CHAPTER-3

Gender Equality and Women Education in India

Social justice is the key stone of the Indian Constitution. One facet of it is gender justice. This is a composite concept. It is the human right of women. The principle of gender equality is enshrined in the Indian Constitution, in its preamble, fundamental rights\textsuperscript{240}, fundamental duties\textsuperscript{241} and directive principles\textsuperscript{242}. The Universal Declaration of Human Rights, 1948 too affirms the ideal of equal rights of men and women. The U.N. Convention on the Elimination of All Forms of Discrimination against Women, 1979 observes that discrimination against women violates the principles of equality of rights and respect for human dignity.\textsuperscript{243}

3.1 Gender Inequality in Education: A Review of Theories

There are various theories that describe and explain educational inequality across social space in particular. These theories can broadly be grouped into classical and feminist theories.\textsuperscript{244} Now seeks to present a review of educational theories dealing with educational inequality.

3.1.1 Classical Theories

A. Functional theory

Functional theory is one of the classical theories involved in explaining inequality in education. According to the functionalist perspective what leads to inequality in educational attainment is the family background of students and personal characteristics. The thrust of argument is that family socialization practices shape children's thought pattern. While some of these socialization practices are conducive to knowledge enhancement, others are inhibitive. Implicit in such assumptions is that in affluent families socialization practices are such that enhance knowledge and infuse aspirations and as such their children are less likely to face problems in school, a situation of better school achievement compared to the children of underclass people because underclass parents fail to provide their children intellectual environment. In a nutshell, educational attainment of an individual is the function of one's class location. Thus, functionalist does not address the role of gender in educational

\textsuperscript{240} Part III, Articles 12 to 35 of Constitution of India.
\textsuperscript{241} Part IVA, Article 51A of Constitution of India.
\textsuperscript{242} Part IV, Articles 36 to 51 of Constitution of India.
\textsuperscript{243} AIR 2001 Journal Section at 149.
\textsuperscript{244} Mohd. Sanjeeer Alam, Interrogating gendered inequality in educational attainment in India, Social Change: December, 2007; Vol 37 No.4 at 161.
inequality as they assume that the experience of men and women in school is the same.\textsuperscript{245}

B. Reproduction theory

Reproduction theory like the functional theory, 'too, though in a different mode, sees educational inequality as a function of social class difference. The central premise of the reproduction theory is that 'cultural capital' in terms of familiarity with dominant values, tastes and language code all inputs that schools presuppose are differently distributed across social groups. As schools tend to inculcate or epitomize the dominant value, the children of the wealthy are inherently privileged by the school system.\textsuperscript{246} In other words, class location of an individual crosscuts other social denominations so far as inequality in educational opportunities is concerned. Viewed thus, 'the reproduction theory' is also gender blind in that it does not deal with inequality within the class where gender could play a part in reproducing and perpetuating educational inequality in society.

C. Conflict theories

Conflict theories suggest that school systems are one of those sites that reflect the dominant economic structure in the society and foster differential socialization, that is, dominant and dominated social classes. The best known Marxist critiques\textsuperscript{247} on education, argue that while the children of well off strata are taught and prepared to be subservient and obedient workers. Anchoring there study in the context of the US, they further argue that expansion of the educational system was a response to the need of producing workers for a fast expanding economy in the nineteenth century. Hence, expansion of the educational system was made not with an objective of social mobility, but with a view to cater to the need of the economy. However, it suffers from the same weaknesses, as do other classical theories, that is, intra-social class differences in education are just ignored. Nonetheless, conflict theories do offer some deeper insights for it is structure that becomes a significant force rather than motivational or ability factors that determine one's educational attainment. As Stromquist\textsuperscript{248} puts it, 'what neo-Marxist theories do contribute to the understanding of gender inequalities is that determinants of schools failure are located not within

\textsuperscript{248} See supra note 7.
motivations and abilities of individuals but within process and objectives of institutions in a society.249.

3.1.2 Feminist Theories

Of late, feminist theories have appeared which basically deal with gender issues in society. Though these theories have their origin in the west, they are relevant to non-western societies as well. Their application varies across societies in degree rather than in kind. Nevertheless, feminist theories are not homogeneous. They stem from several ideological traditions and have several stands although they share a common thread in that gender constitutes the core of explanation.

A. Liberal feminism

Liberal feminism attributes gender inequality to sexual division of labour and the prevalence of separate private and public spheres for social activities. While the private sphere is considered to be a location exclusively for women, the public sphere for men. Such a division results in differential socialization of children, which is meant to prepare their adult roles and work in the spheres appropriate for their sex. Thus, from this perspective it could be argued that women’s exclusion from educational opportunities and gender inequality therein as well, is the result of traditional socialization processes which are biased against women’s education as it can be argued that women’s education is inconsistent with their perceived role in their private domain, that is, domestic work and the task of reproduction.

B. Radical feminism

Radical feminism, in brief, maintains that gender inequality in society or women’s subordination springs from power relations based on sexual differences power which is entrenched in patriarchy as an ideological system that holds men being superior to women by, amongst other attributes, assigning stereotypical coded behaviour to men and women. That is, while men are solely viewed as breadwinners, women are seen as mothers confined to their homes, as caretakers of children and other domestic chores. This ideology is defended, maintained and reconfigured through a complex web of institutions, norms, values and laws250. Educational inequality between men and women, seen in this perspective, can thus be an outcome of differential role expectations from women and men in approval to this both

249 Ibid.
indirectly and directly. Indirectly, the state is indifferent or very slow to respond to the educational problems of women and not getting involved seriously to transform the society and to espouse the value of equality of educational opportunities. Directly, the state endorses patriarchy values by emphasizing sex role socialization in textbooks. However, such theoretical exposition suffers from a serious weakness as it tends to treat women as a homogenous social category and defines gender problems solely based on ideological determinants. It is well established that all women do not have equal chances to participate in the available educational opportunities, nor are they equally deprived. I have already observed in the preceding section that educational chances of women in India very widely both horizontally and vertically and so does the gender inequality.

C. Socialist feminists

Socialist feminists argue that though family is a source of oppression, forces of labour market reinforce this oppression. Women represent both reserve and cheap labour force. While women have to perform domestic work for the family, as workers they have to provide cheap labour for the labour market, especially in informal sectors of production. In other words, both patriarchy and capitalism negotiate and reinforce each other. This perspective, when applied to educational inequality, make it possible to argue that the lower educational attainment of women relative to men lies in women’s double roles as reproducers of children and as workers in informal sectors of the economy pre-empting education as a pre-requisite. Hence, gender inequalities in education cannot be held as a function of merely lacking attributes and resources needed for educational success, but primarily as the expression of conflicting economic interest in society.

To sum up the theoretical exposition, it can be said that in one way or the other these theories are ambivalent in their overall explanation of educational inequality in society. While the classical theories view the individual’s class location as a crucial determinant of educational attainment, the feminist theories hold sex role division of labour in society primarily responsible for women’s exclusion from educational opportunities. Undoubtedly, however, these theories offer valuable

252 See supra note 11.
insights into understanding the nature and pattern of educational inequality. On one hand, classical theories fail to see that within class, gender might play a crucial role in educational inequality, the feminist theories on the other do not adequately address the differentiated socio-economic locations of women have differing chances of access to and participation in education.

3.2 Sex and Gender
(a) The former is biologically determined; the latter imputes values on biological differences.

(b) One is born male or female but it is one's culture which makes one masculine or feminine. Gender is thus the cultural definition of sex role appropriate behaviour.

(c) Gender differentiation is more ancient, more widespread than any other type of social differentiation.

The history of humankind can be viewed, among the things, as a history of unequal relations between two halves men and women. The two sexes have never shared the world in equality and even today woman is handicapped.254

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of Indian Constitutional scheme. The International Conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.255

Gender equality includes protection from sexual harassment, right to work with dignity and right to education which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.256

---

256 Ibid.
Gender relations need to be measured in the context of participation in and sharing of the important decision making process that result in the above inequalities. Such a measure would help identify the differing degrees of inequality in terms of age, income levels and geographical location. For Governments and concerned citizens seeking to redress these inequalities, indices are a means of determining the issues on which they must concentrate, and provide feedback on the 'effectiveness of their actions.' Clearly, then the accuracy of any measure of gender inequality needs close scrutiny.

There has been some progress in the field of gender equality since 1985, but much less than what was expected. Women's ability to bear children means they are expected to take responsibility for domestic work worldwide. But housework is everywhere invisible and undervalued.

The causes of gender inequality are complex, linked as they are to the intra-household decision-making process. However, the decisions are made; the intra-household allocation of resources is influenced by market signals and Institutional norms that do not capture the full benefits to society of investing in women. Low levels of education and training, poor health and nutritional status, and limited access to resources depress women's equality of life and creates hurdle in economic efficiency and growth. Regional perspectives play a very important role in the realm of gender equality. 257

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. However, there still exists a very wide gap between the goals enunciated in the Constitution, Legislations, Policies, Plans, Programmes and related mechanisms on the one hand and the situational reality of the status of women in India on the other. 258

The causes of persistent disparity and inequality between men and women are only partially examined, explored and understood. In recent years, attention was focused on inequalities in the allocation of resources at the household level, as seen in the higher share of education, and health and food expenditures boys receive in comparison to girls. The decision-making process within households is complex and is influenced by social and cultural norms, market opportunities and institutional factors. There is considerable proof that the intra-household allocation of resources

257 Ibid at 83.
258 Ibid at 81.
according to household members is a key factor in determining the levels of schooling, health and nutrition. Regional factors also have contributed in gender equalities.259

One of the fundamental obstacles to promoting gender equality in development remains at the community level where attitudinal biases often prevent women from realizing their rights. The Government has done little to take on board these obstacles, apart from occasional and irregular campaigns around single issues like dowry, girl child education, amniocentesis and so on. Policy education campaigns are restricted to occasional posters and T.V. spots, but are not consistent or backed up by strong and clear action by the State. Their Impact remains less than effective, particularly since there is little action taken against advertising or campaigns that are gender-discriminatory.260

