which established a rights-based national education law in 1996 for a more cooperative relationship between the centre and the state. Despite its limitations, this law was accompanied by another piece of legislation that established the FUNDEF (1996) national fund for elementary education, intending to ensure a standard minimum level of per-student spending.

The concept of accessibility draws attention to the fact that education is a complicated process that cannot be satisfactorily provided by merely putting the necessary physical infrastructure in place and supplying the necessary resources. In order to guarantee that every child in society, originating from any segment, receives education and faces non-discrimination in any form and context of educational endeavours, there needs to be a shift in the attitudes and norms prevalent in society.

On the surface, the RTE Act of 2009 has several provisions that exemplify the objective of making education accessible. The Act acknowledges how the educational system reflects the pervasive prejudice in society. Children with disabilities have a right to free and compulsory education, which is acknowledged in section 3.2 of chapter 2. The term 'disability' was not defined in the original Act. However, a subsequent notification, The Right of Children to Free and Compulsory Education (Amendment) Act, dated June 19 2012, defines the term disability as per the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation Act 1955 and National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities" Act 1999. The Act has made positive discrimination with provisions for children with multiple or severe disabilities to opt for home-based education.

Furthermore, section 9 of chapter 3 describes the duties of the local authorities, including prohibiting discrimination against and impeding the pursuit and completion of elementary education for kids who are a part of weaker groups, disadvantaged groups, and migrant families. The terms "disadvantaged group" and "weaker portion" are also defined in the second section of the first chapter of the Act. Caste criteria are included in the category of disadvantaged groups, specifically the scheduled caste, scheduled tribe, and the educationally backward class. Disadvantaged groups include any groups that are negatively impacted by social, cultural, economic, geographic, linguistic, or other circumstances. The child's guardians' yearly income is utilised to identify the economically weaker category. The local government ensures that the child is not the victim of discrimination due to the many potential discrimination-causing causes listed in the Act. However, the Act disregards the fact that the educational institutions themselves do not usually create barriers to education. There are numerous social barriers present outside of the classroom. Numerous studies have shown that early marriage or the need to shoulder household responsibilities forces many girls to leave school early. Girls are barred from attending school because of social stigmas. Additionally,

schooling is not available to kids from lower castes. It is a society in which inequality and discriminatory behaviour are entrenched. Therefore, the local authorities, who are a part of society, may discriminate against the children. However, Article 37 grants legal immunity to local and state authorities.

In addition, the Act does not sufficiently address the problem of bullying in schools, which is widespread in today's society and occurs rather frequently. In the context of the curriculum, the Act states that it should be in consonance with the values that are enshrined in the constitution; however, what about ensuring that the curriculum does not contain any content that could be construed as discriminatory based on gender, caste, religion, or other factors?

Furthermore, accessibility means that all obstacles to education must be taken away. Section 5 of the Act says that children have the right to transfer from a government or government-aided school to another government or government-aided school to finish their elementary education and that a child who wants to go to another school can get a Transfer Certificate right away. It says that being unable to show the Transfer Certificate on time can't be used as a reason to deny or delay admission to another school. This rule should cause the states to make changes that make it easier for people to get Transfer Certificates. However, the language barrier a child faces due to relocation must be addressed in the Act.

3.12.3 ACCEPTABILITY

The A-4 framework emphasises the idea of acceptability since it contends that a child must be acknowledged as the possessor of rights. The right to an education that is appropriate for them, relevant to their lives, of high quality, objective, ethical, and devoid of any physical or emotional abuse should be provided to every kid. Hence, the main focus of this component is the subject matter or the content being taught. The country's diverse population has a wide range of needs, and education is geared to suit those needs. The state is under the obligation of ensuring that "religious, moral or philosophical convictions" (Tomasevski, 2001) of varied social groups are given adequate consideration while in charge of the educational system. Human rights conventions, as well as numerous court cases around the world, safeguard this. Therefore, the freedom to pick an education for their child that is in line with the values they defend as a family should also be granted to the parents of the ward. The notion of acceptability of education also addresses the language of instruction, a sensitive topic, particularly in multicultural countries. The government must respect minority groups' rights to open schools

where instruction is provided in their mother tongue (ibid). Finally, it covers the ban on corporal punishment in schools as well as the state's role as the regulatory body for education, guaranteeing that both public and private schools follow a set of minimum academic standards. Hence, the concept of acceptability of education mainly focuses on the rights in the education of children.

The RTE Act 2009 aims to ensure that education is acceptable and inclusive, and incorporates various features to achieve this. The Right of Children to Free and Compulsory Education Act is based on the belief that providing elementary education to all is crucial in promoting equality, social justice, democracy, and a fair and compassionate society. This is stated in the Statement of Objects and Reasons (SOR) attached to the bill.