Gender based discrimination represents ugly face of the society. This Issue is global with varying degree and very old. Really, it is a travesty of all canons of social justice and equity that women who 'constitute half of the world’s population and work two-third of Worlds working hours should earn just 1/10th of World’s property and also should remain victim of inequality and injustice. This anomaly is, now being openly questioned and the underlying discrimination is seriously challenged. As human development moves centre-stage in the global development debate, gender equality and gender equity are emerging as major challenges, Gender discrimination, though amongst the most subtle, is one of the most all pervading forms of institutionalized deprivation.261

The term “sex” and “gender” are often used interchangeably in everyday life, but in sociological literature they are frequently differentiated. The term ‘sex” is applied to differences between men and women that are based on biological differences such as anatomy, physiology, hormones and chromosomes, and in this respect people are female or male. The term “gender” is applied to the cultural aspects of male and female roles. In other words the behaviour, personality and other social attributes that are expected of males and females, and these social attributes become the basis of masculine and feminine roles. Sexuality and the different capacities of

259 Ibid at 83.
260 Ibid at 83.
261 Bhatt, Justice J.N., Judge Gujarat High court in his article “Gender equality: Turmoil or Triumph?” See AIR 1998 Journal Section 81 at 81.
men and women in the reproductive process are particularly likely to be thought of as giving "natural" reasons for gender divisions in society.262

The general recommendations of "Convention on the Elimination of All Forms of Discrimination against Women" (CEDAW) in this context in respect of Article 11 are:

"22. Violence and equality in employment—Equality in employment can be set seriously it paired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behaviour as physical contacts and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place."263

3.3 Problem of Gender Equality

The question of gender equality is a very old and burning problem. Twenty years ago in Mexico the First World Conference on Women inspired a movement that has helped to reduce gender inequality worldwide. Illiteracy among women is declining, maternal mortality and total fertility rates are beginning to fall, and more women are participating in the labour force than even before. However, much remains to be done. Persistent inequality between women and men constrains a society's productivity and, ultimately, slows its rate of economic growth. Although this problem has been generally recognized, evidence on the need for corrective action is more compelling today than even before.264

262 Ibid at 81.
264 Justice J.N. Bhatt, Judge Gujarat High court in his article "Gender Equality: Turmoil or Triumph?" Sec AIR 1998 Journal Section 81 at p. 81.
3.4 Judicial Response to Gender Justice

The Supreme Court of India has responded to issues of gender justice in a positive manner. Some of the cases significantly advance the cause and dignity of women. In *C.B. Muthamma, 1980* 265, a service rule whereby marriage was a disability for appointment to foreign service was declared unconstitutional; the Air Hostesses case, 1981 266, where pregnancy as a disqualification to continue in public employment was declared ultra vires Article 14 267 and 16(1) 268 of the Constitution; the *Shah Bano judgment, 1985* 269, granting equal right of maintenance under section 125 of the code of Criminal Procedure, 1973 to a divorced Muslim women notwithstanding the personal law; *Pratibha Rani, 1985* 270, on women's right to her stridhana; *Shobha Rani, 1988* 271, where dowry demand was held enough to amount to cruelty; *Thota Sesharathamam, 1991* 272, which permanently eliminated the economic disparity between the male and female and put a seal of finality on a Hindu female's right to property, the *Gautam Kundu case, 1993* 273, in which the woman refused the husband's application for a blood test to disprove paternity as it would be slanderous, embarrassing and humiliating for the woman; *Bodhisattwa's case, 1996* 274, in which the Supreme Court observed that rape was not only an offence under the criminal law but it was violation of the fundamental, right to life and liberty guaranteed by Article 21 275 of the Indian Constitution; *Gurmit Singh's case, 1996* 276, in which rape was held to be violative of the right to privacy; *Savita Samvedi's case 1996* 277, where a married daughter was allowed accommodation in parental house and *Vishaka vs. State of Rajasthan 1997* 278, where the Supreme Court provided adequate safeguards to working women against sexual harassment. The guidelines given in *Vishaka* were

---

265 *C.B. Muthamma (Miss) vs. Union of India, AIR 1979 SC 1868.*

266 *Air India vs. Nargesh Meerza, AIR 1981 SC 1829.*

267 The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

268 There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.


270 *Pratibha Rani vs. Suraj Kumar, AIR 1985 SC 628.*

271 *Shobha Rani vs. Madhukar Reddi, AIR 1988 SC 121.*


273 *Goutam Kundu vs. State of West Bengal, AIR 1993 SC 2295.*

274 *Bodhisattwa Gautam (Shri) vs. Subhra Chakroborty, AIR 1996 SC 922.*

275 No person shall be deprived of his life or personal liberty except according to procedure established by law.


277 *Savita Samvedi vs. Union of India, 1996 (2) SCC 380.*

278 *AIR 1997 SC 3011.*
applied by the Bombay High Court in case of *Shahnaz Sani 1998*\(^{279}\). Recently in *Shakila Parveens case*\(^{280}\), Mr. Justice Basudev Panigrahi of the Calcutta High Court extended the ‘iddat period’ till such time the woman remarries, to allow Muslim Women a maintenance allowance beyond the customary iddat period of about three and a half months under the *Muslim Women (Protection of Rights on Divorce) Act, 1986*.

Though the Supreme Court has exhibited a dynamic attitude in ensuring gender equality, judicial activism is yet to percolate to the lower levels of the judicial system. Moreover some of it is much talked about reforms such as legal aid\(^{281}\) etc. has not taken off at all. Women’s access to justice becomes much more difficult because of the cultural barriers that arise from gender\(^{282}\).

### 3.5 Discrimination on Grounds of Gender

Human Rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for women including girl child are, therefore, inalienable, integral and individual part of the universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social and economic and cultural life are concomitants for national development, social and family stability and growth, cultural, social and economical. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights\(^{283}\).

In *Madhu Kishwar vs. State of Bihar*\(^{284}\), the Supreme Court considered the provisions of the *Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)* and held the same to be integral scheme of the


\(^{281}\) Article 39A The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

\(^{282}\) See AIR 2001 Journal Section 149 at 152-153.

\(^{283}\) *Valsamma, Paul vs. Cochin University*, AIR 1996 SC 1011.

\(^{284}\) AIR 1996 SC 1864.
Fundamental Rights\textsuperscript{285} and the Directive Principles\textsuperscript{286}. Article 2 (e) of CEDAW enjoins the State Parties to breathe life into the dry bones of the Constitution, International Conventions and the Protection of Human Rights Act, to prevent gender-based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2 (1) read with Articles 3, 14 and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights Act. Section 12 of the Protection of Human Rights Act charges the National Commission with duty to ensure proper implementation as well as prevention of violation of human rights and fundamental freedoms\textsuperscript{287}.

3.6 Sensitivity towards Gender Bias

Less than ten years ago, terms such as “judicial gender bias” or ‘gender bias and the Courts” were unheard of. Today, the systematic discussion of gender bias is not only part of the most rational judicial education system, but it has also received national and international recognition, and pervasive gender bias in the Courts which was virtually invisible as recently as the 1980 has become apparent and is plainly visible on record and one cannot miss it even with a casual glance. Research conducted into this matter by social scientists and researchers in the legal field have documented a judicial gender bias and its profound effect on judicial fact-finding and decision making. Originally, such progressive empirical studies were uncoordinated. In numerous areas of the law, a disquieting picture emerged which shows that gender bias existed in all areas, operating sometimes to the advantage of men and more often and more seriously to the disadvantage of women. If gender bias is identified in all its nuances and hues that would be a large step in dealing with the dilemma. It is not special treatment for women or for men that are called for, because such special treatment is not needed, instead, what is needed is sensitivity to the ways in which unexamined attitudes about men and women lead to the unintended result of biased decision-making. Once this sensitivity is achieved, and it is reinforced by curiosity, analysis and openness, then and only then will the litigants be able to explain their circumstances to a court that is both willing to learn and to judge to achieve a gender

\textsuperscript{285} Part III, Articles 12 to 35 of Constitution of India.
\textsuperscript{286} Part IV, Articles 36 to 51 of Constitution of India.
\textsuperscript{287} Gaurav Jain vs. Union of India, AIR 1997 SC 3021 at 3030- 3031.
neutrality in its judicial system, which is both vital and important to the ultimate achievement of justice in its purest and highest form.288

3.7 Women’s Education and Gender Equality

It is essential that public policies work to compensate for market failure in the area of gender equality. These policies should equalize opportunities between women and men and redirect resources to those investments with the highest social returns. Of these investments, female education, particularly at the primary and lower secondary level, is the most important, as it is the catalyst that increases the impact of other investments in health, nutrition, family planning, agriculture, industry, and infrastructure.289

3.8 Education as Fundamental Right

"Education is the teacher of the teacher; Education is God incarnate; Education secures honour at the hands of the State, not money; A man without education is equal to animal."290

Article 21291 of the Constitution is a fundamental right conferred under Part III of the Constitution, whereas Article 39-A292 is one of the directive principles as the State Policy under Part IV of the Constitution. As held by the Constitution Bench of the Apex Court in Chandra Bhawan Boarding and Lodging, Bangalore vs. State of Mysore293: "While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are commentary and supplementary to each other."

As held by the Supreme Court in Kesavananda Bharati vs. State of Kerala,294 fundamental rights and directive principles constitute the 'conscience of our

288 Bhatt, Justice J.N. Judge Gujarat High court in his article “Gender Equality: Turmoil or Triumph?” See AIR 1998 Journal Section 81 at p. 84.
289 Ibid at p. 83.
290 Sanskrit Poet Bharat Hari in ‘Neeti Shatakam’ referred in Parul Agarwal (Miss) vs. University of Rajasthan, AIR 2002 Raj 70.
291 No person shall be deprived of his life or personal liberty except according to procedure established by law.
292 The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
Constitution’. The purpose of fundamental rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution the Constitution seeks to fulfill the basic needs of the common man and to change the structure of our society. It aims at making the Indian masses free in the positive sense. Without faithfully implementing the Directive Principles it is not possible to achieve the Welfare of State contemplated by the Constitution.

As held by the Supreme Court in State of Kerala vs. N.M. Thomas,\(^{295}\) there is complete unanimity of judicial opinion of the Supreme Court that the directive principles and fundamental rights should be construed in harmony with each other and every attempt should be made by the Court to resolve the apparent inconsistency.

Supreme Court also noticed in Pathumma vs. State of Kerala,\(^{296}\) that the purpose of the Directive Principles is to fix certain socio-economic goals for immediate attainment by bringing about a non-violent social revolution. Our Constitution aims at bringing about synthesis between fundamental rights and the directive principles of State policy\(^{297}\) by giving to the former a place of pride and to the latter a place of permanence. In view of the principles adumbrated by the Supreme Court, it is clear that the directive principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. The directives thus provide the policy, the guidelines and the ends of socio-economic freedom of Articles 14 and 16 of the Constitution and the means to implement the policy to achieve the ends sought to be promoted by the directive principles.

Supreme Court also in Jacob M. Puthuparambil vs. Kerala Water Authority\(^{298}\) held that Directive Principles of State Policy reflect the hopes and aspirations of the people. Principles laid down therein are fundamental in the governance to the country and the State is under obligation to apply them in making laws.

---

\(^{295}\) AIR 1976 SC 490.

\(^{296}\) AIR 1978 SC 771.

\(^{297}\) Part III, Articles 12 to 35 of Constitution of India & Part IV, Articles 36 to 51 of Constitution of India.

Supreme Court also emphasized in *Unni Krishnan, J.P. vs. State of Andhra Pradesh* 299, that right to education implicit in the right to life and personal liberty qualified under Article 21 300 of the Constitution of India must be considered in the light of the Directive Principles of State Policy enshrined in Part IV 301 of the Constitution. The provisions of Parts III 302 and IV 303 are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goal indicated in Part IV 304. It is also held that the fundamental rights must be construed in the light of the directive principles.

3.9 Right to education

The right to education, at least at the elementary level, has been recognized and upheld as a fundamental right. 305 Right to uninterrupted education is also a fundamental right, which is implicit in the right to life and personal liberty guaranteed under Article 21 306 of the Constitution of India. Right to education has been treated as one of transcendent importance. 307

In *Brown vs. Board of Education*, 308 the Court observed:

"Today, education is perhaps the most important function of State and local Governments it is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful any child may reasonably be expected to succeed in life if he is denied the opportunity of an education".

299 AIR 1993 SC 2178; see also State of Maharashtra vs. Manubhai Pragajl Vashi, AIR 1996 SC 1.
300 No person shall be deprived of his life or personal liberty except according to procedure established by law.
301 Part IV, Articles 36 to 51 of Constitution of India.
302 Part III, Articles 12 to 35 of Constitution of India.
303 See supra note 52.
304 Ibid.
306 No person shall be deprived of his life or personal liberty except according to procedure established by law.
In *Unni Krishnan J.P. vs. State of Andhra Pradesh*\(^{309}\), the Supreme Court observed that the "right to education which is implicit in the right to life and personal liberty guaranteed by Article 21\(^{310}\) of the Constitution and the State cannot deprive the Student his right to education except in accordance with the procedure prescribed by law." Age limit can be prescribed for admission to educational courses.\(^{311}\) Endeavour is to be made to educate all specially children of the weaker sections as mandated by directive principles otherwise right guaranteed as fundamental becomes meaningless\(^{312}\).

### 3.10 Right to Free Education not as Absolute Right, is Not Relevant Today

In *Director of Medical Education, Chennai vs. Dr. Ramlakshmi*,\(^{313}\) a Division Bench of the Madras High Court held thus:

"Though the learned Judge appears to have placed strong reliance to sustain the plea of freedom to education as a fundamental right, relying upon what is known as Mohini Jain's\(^{314}\) case, the larger Bench of the Apex Court in the decision reported in *Unni Krishnan, J.P. v. State of Andhra Pradesh*\(^{315}\), in unmistakable terms held that a citizen's fundamental right to education flowing from Article 21 of the Constitution of India is not an absolute right, but its content and parameters have to be determined in the light of Articles 45 and 41 of the Constitution of India and that every child/citizen of the country has a right to free education until he completes the age of fourteen years and, thereafter, the right is subject to the limits of economic capacity and development of the State. It is only adverting to the said aspect, the Division Bench of this Court in the decision in A. Balasubramaniam vs. Secretary to Government, Education Department,\(^{316}\) has held that the fundamental right to education guaranteed is only up to the age of fourteen years and not beyond that."

The question of gender equity has been gaining prominence last century. It is being critically analyzed by a large number of social scientists which includes an

---

\(^{309}\) AIR 1993 SC 2178.

\(^{310}\) See supra note 57.

\(^{311}\) Nithiyan P. and P. Prasanna vs. State of Tamil Nadu, 1994 Writ LR 624 (Mad), referred in *A. Balasubramaniam vs. Secretary to Government, Education Department*, AIR 1996 Mad 95 at p. 97.


\(^{314}\) AIR 1992 SC 1858; (-1992) 3 SCC 666.


\(^{316}\) AIR 1996 Madras 95.
also realized that women are no longer going to be satisfied by being treated as beneficiaries of welfare doles but wish to be actively involved in the developmental process in the country. Some of the observations of the Supreme Court reflect this awareness of the change though regretfully not always has this consistently been reflected in the decisions. As Khalid J. observed in case dealing with equal pay, vigilance is needed to check how “the equality doctrine embodied in the Constitution of India is attempted to be flouted by some authorities” 318.

In *Suneeta v. State of Maharashtra* 319 the court interpreted a rule of the Maharashtra Government, which provided for the reservation of two seats for children of the central Government servants transferred to Maharashtra from other states, to hold that two seats in each college and not two in all the colleges were reserved. Where a seat in post-graduation reserved for scheduled casts was not given to the petitioner, though he was a SC because he had not passed the MBBS from the same college but was given to a Vimukta Jati Candidate, it was held that the seat must be given to the petitioner. A seat reserved for SC could not be given to a Vimukta Jati candidate on the ground that a SC candidate of the same college was not available 320.

The Bombay High Court in *Archana vs. Dean, Govt. Medical College, Nagpur* 321 held that the expression “from an institution located in Maharashtra State” occurring in last part of R.C. (3) (11) could not be intended to be applied to a candidate covered by clause B (3) of the rules. If the rule were to be interpreted otherwise, it would have attracted the vice of unconstitutionality under Article 14 because between the group of servicemen/ex-servicemen, it would have discriminate between those whose children had passed the XIth standard examination from an institution located in Maharashtra and those whose children had passed that examination from an institution located outside Maharashtra.

In *M/s. Mackinnon Mackenzie & Co. Ltd. vs. Audrey D’Costa* 322 the respondent, a confidential lady stenographer, had claimed arrears of difference between her salary and that of her male counterpart, which the High Court had
granted. The management came in appeal under Article 136\textsuperscript{323} to the Supreme Court. Two arguments were advanced on behalf of the petitioner. (a) That the nature of the work done by the respondent was not same or similar to that of a male stenographer and (b) that the lower salary was given to her because there was an agreement to that effect with the union. The court explained what was meant by equal remuneration for men and women as provided by the Equal Remuneration Act, 1976. While comparing the works of men and women, broad view must be taken. The very concept of similar work implied differences in details but such details should not defeat a claim for equality on trivial grounds. But where a man was required to work at an inconvenient hour, say, nights, and his remuneration was bound to be higher than that of a woman working during the day. There were some kinds of work which women might not be able to do at all. Men did work like loading, unloading, carrying and lifting heavier things, which women could not do. In such cases there could not be any discrimination on the ground of sex. On merits the court upheld the claim of the respondents and affirmed the decision of the High Court. Regarding the second contention the court held that no discrimination based on sex could survive the provisions of the Equal Remuneration Act, 1976 even if it were a term of the settlement between the labour union and the management.

In \textit{Lena khan vs. Union of India},\textsuperscript{324} the question raised was whether higher age of retirement of air hostesses recruited in UK by the Air India than the age of retirement for the air hostesses recruited in India by it was discriminatory and, therefore, violative of Article 14. In a previous decision,\textsuperscript{325} the court had upheld the age of retirement for air hostesses being 35 and extendable up to 45. It was, however, 55 for the air hostesses recruited from England. The Air India argued that it was phasing out the air hostesses from other countries and once all of them retired there would be no discrimination. Further, it was argued that the higher age of retirement for air hostesses from UK was required by the law of that country. The court decided not to interfere and dismissed the petition. This was really, not a case of gender discrimination. It was discrimination between Indian air hostesses and foreign air hostesses recruited by Air India. Oza J, however, felt that Air India should not have

\textsuperscript{323} Notwithstanding anything in this chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

\textsuperscript{324} AIR 1987 SC 1515.

agreed to abide by the law of England if it required it to disregard a provision of the Indian Constitution.

Discrimination in favour of women is, however, not forbidden. Article 15(3)\textsuperscript{326} provides for it. In \textit{K.R.G. Nair vs. Sr. Inspector-cum-Spl. S.O. Co-op. Societies}\textsuperscript{327}, section 28 of the Kerala Co-operative Societies Act, 1969 providing for reservation of one seat each for a woman and a person of scheduled caste or scheduled tribe was upheld.

In \textit{Archana vs. Dean, Medical College, Nagpur}\textsuperscript{328}, the petitioner, who was entitled to admission on merits against the quota of seats reserved for the sons and daughters of servicemen and ex-servicemen, domiciled in Maharashtra, was denied admission on the ground that she had not passed her qualifying examination from an institution located therein as stipulated by the rules. The court held that this requirement could not be intended to be applied to candidates covered by clause B (3) of the rules which provided for reservation to sons/daughters of defence personnel domiciled in the state. Otherwise the rule will permit discrimination between classes of servicemen of Maharashtra domicile actually posted at the material time, (a) in Maharashtra and (b) outside Maharashtra. The court preferred an interpretation which avoids unconstitutionality of the rules.

In \textit{A. Sudha vs. University of Mysore}\textsuperscript{329}, the appellant got admission to the MBBS course, which was later cancelled by the university as she did not get minimum qualifying marks for the pre-university examination. The Supreme Court held that though the appellant was not eligible for admission to the course, she be allowed to continue her studies because she was quite innocent and justified in relying upon the information supplied by the principal. The university regulations also suffered from ambiguity.