Additionally, it is stated in Chapter V, Section 29(2) that the academic authority is required to ensure adherence to the constitutional values, the child's overall development, the development of their knowledge, potential, and talent, as well as the fullest possible development of their physical and mental abilities. It is crucial to ensure that learning takes place in a child-friendly and child-centered manner, emphasizing activities, discovery, and exploration. The RTE Act of 2009's concept of "acceptability" of education is greatly influenced by this provision. The tremendous diversity in all domains, including social, economic, cultural, linguistic, ethnic, caste, religion, and gender, was considered when writing the Indian constitution. The Constitution is built on the principles of liberty, equality, and justice to guarantee the preservation of all people's rights and to advance their well-being without discrimination. Given their uniqueness in the sociocultural domain, minorities' rights require protection. Minority rights are protected under the Indian constitution's articles 15 (1 & 2), 16 (1 & 2), 25 (1), 28, and 30 (1 & 2). Through Article 32, these rights are further made justifiable. The rights of various groups in society concerning education are thus protected by creating the RTE Act in accordance with the constitution's ideals. According to the RTE Act, this adherence to constitutional ideals must be guaranteed when establishing the curriculum and evaluation process. Additionally, it is crucial to remember that the child should be taught in their mother tongue "as far as is practically possible," that they should be free from fear, trauma, and anxiety, and that they should be provided an opportunity to express their opinions freely, and that they should be subjected to extensive and ongoing evaluations of both their level of understanding and their capacity to apply what they have learned. The Act further specifies the prohibition of physical punishment in educational settings.

The government has also taken adequate steps to protect the interests of children from the underprivileged group regarding their access to education which is also acceptable to them. Through the efforts of the Gujarat State Tribal Educational Society, the government of Gujarat has introduced significant programmes. There are currently 34 Eklavya Model Residential Schools sponsored by the Government of India and 10 Eklavya Model Residential Schools sponsored by the Government of Gujarat, for a total of 43 Girls Residential Schools, 12 Model Schools, and 2 Sainik Schools. In addition, the central government created the Kasturba Gandhi Balika Vidyalaya (KGBV) project in August 2004 to establish residential upper primary schools for girls, mainly from the Scheduled caste and Scheduled tribe, other underprivileged classes, and minorities in challenging locations. The RTE Act 2009 entered into force on April 1, 2010, and the Sarva Shiksha implementation framework was updated to comply with the RTE Act. As a result, the KGBV component of Sarva Shiksha is now being implemented in accordance with the spirit and provisions of the Act and within the broader context of children's rights and entitlements.

3.12.4 ADAPTABILITY

The conventional notion that a child needs to adapt to the school environment and that if the child does not comply with these requirements, the school has the right to expel the child is challenged by the concept of adaptability. It is a novel idea that the school should try to adapt to the needs of the students, which is what the argument suggests should happen. The individuality in each child and their specific needs must be taken into account by educational institutions. Children with disabilities, children living under challenging circumstances such as armed conflict or a hostile environment, and children who belong to indigenous communities all have special needs that need fulfilled by the schools. These children's needs must be accommodated wherever possible. Educational institutions must adjust their methods of operation in order to fulfil the requirements of all children who have exceptional circumstances. Because of various social, economic, and cultural factors, several children are forced to leave school early and enter the workforce when they are still very young. The concept of adaptability places an emphasis, as well, on this particular facet, which the educational system is obligated to address.

The RTE Act has provisions that, to a certain extent, represent the concept of adaptation. According to Section 4 of Chapter 2 of the Act, each child admitted to an age-appropriate class must receive Special Training to bring him or her up to the same level as the other children in

the class. This aspect is significant because the majority of children who are not enrolled in school come from marginalised groups, such as scheduled castes, scheduled tribes, Muslim minorities, migrants, children with special needs, urban deprived children, working children, children living in difficult circumstances, such as those residing in difficult terrain, children from displaced families, and areas that have been impacted by civil strife. The RTE Act contains a provision that allows children not enrolled in primary school to finish their education by being admitted to an age-appropriate class. The goal of age-appropriate admittance for these youngsters is to prevent them from the humiliation and disgrace of sitting alongside younger children. It can be accomplished by setting the minimum age requirement at the child's current age. When older children are forced to sit in a class with younger students than their age, they are more likely to be mocked and tormented, experience a decrease in self-esteem, and ultimately drop out of school. The field of education acknowledges, taking into account the diverse life experiences of these children, that their mental capabilities are higher than those of entry-level children who are six years old and that they are indeed capable of accelerated learning. It is because these children have more life experiences than children who are six years old. After the Special Training, the kid will be evaluated, and a determination will be made regarding whether or not he or she is suitable for enrollment in a particular class. This is the justification behind the provision that extends the child's eligibility for free and compulsory education until they reach the age of 14 years old. Even after a kid has been correctly placed in the regular school setting, she may continue to get particular attention from the teacher to help her properly integrate with the rest of the class, academically and emotionally. It is done in order to ensure the child's success.

Further, in Chapter 2, section 5 (1, 2, and 3), provisions make transferring the child from one school to another easier. This would make it easier for the child to finish their primary schooling and would also speed up the process of issuing a transfer certificate to a child trying to get into a different school. It stipulates that a delay in producing a Transfer Certificate shall not be a basis for denying or postponing admission into another educational institution. This clause should lead to states initiating reform to reduce procedural barriers to obtaining Transfer Certificates to make it easier for students to transfer between schools.