In \textit{Vandana vs. MLN Medical College, Allahabad}\textsuperscript{330}, here the petitioner was selected for admission to MBBS course. Later the government informed the principal that she had been wrongly admitted treating her as belonging to Scheduled caste and hence her selection was cancelled. It was contended that the authorities were stopped from canceling the admission, since she had, in pursuance of the admission,

\textsuperscript{326} Nothing in article shall prevent the State from making any special provision for women and children.
\textsuperscript{327} AIR 1987 Ker 167.
\textsuperscript{328} AIR 1987 Bom. 155.
\textsuperscript{329} AIR 1987 SC 2305.
\textsuperscript{330} AIR 1987 All 22.
left her studies at another college and thus acted to her detriment. The court held that
the petitioner could not get the benefit of the equitable principle of estoppels because
she knew or could be presumed to have known that she could not be admitted as a
general candidate because her marks were much less than the last candidate in the
general category.

In *Lakshmi V.V.S. vs. State*[^331] the impugned provision was rule 3(8) of the
Karnataka Medical Colleges (Admission to P.G. Courses) Rules, 1986 under which
candidates seeking admission to post graduate medical courses shall have studied for
a minimum period of five years prior to the admission to MBBS course in any of the
recognized institutions in Karnataka. The court, relying on *Pradeep Jain v. India*[^332],
struck down the provisions as violative of Article 14.

*Sofia vs. Maharishi Dayanand University*[^333] illustrates the naked abuse of
power without even a fig leaf to cover it. In the prospectus issued by the University
for Admission to MBBS and other courses, there was provision for weightage up to 5
marks for candidates who have distinguished themselves in sports. The weightage to
be given to each particular grade certificate was specified in the prospectus, which
made the petitioner eligible to get 2 per cent weightage. If this was added to the
qualifying marks of the petitioner, she was entitled to admission. But she was denied
admission on the grounds that (a) the certificate produced by her for her participation
in volley ball was not for during and after part II of the higher secondary/prep and the
pre-medical class; (b) the certificate was signed by the deputy director and not by the
director of sports; and (c) the certificate was not filed along with the admission form
but was produced later on. The court found all these contentions without any
substance and directed the university to give 2 per cent weightage to the petitioner and
to admit her to the MBBS course strictly according to her merit. The seat reserved for
the sports quota need not necessarily go to the most outstanding sportsman. Academic
attainments and outstanding ability in sports must be properly balanced.

The decision of the Supreme Court in *Aarti Gupta vs. State of Punjab*[^334] is
confined to the peculiar facts of the case and does not lay down any principle.
Nevertheless, the question that has been raised in the case the question of harmonizing

[^331]: AIR 1988 Kant 43.
[^332]: AIR 1984 SC 1420.
[^333]: AIR 1988 P & H 188.
[^334]: AIR 1988 SC 481.
the interests of SC/ST and the maintenance of standards is one of the conundrums of protective discrimination and is likely to show its ugly face in the corridors of our courts again and again in the years to come. In the instant case, a government notification prescribed the minimum marks required for being eligible for admission to MBBS etc. as 50 per cent in the competitive entrance examination for general candidates and 35 per cent for SC/ST candidates. The prospectus issued by the university provided that the seats left vacant in any reserved category owing to non-availability of eligible candidates may be filled from the eligible candidates belonging to general category. Modifying the government notification the President of India issued an order lowering the percentage of marks for SC/ST candidates from 35 to 25 per cent during the 1987 session only. This was challenged as being contrary to the earlier notification and prospectus and also to the regulations made by the Indian Medical Council prescribing 40 per cent as the minimum qualifying marks. The court held that the regulations of the Indian Medical Council were only recommendatory. The court recognized the need for maintaining high standards in the field of medical education, but refrained from considering the impact of the impugned order on maintenance of standards, as 68 students belonging to SC/ST had already been admitted and they had not been impleaded. The court did not consider it proper to cancel their admission behind their back. The fact that the relaxation was applicable only for one year also tilted the balance against the petitioner, and the court hoped that there would not be necessity for a repetition of this action.

Mistake of the authority in properly implementing a transitory measure had to be rectified by the Supreme Court in *Mridula Avasthi vs. University of Delhi*. The university decided to adopt three-year course for PG degree in medicine and two-year course for diploma from September 1988 onwards. With a view to mitigating hardship to candidates already completing house jobs and becoming entitled to undergo PG course in two years, it was decided to continue the existing practice for a year as a transitory provision. The university evolved a scheme where under the number of seats for post-graduate and diploma course available in previous year to

---

335 The court relied on *State of M.P. vs. Nivedita Jain*, AIR 1981 SC 2045. (In this case the Government fully deleted the prescription of minimum percentage of marks in the selection examination which was upheld by the court). The observation that regulations of the IMC were binding in *Kerala vs. T.P. Roshane*, AIR 1979 SC 765 and *Krishna Priya Ganguly vs. University of Lucknow*, AIR 1984 SC 186, were held obiter.

students completing one year's housemanship was left untouched, and students doing
housemanship were not eligible for admission to PG and diploma courses. However,
one common selection test was prescribed. If admission were to be given in the order
of merit in the selection test, more seniors were entitled to admission and the scheme
of reservation would not work. The court rightly observed that 'the situation has to be
handled not by first principles, but by a somewhat informed pragmatic
adhocism'.337 The university was directed to create one seat in every specialty over and above the
seats fixed by the university and take away equal number of seats from every
specialty from reserved seats for fresher and make all seats so created available to
seniors.

When the relevant rule prescribes the marks obtained in the final year
examination as the basis of allotment of a particular college, and the notification
clearly states that order of merit will be determined on the basis of marks obtained in
theory only, that cannot be held arbitrary and contrary to rules.338 There is also no
substance in the contention that because of the existence of a rule which lays down
that girl candidates will be offered admission on the basis of their first choice as far as
possible, they cannot be offered admission on the basis of second choice.339

In K. Narmiada vs. Secretary, Medical and Health Department, A.P.340 the
petitioner's application was accepted and she was allowed to sit at the entrance
examination. She secured a very high rank in the entrance examination. After the
result was announced, she was informed that her application for admission to the
course was rejected as she was under aged. This was challenged mainly on two
grounds: (a) the exemption granted by the district education officer in respect of
minimum age requirement when the petitioner appeared for the SSC examination
must ensure to her benefit for all future courses of study; and (b) the principle of
promissory estoppels binds the respondent, since in her application the petitioner had
clearly correct date of birth which was accepted and she was permitted to sit for the
entrance test. The court did not favourably respond to the first contention, but allowed
the petition accepting the second. It was held that the acceptance of her application
amounted to a promise intended to be acted upon. Even assuming that there was any
infirmity in the application submitted by the petitioner, the respondent was held to

337 Ibid. at 1487.
338 Anilkumar vs. State, AIR 1988 MP 258.
339 Ibid. at 259.
340 AIR 1988 Ker 200.
have no power to deny her a seat after she passed the entrance examination securing a high rank.

_Sahara Begum vs. Board of Secondary Education_341 is one such instance. Here petitioner appeared in the higher secondary examination. By a notification her results were withheld not because of any alleged malpractice, but because of other reasons. Later by another notification her results were cancelled on the ground of malpractices, under a regulation which authorized the board to cancel the examination of a candidate without giving an opportunity to be heard when the board was satisfied that there was mass malpractice. It was contended by the petitioner that since the results of some candidates from the centre have been declared and in respect of some others the results have been cancelled, it cannot be a case of mass malpractice. It must then be held to be a case of individual malpractice, for which, under the regulation, action could be taken only in compliance with the rules of natural justice. The board replied that the experts committee which examined the answer papers submitted the report indicating therein how many of the students had adopted unfair means and how many of them had not, and on that basis the results were either cancelled or announced. The court held that the procedure adopted by the board was wholly illegal. Since this cannot be considered as a case of mass malpractice but only as a case of alleged individual malpractice, any action should have been taken only after bringing to the notice of the concerned candidate the incriminating materials which formed the basis of the suspicion and giving him an opportunity to be heard.

The reasonableness of a condition that a candidate appearing for entrance examination for admission to a medical college in Delhi should have received the last two years of education in a school in Delhi was raised in _Meenakshi Malik vs. University of Delhi_342. The father of the petitioner was placed on deputation with the Government of Nigeria. The petitioner accompanied her parents to Nigeria and studied there, passing GCE-O level examination which is recognized by the Central Board of Secondary Education as equivalent to class XI. The court held the condition unreasonable when applied in the case of a candidate, such as the petitioner, who was compelled to leave India for a foreign country by reason of the posting of the parent by the government to such foreign country. It is submitted that the ratio of the case has been unnecessarily narrowed down, and the court could have considered the

341 AIR 1988 Ori 240.
342 AIR 1989 SC 1568.
reasonableness of the condition in the wider context of the fundamental rights guaranteed in Articles 14 and 19(1) (e). The object sought to be achieved by the condition is not clearly spelt out, which makes it difficult to find out, whether a rational nexus exists between the object and the restriction imposed.

The Supreme Court, throwing away its normal reluctance in interfering in the matter of admission of students, came to the rescue of a student who had lost two academic years for no fault of hers, in *Sheela vs. Dean, Dr. V.M. Medical College, Solapur.*\(^{343}\) The Government of Maharashtra created a house-post in obstetrics and gynaecology specifically and categorically stating that the supernumerary house-post was created to enable a student, who was the wife of a government servant and who had fulfilled all other requirements prescribed by the relevant rules for such category of students, and was a merit student from the University of Andhra Pradesh, to do her post-graduate studies. Accordingly she joined the house-post and completed the same. But when admission to the post-graduate course was advertised, the university refused to issue an application form to her on the ground that in view of the provision in the rules for giving institutional preference in the matter of admission she could not be admitted and also on the ground of failure on the part of the State of Andhra Pradesh to reciprocate with regard to reservation of 25 per cent of total number of seats in PG courses in medical science. Reversing the Bombay High Court, the Supreme Court directed the authorities to admit the petitioner to the post-graduate course in obstetrics and gynaecology. The court pointed out that as no application form was issued to the petitioner; the question of not admitting her on the ground of institutional preference did not arise. Moreover, in the application of the student for the creation of a supernumerary house-post, she had disclosed all facts including the fact of her passing the MBBS examination from a medical college in Andhra Pradesh. After creating a supernumerary house-post so as to enable her to become eligible for the post-graduate degree course, the authorities are not at all justified in refusing her even an application form and in not considering her case for admission on the ground of failure of reciprocity by the State of Andhra Pradesh.

Denial of seat to a candidate who belongs to the reserved category may take several forms. When this is done through a distortion of the relevant provision, it

\(^{343}\) AIR 1989 SC 382.
becomes the duty of the court to protect the legitimate rights of the aggrieved party. A
student who was not able to fulfill the required attendance for B.Sc. Part-I because of
severe illness was re-admitted to the course and a certificate of her being a bona fide
student was issued by the authorities. But when she applied for admission to MBBS
course from the quota reserved for bona fide students of the degree course, it was
rejected on the ground that she was not a bona fide student and that she took re-
admission on false pretence only for getting admission to MBBS course against the
reserved quota. The Allahabad High Court held that she was a bona fide student of the
degree course and entitled to get admission against the reserved quota.

Since the Supreme Court held that exercise of arbitrary power was per se
violative of the right to equality guaranteed by Article 14, many instances of the
exercise of such judicial power are coming up. In another case, where a judge
rejected the testimony of a medical person on the ground that she was a woman, the
court intervened to quash it on the ground that such an arbitrary action was violative
of Article 14.

Where female apprentice trainees were denied an opportunity to appear for
internal examination leading to their absorption on the ground that by virtue of section
66 of the Factories Act, 1948 there were restrictions on their working hours, the rule
was held to be discriminatory.

District wise reservation was rightly upheld by the Himachal Pradesh High
Court in Lalima Gupta's case. The State of Himachal Pradesh distributed 1500 seats
of the junior basic training course (JBT) among twelve districts of the State. Such
reservation was challenged as violative of Articles 14, 15 and 29(2) of the
Constitution. But the Division Bench, consisting of Leila Seth CJ and Gupta J, set
aside the above plea. The court's order mainly paid attention to the education of the
‘first generation learners' of the primary schools in far remote areas with dialects

346 The State shall not deny to any person equality before the law or the equal protection of the laws
within the territory of India.
347 Omana Oomen, Audit Operator, Chemical Plant Trainee vs. FACT Ltd., AIR 1991 Ker 129.
349 See supra note 95.
350 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
351 No citizen shall be denied admission into any educational institution maintained by the State or
receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
changing from district to district and *tahsil* to *tahsil* where, according to the court, it was necessary that the teacher must have effective communication, familiarity with the local customs, culture and their dialects and sub-dialects. On behalf of the petitioners, a plethora of case law on higher education and, in particular, medical education was cited in support. But the court distinguished them on the ground that primary education had different parameters and considerations.

Ten seats were reserved in the MBBS course for the male dependents of the ex-army personnel. Such reservation was declared unconstitutional under Article 14 by the Allahabad High Court in *Sharda Mishra v. State of U.P.* 352 There has been no doubt, a changed scenario in the position of women after the commencement of the Constitution. This gets support from the marks index of the male and female students mentioned in the judgment. Can the changing position be the subject of a general direction for future so that girls do not enjoy double advantage? Katju, J. evolved the following formula 353 to be followed by all authorities:

*The open seats should have been filled in first, and if some girls qualified against these seats then the number of seats reserved for females should have been reduced to that extent, and those seats should also have been treated as open seats.*

The concern of the judge for gender justice lands him, it may be submitted, in a wrong box and the present direction would result in reverse discrimination, attracting Article 14 354 with Article 15(3) 355. If a girl comes in the rank position of the entrance test examination, she gets this position on her merit and merit alone. To eliminate such seat from the reserved seats would offend both Articles 14 356 and 15(3) 357. Till Article 15(3) 358 survives in the Constitution, the present interpretation may not be correct in the constitutional scheme of reservation.

*In Mohini Jain vs. Karnataka* 359 the Supreme Court speaking through Kuldip Singh J. had held that the right to education was part of the fundamental right to life...

---

352 AIR 1993 All 112.
353 Ibid at 113, see for a contra stand in *A.D.S. Chopra vs. Del. Univ. AIR 1993, Del. 102* where the court ruled that general and reserved seats be dealt with separately.
354 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
355 Nothing in article shall prevent the State from making any special provision for women and children.
356 See supra note 116.
357 See supra note 117.
358 Ibid.
359 AIR 1992 SC 767.
and personal liberty guaranteed by Article 21. This sudden elevation of the right to education to the high Constitutional pedestal was bound to trigger a controversy. Some private educational institutions, which run medical and engineering colleges, challenged the correctness of that proposition and the matter came before a larger Bench consisting of Jeevan Reddy, Pandian, Mohan, Sharma and Bharucha JJ. In *Unni Krishnan vs. A.P.* three questions were raised for the court's determination, namely (i) whether the Constitution of India guaranteed a fundamental right to education to its citizens?; (ii) whether a citizen of India had the fundamental right to establish and run an educational institution under article 19(l)(g) of the Constitution?; (iii) whether the grant of permission to establish and the grant of affiliation by a university imposed an obligation upon an educational institution to act fairly in the matter of admission of students? The court's judgment was delivered by Jeevan Reddy J, on behalf of Pandian J. and himself. Two concurring judgments were written by Sharma J. and Mohan J.

3.12 Is Right to Education a Fundamental Right?

Jeevan Reddi J, speaking on behalf of Pandian J. and himself, agreed with the dicta of *Mohini Jain* that the right to education flowed directly from the right to life guaranteed by Article 21 of the Constitution. The judge, however, differed with the view adopted by Kuldip Singh J. in that case on the content and sweep of that right. *Mohini Jain* seemed to suggest that the citizens could demand that the state must provide adequate number of medical colleges, engineering colleges and other educational institutions to satisfy all their educational needs. Differing with this formulation, the judge observed:

"The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution... The three Articles 45, 46 and 41..."

---

360 No person shall be deprived of his life or personal liberty except according to procedure established by law.
362 To practice any profession, or to carry on any occupation, trade or business.
363 See supra note 109.
364 See supra note 109.
365 See supra note 3.
366 The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
367 The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
are designed to achieve the said goal among others. It is in the light of these Articles that the content and parameters of right to education have to be determined. Right to education, understood in the context of Articles 45 \(^{369}\) and 41 \(^{370}\) means (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development”.

The court, therefore, declared that “a child has a fundamental right to free education up to the age of 14 years.” Beyond 14 years, the right to education was subject to the limits of the economic capacity of the State. The judge conceded that “the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State. He hastened to add that just because they relied upon some of the directive principles to locate the parameters of the right to education implied in Article 21\(^{371}\), it did not follow that “each and every obligation referred to in Part IV\(^{372}\) gets automatically included within the purview of Article 21.”\(^{373}\) Sharma, J. (for Bharucha J and himself) concurring, observed that whether the right to primary education provided in Article 45\(^{374}\) could become an enforceable right needed “a thorough consideration” if necessary by a larger Bench in a case where the question would squarely arise. Mohan J., concurring concluded on the basis of his empirical findings that “the right to free education up to the age of 14 years is a fundamental right.” It is respectfully submitted that the majority was virtually rewriting the Constitution by converting a directive principle into a fundamental right. The proposition that everyone should get free and compulsory primary education is undisputed. But making it a justiciable right could create a number of problems. Firstly, the Constitutional text does not support such a proposition. The fact that the Constitution-makers put it in Part IV\(^{375}\) meant that it was not intended to be a justiciable right. The government was required to endeavour to provide free and

\(^{368}\) The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness, and disablement, and in others cases of undeserved want.

\(^{369}\) See supra note 115.

\(^{370}\) Right to work, to education and to public assistance in certain cases.

\(^{371}\) See supra note 109.

\(^{372}\) See supra note 3.

\(^{373}\) See supra note 109.

\(^{374}\) The State shall endeavour to provide early childhood care and education for all children until they complete of six years.

\(^{375}\) See supra note 3.
compulsory primary education within ten years from the commencement of the Constitution. This clearly meant that it was not to be a fundamental right at least till the lapse of ten years from the commencement of the Constitution. Since when does it become a fundamental right? Obviously from the date of this decision will the State be held liable to pay compensation for its failure to provide free and compulsory primary education if such a failure has resulted in a manifest injury or loss to any person? If right to be educated becomes a fundamental right, is there not a right not to be educated? It is one thing to say that the State must achieve the goal of universal education so that everybody will get an access to education which is intended by Article 45.376

The right is not to education but to access to education. Is poverty not offending to the right to live with dignity which the Supreme Court has held to be included within Article 21?377 Does one have a fundamental right to be not poor? To incorporate the directive principles within the fundamental rights is doubtless very exciting and romantic but can it be articulated through judicial process? Do we not trivialize the right under Article 21 by overstretching it? It can also be argued that the right to primary education ought to be considered as a fundamental right,379 but making it a fundamental right would require tremendous change in the political economy. It would essentially be an aspect of human rights and will have to be dealt with at the political level. A mere judicial declaration of its fundamentalness without the necessary changes in the social and economic policies would merely tokenize that right. Further, to say that the right to education beyond primary was subject to the economic capacity of the State was to make it almost redundant. If right to education is part of the right to live, how can it be made dependent on the economic capacity of the State? If it is a fundamental right, it has got to be enforced irrespective of the economic capacity of the State. It is submitted that economic incapacity ought not to be a defence against violation or disregard of a fundamental right. If once economic capacity becomes a defence for formulating the scope of a fundamental right, so many other aspects of Article 21380 would also be in jeopardy. Treatment of prisoners in jails or protective homes will depend upon the economic capacity of the State. Juvenile

376 See supra note 136.
377 See supra note 109.
378 Ibid.
380 No person shall be deprived of his life or personal liberty except according to procedure established by law.
justice would also depend upon the economic capacity of the States. It is respectfully submitted that what is fundamental is not the right to education but access to education and equal access is the fundamental right. The human rights incorporated in the directive principles have to be achieved through suitable legislative and administrative policies. Compulsion of democratic politics is bound to force the governments to go towards such egalitarianism. The judicial process ought to refrain from its benevolent activism because such activism is likely to benumb the public effort towards the articulation of these human rights.

The Supreme Court objected to discrimination against women which resulted from differential treatment given to male teachers and female teachers\textsuperscript{381}. In \textit{S. Mahendran vs. Secretary, Travancore Devaswom Board}\textsuperscript{382}, the Kerala High Court upheld a prohibition of women of the age group of 10 to 50 in the Sabarimala temple as it formed a matter within the rights of the religious denomination. The Constitution permits the state to make law for the throwing open of Hindu religious institutions of public character to all classes and sections of Hindus.\textsuperscript{383} Obviously such temple entry legislations have not covered women. This lacuna needs to be filled in by suitable amendment of the temple faulty legislations. Should such gender discrimination be allowed to continue in the name of freedom of religion? Should Article 25(2) (b)\textsuperscript{384} of the Constitution also not include a provision guaranteeing non exclusion of women from temples?

Admissions to professional colleges, particularly, engineering and medical colleges, have been the subject of prolific litigation almost since the early years of the Constitution.\textsuperscript{385} Although articles 15(1)\textsuperscript{386} and 16(2)\textsuperscript{387} forbid discrimination on the ground of sex or caste, women and persons belonging to SCs and STs continue to suffer from various disabilities which are rooted in tradition, custom and social ethos.

\textsuperscript{381} Uttarkhand Mahila Kalyan Parishad vs. State of U.P., (1993) Supp (1) SCC 480; also see Sharda Misra vs. State, AIR 1993 All 112.
\textsuperscript{382} AIR 1993 Ker 42.
\textsuperscript{383} Art 25 (2) (b).
\textsuperscript{384} Nothing in this article shall affect the operation of any existing law or prevent the State from making any law – providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.
\textsuperscript{385} State of Madras vs. Champakam Dorairajan, AIR 1951 SC 226.
\textsuperscript{386} The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.
\textsuperscript{387} No citizen shall ,on grounds only of religion, race, caste, sex,descent,place of birth, residence or any of them ,be ineligible for, or discriminated against in respect of ,any employment or office under the State.
The Constitution, therefore, vests power in the state to make special provisions for the environment of those groups.388

_Uttarkhand Mahila Kalyan Parisad vs. U.P._389, the Supreme Court mandamuses the U.P. government against giving lower scales of pay and providing lesser promotional avenues to lady employees as compared to their male counterparts doing the same work.

In another similar case390, a seat was reserved for deserted women. The applicant could not attach the requisite certificate from _tahasildar_ but submitted the decree of divorce on ground of desertion. Subsequently, she submitted the required certificate. The High Court, quashing the non consideration of her application for want of certificate observed that the denial of admission to the only candidate available in the category on a very feeble and technical ground did not serve the purpose for which the reservation was made.

_In Priya Kapoor vs. State_391, the Punjab and Haryana High Court strictly applied the rule that a candidate seeking admission in the quota reserved for rural candidates should reserved for rural candidates should have completed education from class 1 to 12 from rural area. The petitioner who had studied in urban area for part of her academic career was held not entitled to admission in that category.

A candidate who had qualified in the entrance test was not able to attend the interview for admission to BDS because she was seriously ill and bed-ridden. After recovery she made a representation to the university to consider her for admission against any vacancy or any future vacancy that might arise. On the basis of clause 7 rule 11 of the prospectus which stated that candidates who were absent at their turn for selection shall not be considered for subsequent selection, she was denied admission. Observing that the rules contained in the prospectus are statutory rules but only administrative instructions, the Andhra Pradesh High Court directed the authorities to consider the petitioner for admission.392

---

388 See arts. 15(4), 16(4) and 15(3) of the Constitution. See generally S.P. Sathe, Towards Gender Justice (1993).
392 K. Madhuri vs. University of Health Sciences, AIR 1995 AP 159.
Admission of students in excess of the sanctioned strength was condoned by the Supreme Court in *State of Maharashtra vs. Admane Anita Moti* on humanitarian grounds, in view of the fact that all the candidates were girls belonging to backward classes.

Article 14 of the Constitution is a shining star among the fundamental rights which guarantees equality to every citizen and equal protection of laws to all persons. Equality before law is correlative to the concept of rule of law for all round evaluation of healthy social order.

Under article 15(3) of the Constitution the State may make "special provision" to improve women's participation in all activities under the supervision and control of the State which can be in the form of either affirmative action or reservation. Thus, rule 22-A(2) of the A.P. State and Subordinate Services Rules providing that where women and men are equally suited, preference is to be given to women, 'other things being equal', in selection for direct recruitment to an extent of at least 30 per cent of the posts in each category of other backward class (OBC), backward class (BC), SC and ST quota, was declared to be protected under Article 15(3) and not violative of Article 16(2) and (4). A provision in the Railway Board circular restricting eligibility of retiring officials' married daughter also a railway employee, to get out of turn allotment of railway quarter, only if such official has no son or the daughter is the only person prepared to maintain the parents and the sons are not in a position to do so, was held to be suffering from gender discrimination.

Women have right to elimination of gender based discrimination particularly in respect of women empowerment. This forms part of universal human rights. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights. By virtue of the *Protection of Human Rights Act, 1993* the principles embodied in the *Convention on Elimination of all Forms of Discrimination against Women (CEDAW)* and the concomitant right to development have become

---

393 AIR 1995 SC 350.
394 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
396 Nothing in article shall prevent the State from making any special provision for women and children.
397 Ibid.
integral parts of the Indian Constitution and thus enforceable. The Supreme Court is obliged to effectuate these rights of women.

*Savita Samvedi vs. Union of India*\(^{400}\) is an important decision of the Supreme Court in the context of gender discrimination writ large in the rules of the agencies of government against daughters married or unmarried. For too long some of these rules lay unquestioned and the judgment of the Supreme Court will hopefully start a critical examination of the laws and rules that discriminate on the ground of gender, e.g., laws relating to devolution of tenures in the North.

In *Samvedi* the rules relating to the allotment of railways accommodation provided that where an allottee of railway accommodation retires from service, his or her son, unmarried daughter, wife, husband or father may be allotted railway accommodation on an out of turn basis subject to two conditions being fulfilled viz; (a) such son or unmarried daughter etc., is a railway employee, and (b) the retiring employee should have exercised his nomination in favour of such son or daughter. Later the ministry extended the scope of the concession to a married daughter, in case the employee does not have a son or in case the married daughter is the only person who is prepared to maintain the parents e.g., where the sons are minors.

In the present case, the father of the retiring employee's married daughter was a railway employee and was living in his accommodation in Delhi, while his sons were not in railway service. He exercised his option in favour of the appellant who is his married daughter. Her claim for regularization was, however rejected by the railway authorities on the ground that there were two major sons of the retiring employee who were gainfully employed and her case did not fall within the scope of the circular relating to a married daughter's entitlement for regularization of accommodation. The Central Administrative Tribunal (CAT) upheld the view of the railway authorities.

The Supreme Court, on appeal, reversed the decision of the CAT. Punchhi, J. observed that there was no reason why a retired official's choice should not be respected irrespective of the gender of the child. He stated:\(^{401}\)

"[W]e see no reason why the choice be not left with the retiring official's judgment on the point and be not respected by the Railway authorities"

\(^{400}\) (1996) 2 SCC 380.

\(^{401}\) Ibid at 382.
irrespective of the gender of the child. There is no occasion for the Railways to be regulating or bludgeoning the choice in favour of the son when existing and able to maintain his parents. The Railway Ministry's Circular in that regard appears thus to us to be wholly unfair, gender-biased and unreasonable, liable to be struck down under Article 14 of the Constitution. The eligibility of a married daughter must be placed on a par with an unmarried daughter for she must have been once in that state), so as to claim benefit of the earlier part of the Circular."

It may be pointed out that some legislation draw a questionable distinction between a married and an unmarried daughter, and one is left to wonder whether it would be construed as reasonable classification. For example, the recent legislations in Andhra Pradesh, Tamil Nadu, Karnataka and Maharashtra conferring coparcenary rights to daughters, exclude a daughter already married at the time of the passing of the relevant legislation from having the benefit of the legislation. Samvedi lends support to the view that the distinction between a married and an unmarried daughter drawn by these legislations is unconstitutional.402 The fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality.

Article 15(3)403 permits the State to make special provision in favour of women. But where no provision was available in recruitment rules for reservation of posts of telephone operators exclusively for women and while issuing advertisements, posts were reserved only for women candidates, the Supreme Court declared in unconstitutional.404

The Sharda Meel case405 has an interesting story to narrate about the illogical response in admission to the post-graduate medical education. The admission ordinance made discrimination between a lady doctor candidate who because of her marriage had become a bona fide resident of Rajasthan, entitling her to admission: and an unmarried girl, a bona fide resident of Rajasthan but because her father as

403 Nothing in article shall prevent the State from making any special provision for women and children.
405 Sarda Meel vs. State of Rajasthan, AIR 1999 Raj 284.

151
posted at Chandigarh, had to live with her parents, was denied admission. The high court set aside the discrimination and directed the university to give admission to her. A grand-child of the freedom fighter (daughter's daughter) claimed admission to the MBBS/BDS course under the seat reserved for the son/daughter of the freedom fighters. She took the stand that if a grandson can get the benefit, any deprivation of granddaughter was discriminatory on the basis of sex. The Himachal Pradesh High Court,\textsuperscript{406} setting aside the plea, held that the existing provisions were to give effect to the laudable object of benefiting the freedom fighter's family and that a married daughter being transplanted in the family of her husband cannot claim to be part of her father's family. The court ruled out the plea of gender injustice as the existing provisions allowed the benefit to a daughter's son/daughter in case the father had no son.

India is essentially an unequal society. Equal protection of law, therefore, requires preferential attention to various disadvantaged sections other than the scheduled castes and scheduled tribes or the backward classes. It was held that allotment of 50 per cent quota for pre and post 1942 settlers in Port Blair for admission to institutions of higher education was not violative of Articles 14 or 15.\textsuperscript{407}

In \textit{Gayatri Devi Panjari vs. State of Orissa}\textsuperscript{408}, the Supreme Court dealt with the question of reservation of facilities for women. It was the government's policy to allot 30 per cent of the day and night medical shops exclusively for women. In respect of the remaining number of shops, applications were invited from both men and women and allotments were to be made on merits. The petitioner was given an allotment not from among the shops identified for reservation for women, but from those which were advertised for men and women both. The policy of the government was to give preference to women. The Supreme Court pointed out the distinction between reservation and preference. In respect of the 30 per cent of shops which were reserved, women alone were eligible, in respect of the other shops, although men and women both could apply, government could give preference to women. In this case, it was not the case of the respondent that women had already been selected and allotted shops against the reserved quota. The high court had held that the appellant was not entitled to the allotment on the ground that the shop given to him was not among

\textsuperscript{406} \textit{Ishan Pandit vs. State of HP}, AIR 1999 HP 1.  
\textsuperscript{407} \textit{Parents Association vs. India}, AIR 2000 SC 845.  
\textsuperscript{408} \textit{AIR} 2000 SC 1531.
those which were identified as exclusively for women. The policy of the State was to give preference to women, for their rehabilitation and to make them reliant. Although the decision is right, the reasoning discloses a hidden male bias. 30 per cent reservation cannot be a ceiling on the number of shops that could be allotted to women. It should always be considered as the minimum. If on merit they give more than the quota that should not be grudged. Generally, this is a policy regarding all reservations. While reserved seats are exclusively for the category for which reservation is made, they do not act as a ceiling on the eligibility of such reserved category persons. They can compete for the open allotments also. In respect of such open allotments, government could give preference to women. While reservation means that only such persons for whom allotments are reserved can apply, it does not mean that they cannot apply for the non-reserved allotments. The policy of reservation aims at ensuring the minimum while the policy of preference aims at facilitating the empowerment of the disadvantaged sections of people.

In Velamuri Venkata Sivprasad vs. Kothuri Venkateswarlu the Supreme Court, while interpreting the Hindu Succession Act, 1956 observed that equality of status permeated the basic structure of the Constitution and was an important aspect of gender justice. In the matter of interpretation of statutes, specially relating to women folk, the court emphasized that due weight age should be given to the Constitutional requirement of equality of status.

How a university adopts a micro fine constricted approach can be seen in the Rohini Singh case. The university, instead of providing reservation for the students passed out from the university, adopted a restricted approach and extended the benefit of reservation to only the campus students and not the students of its affiliated colleges. Whereas, the fact was that in both the cases syllabus, standard of examination and the examiners evaluating the answer scripts and the degree awarded were the same as 'BHU Students'. Such classification, according to the Allahabad High Court, having no intelligible differentiation, was rightly hit by Article 14 of the Constitution of India.

The tidal waves of liberalization, privatization and globalization (LPG) which 'leave their mark on every sphere of activity have not spared the educational arena as

---

409 (2000) 2 SCC 139.
well. A liberal policy of permitting educational institutions in the private sector, resulting in proliferation of institutions for professional education and commercialization of education, the increasing trend to have tie ups with foreign universities and a craze for foreign qualifications, which people believe, would enable the young generation to survive in a fiercely competitive world, are some of the clearly visible fall outs of LPG. But deep below are the socio-economic problems and conflicts produced by LPG and the advancement of technology which accompany them. The questions of access to education, maintaining quality and achieving social justice loom large. Litigation is said to represent social conflicts; but the social conflicts in the educational sector are yet to find their expression in litigation.

The concept of "equality before law" does not give the idea of absolute equality amongst all, which may be physically impossible. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. In fact, equality before the law means that among equals the law should be equal and should be equally administered and that likes should be treated alike. In other words, equality before the law does not mean that things, which are different, shall be treated as though they were the same. It is true that Article 14 enjoins that the people similarly situated should be treated similarly but what amount of dissimilarity would make the people disentitled to be treated equally, is rather a vexed question. The State always has the power to make classification on the basis of rational distinctions relevant to the particular subject to be dealt with. Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. While making classification what is necessary is that there must be a nexus between the basis of the classification and the object of the Act. When a law is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and the object of the Act, the court has to apply a dual test in examining the validity, the test being, whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group, and whether the basis of

---

411 See supra note 143.
412 Ibid.
413 Ibid.
differentiation has any rational relation or nexus with the avowed policy and objects.\(^{414}\)

In view of article 15(3)\(^{415}\) special provision can be made in favour of women. In S. Renuka vs. State of A.P.\(^{416}\), the State of Andhra Pradesh established family courts and Mahila courts. The High Court decided that these courts be manned by women. However, due to non-availability of women judicial officers in the cadre of district and sessions judge, grade II who could be posted in these courts, the high court requested the State to create 10 additional posts of district and sessions judge, grade II. The relevant rules prescribed that in the cadre district and sessions judges there had to be reservations for SC/ST/BC and Women. The rules did not allow 100 per cent reservation for women. When the petitioner though selected but not given the appointment challenged it before the court, it was held that 100 per cent reservation was not permissible under rules and the reservation policy was also not properly followed in this case. The Supreme Court further clarified that selected candidates have no right to be appointed.

In another case\(^{417}\) at the time of the first counseling the candidate was not qualified for admission because of the inability to get pass certificate in 10+2 examination. But at the time of the second counseling, the authorities did not permit her to participate in the counseling. The court held that she could not be deprived of admission because one has to put hard labour in participating and securing high rank in the entrance test and once she was covered under eligibility the technicalities should not come in her way.

### 3.13 Gender Bias in Education

We may state that gender bias discrimination against a person on the basis of sex is not endemic to education but is systemic. It is interesting to note that while sexism and the apartheid of gender pervades all spheres of public and private life in India, in education, gender disparities are on the decline and female educational participation and female literacy rates are on the rise. Female male differentials in literacy rates are lower in the younger age groups and therefore it is perhaps reasonable to assume that given the present pro girl child policies and a proactive

\(^{414}\)Ashutosh Gupta vs. state of Rajasthan, (2002) 4 SCC 34 at 42. See also State of Rajasthan vs. Bhupinder Singh. AIR 2002 Raj 224.

\(^{415}\)Nothing in article shall prevent the State from making any special provision for women and children.


\(^{417}\)Shilphi Saini vs. State of Uttaranchal, AIR 2004 Utt 34.
State upholding women's equality and empowerment as the central organizing principles of national development, gender bias in education, against women the adverse sex ratio, female per thousand with 36 million fewer women in the population and six million girls in the age group 0-6 years missing, what kind of education? What curricular and planning strategies are needed to ensure not only gender equality but preservation and upholding of human dignity of all regardless of sex, caste or creed? Sexism, casteism and communalism are eating into the vitals of our nation. In the following pages we look back and forth to capture the Indian experience of removal of gender bias and other inequalities in the pre and post independent India.

India has an early and rich tradition of education of women nearly 5000 years old. The high point of female education and status in this Sub-Continent was the Vedic Period. Among the Vedic Aryans education was prescribed for all children first under the family elders and later in the house of the Guru on attaining the age of 8 years after a special ceremony known as 'Upanayana'. Education last up to the age of 16 and sometimes till the age of 24. A period of 8 years education was universal among the Aryans; In Rigvedic times complete education facilities appear to have been available to women. Women attained high educational levels and distinguished themselves. There were sages as well as women who had gone through the discipline of Brahmacharya; as recorded in Sarvamukramika. There were 20 women 'seers' or authors of Rigveda. There were two classes of women students, the Brahmavadinis, who studied up to the age of 16 of 18 years and learnt Vedic hymns by heart. Specialists in theological work were termed "Kasakritos". As a noted sociologist observes, if women scholars in such a technical branch of learning were so numerous as to necessitate coining of a special term to designate them’ it would not be unreasonable to conclude that the numbers of women who received general education must have been very large.

While modern education of men began with the passing of the East India Company Act of 1813, female education suffered from official neglect on account of the strict policy of social and religious neutrality and norms of strict privacy and segregation of women. Education of girls and women in India through the nineteenth century up to the time of Independence developed largely through private effort. The lead given by the Christian missionaries for setting up the first institutions for female

418 Indian Yearbook of Education, 1964
education was followed by large scale effort on the part of the Social reformers who gave overriding priority to female education as the drive arm of social regeneration and freedom from alien rule and obscurantism. Raja Ram Mohan Roy (1772-1833) attacked the caste system campaigned for the abolition of Sati. He championed modern education, equal rights for women, advocated the right of widows to remarry and the right of women to property. Ishwar Chandra Vidya Sagar (1820-91) dedicated himself to the emancipation of women and worked hard to promote education of girls and to remove legal obstacles to widow remarriage through a law in 1856. The reform movement spread next to the western region with founding of the Prarthana Samaj which drew many great national leaders. Ranade (1842-1901) worked tirelessly as the secretary of an All India organization, the Indian Social Conference which worked as a secular organization and campaigned for abolition of caste; inter caste marriages, rising the age at marriage, discouragement of polygamy, widow remarriage, women’s education, child marriage.

The first schools in Maharashtra for girls from lower castes were opened in 1873 by Jyotiba and Savitri Bai Phule who questioned the supremacy of Brahmins and the authority of scriptures. Kandukuri Veerasalingam (1848-1891) pioneered the movement in support of widow remarriage and girls’ education in Andhra. Shri Naryan Guru (1854-1928), led the movement against caste oppression in Kerala. Dayanand Saraswati, born in a Brahmin family in Kathiawar founded Arya Samaj in 1875. He rebelled against idol worship and attached child marriage as being contrary to Vedas and made Arya Samaj a vehicle of social reform especially through education of women and men. Vivekananda (1861-1902), was a reformist with the vision and considered neglect of masses a sin. He took keen interest in the improvement of all aspects of national life and gave pride of place to education, specifically the education of women. Annie Besant came to India in 1893 and became the leader of the theosophical movement and made singular contribution in the field of education. She set up the Central Hindu College at Banaras which was later handed over to Banaras Hindu University, became the president of Indian National Congress in 1917. There were reform movements that worked for the emancipation of women, fighting the system of pardah, polygamy and child marriage amongst Muslims in western and southern India.

419 Burning the widow on the funeral pyre of the husband.
Badruddin Tyabji, (1844-1906) was the most outstanding leader of these movements one of the founders of the Indian National Congress and its third president. The names of Dadabhai Naoroji and Nauroji Fudonji among the Parsis, the Singh Sabhas among the Sikh, as a result of these movements, advances were made in the field of emancipation of women and some legal measures were introduced to elevate their status. The practice of Sati and female infanticide was made illegal. In 1856, a law was passed permitting widow remarriage. Another law passed in 1860, raised the age at marriage of girls to ten. However, education of women progressed largely on account of private initiatives, of the Christian missionaries to begin with and by leading social reformers up to the time of independence. The participation of women in the Freedom Movement accentuated the need to keep them in the fore in all walks of life and special attention was given to their education. It may be pertinent to remind ourselves that education of women in the nineteenth century was an auxiliary development of education of men for colonial bureaucracy and also was seen as a vehicle of lifting the decadent Indian society out of the morass of dead customs and traditions. This education as such did not see any economic role for women and was geared to their family roles.

3.14 The Indian Constitution Mandates Non Discrimination

The Constitution of India provides the framework for socio legal action for removal of disparities (a) by writing in the equality clauses prohibiting discrimination on the basis of religion, race, caste, sex, or place of birth 420, and (b) empowering the State to make special provisions for women and children and for the historically disadvantaged sections of population, the scheduled castes (SC) and scheduled tribes (ST) and other backward castes (OBC) in violation of the fundamental obligation of non discrimination. This is considered as a necessary step to ensure de-facto equality through strong equity measures and policies. The State guarantees equal opportunities to women and forbids discrimination in all matters relating to employment and appointment to any public office. Under the protective discrimination clause the State has passed several social and labour legislations and drawn up special programmes and schemes for the protection, welfare and development of women and children. There are laws to protect women and children from hazardous work, laws providing maternity benefits and child care services, and equal wages for work. Additionally,

420 Article15 (1) of Constitution of India.
women have reserved quotas and seats in many educational and training institutions, development schemes, and local bodies and in government jobs. In post independence India, a large number of Constitutional and legislative measures and many forward looking policies and programmes have been directed at integrating women in the mainstream of national development. Further, India is a signatory to all principal international conferences and conventions such as the Universal Declaration of Human Rights, 1948 and the CEDAW, 1979; the UN Declaration of the Rights of the Child, 1959 and the Convention on the Rights of the Child, 1989.

It is important to note that the Constitution is only old and is superimposed on a highly stratified, iniquitous social fabric of great antiquity, where the regulatory forces had rested with religion and the State. India has one of the most impressive sets of laws for women and children/girls and yet little is known about them either by women themselves or by men. The Indian socio legal framework has; therefore, to contend with deeply entrenched customs and traditions, beliefs and practices of a highly patriarchal and feudal past and present that contributes to the continued subordination of women.

3.15 Female Literacy

Female literacy is considered to be a more sensitive index of social development compared to overall literacy rates. Female literacy is negatively related with fertility rates, population growth rates, infant and child mortality rates, and shows a positive association with female age at marriage, life expectancy, participation in modern sectors of the economy and above all with female enrolments. The impact of the renewed efforts and heavy resource inputs and gender inputs in the area of primary education and the voluntary based Total Literacy Campaigns of the National Literacy Mission, set up in 1988 appears to have given dividends in raising the literacy levels of the population in the age group 7+.

Female literacy had a very poor start at the turn of the century and in a hundred years we have reached a little above the half a mark and even now females are way behind males. Rural urban and inter group disparities were sharp in 1991, the sharpest being amongst the females themselves. Urban females were twice as well off in literacy compare to their rural counterparts. Scheduled Caste (SC) and Scheduled

---

Tribe (ST) females were at the bottom of the heap. (Urban male-81%; Urban female-64%; Rural male-58%; Rural female 31%; SC male-50%; SC female-24%; ST male-41% and ST female-18%).

3.16 The Census 2001

According to the Census 2001, the literacy rate for the population aged seven years and more works out to be 65.38; this being 75.85 for males and 54.16 for females. Thus, three fourths of the males and more than half of the females aged 7+ are literate in a population of over a billion. The overall literacy rates have gone up from 52% to 65% during 1991-2001 for population aged 7+; female literacy for this period has moved up from 39% to 54% in 2001.

The progress during 1991-2001 is a record jump of 13.17 percentage points from 52.21 in 1991 to 65.38 to 2001. The increase in female literacy rate is higher being 14.87 percentage points compared to 11.72 percentage points for males. Thus, the increase in literacy rates observed during 1991-2001 in respect of persons, males as well as females have been the highest recorded in comparison to earlier decades since 1951 except in case of males during 1951-1961. The gap in male female literacy rates of 18.30 percentage points in 1951 increased to 26.62 in 1981 but is seen as decreasing since then. In 1991, this gap was marginally reduced to 24.84 and in 2001 it has further narrowed to 21.70 percentage points. It is heartening to note that for the first time since independence, the absolute number of illiterates have shown a decline. The decline is as large as 31.96 million, the same being 21.45 million among males and 10.51 million among females. However, the number of illiterates are still huge, 296 million in all out of whom 190 million (64%) are female. 422

Mizoram has recorded the minimum gap in male female literacy rates of 4.56 percentage points. In Kerala this gap is 6.34 percentage points and in Meghalaya it is 5.73 percentage points in 2001. It is important to note in case of Meghalaya although the combined literacy rates in the state is below the national average, male female literacy gaps are very small. This can perhaps be attributed to the relatively more advantageous position of women in this matrilineal society. Male female differentials are as high as 32.50 percentage points in Gujarat, these figures being 32.12 for Rajasthan; 30.33 point for Dadar & Nagar Haveli; and more than 20 percentage points in Uttarakhand (23.75); Haryana (23.24); Chhattisgarh (25.46); Orissa (25.02);

Madhya Pradesh (26.55); Uttar Pradesh (27.30); Jammu and Kashmir (23.83); Jharkhand (29.56); and Bihar (26.80).

Kerala continues its lead on the literacy rate with 90.92 followed by Mizoram 88.49. Bihar has recorded the lowest literacy rate of 47.63 percent in the country. Kerala continues to retain the top spot in the country with 94.20% literacy rate for males and 87.86% for the females. Bihar has recorded the lowest literacy rate both in case of males (60.2%) and females (33.57%).

Seven states / union territories have less than 50% female literacy, namely, Rajasthan (44.34%); Arunachal Pradesh (44.24%); Dadra and Nagar Haveli (42.99%); Uttar Pradesh (42.98%); Jammu and Kashmir (41.82%); Jharkhand (39.38%); and Bihar (33.57%). The states and union territories with literacy rates below the national average are Jammu & Kashmir in north, Rajasthan and Dadra and Nagar Haveli in west, Andhra Pradesh in south, Madhya Pradesh, Chhattisgarh and Uttar Pradesh in the central parts, and, Arunachal Pradesh, Assam and Meghalaya in the north eastern part of the country. The State and union territories with literacy rates below the national average in respect of all three categories, i.e., persons, males and females are Arunachal Pradesh, Andhra Pradesh, Bihar, Dadar and Nagar Haveli, Jammu & Kashmir, Jharkhand and Uttar Pradesh.

### 3.17 Female Educational Participation

India has the second largest educational system in the world after China with a total enrolment of 191.63 million out of whom 80.54 million (42%) are girls. Further, girls from 44% of the 113.83 million children enrolled in the primary grades classes I – V; 41% of the 42.81 million at the middle stage, classes VI- VIII; 39% of the 18.99 million students in classes IX – X, and 38% of 9.6 million at the higher secondary stage, classes IX – XII); and 40% of the 7.73 million students enrolled in institutions of higher learning. Due to the strong gender focus of the EFA initiatives during the 1990s as also the pro Girl Child, pro women policies and programme during this decade, girls' education has progressed and the gender gaps are narrowing. However, the regional, rural, urban and inter group disparities remain.

### 3.18 Gender Equality through Curriculum

Even though India has a clear policy of undifferentiated curricula for both sexes, biases and stereotypes creep through the learning materials as well as through

---

423 See supra note 184 at 37-38.
those who handle them. This section spells out the concerns that are to be addressed by the teachers and administrators for eliminating sex biases in an endeavour to promote gender equality and a positive self concept through curriculum and life skills approach. Attempts have been made to critically examine the existing gender bias in curriculum, school programmes, text books and learning materials, and identify required changes in social roles of girls and boys that make them compatible partners for harmonious living and acquiring a unified world view; role of teacher in gender sensitive transaction of the content and process of education, text books and curricular areas; think of the basic elements of a girl friendly school; its activities and content that can promote a sense of equality between girls and boys and can help them develop a positive self concept; and understanding of life skills approach to curriculum; draw up an agenda for community mobilization.

3.19 The National Curricular Framework, 1986

The National Core Curriculum, besides being undifferentiated for both sexes, emphasized core values such as equality between sexes, ending social evils and practices derogatory to women small family norm, democracy, secularism, national integration, conservation and protection of environment, etc. The NPE$^{425}$ and the Programme of Action $^{426}$ highlighted the need to improve the social, nutritional and health status of the girls and also to strengthen support services such as drinking water, fodder, fuel and Early Childhood Care and Education (ECCE), as an integral component of the UEE. The POA, further, emphasized the need to revise text books to remove gender bias and gender sensitize all educational personnel so that equality between sexes could be internalized through gender sensitive, gender inclusive curriculum and its transaction.$^{427}$

Textbooks and other learning materials are developed centrally in each State and by national agencies. Efforts are being made to rewrite text books to incorporate identified core values including equality between the sexes. However, majority of teachers would still have to use existing text books materials which continue to present women and girls very feebly and that too in stereotyped roles and with negative attributes. Such depictions should be handled by the teachers very carefully. Presently, text books are likely to have the following flaws:

$^{426}$ Programme of Action, 1992.
$^{427}$ See supra note 184 at 54.
(a) Predominance of male characters and male authors.
(b) Men in lead roles and few women shown in service roles that consists of either menial work or assisting roles.
(c) While women are seen as passive, timid, disorganized, weak, silly, etc. qualities attributed to men are fearlessness, courage, bravery, initiative and resourcefulness.
(d) Visuals show a preponderance of males in action, as teachers as leaders, as doctors, as farmers, women appear as housewives, mothers, maids, factory workers, doctors, pilots or officers.

On seeing the textbooks we found girls and women being depicted as fairies, as silly, as timid and cowardly and as witches.

3.20 UNESCO’s Mandate for the Right to Education

The right to education is an integral part of UNESCO’s constitutional mandate. Constitution of UNESCO expresses the belief of its founders in “Full and Equal Educational Opportunities for All”. The Organization is entrusted with the mission to: “give fresh impulse to popular education and to the spread of culture” by collaborating with members, at their request, in the development of educational activities; by instituting collaboration among the nations to advance the ideal of equality of educational opportunity without regard to race, sex or any distinctions, economic or social; and by suggesting educational methods best suited to prepare the children of the world for the responsibilities of freedom.” A variety of instruments adopted by UNESCO in the fields of education give expression to this mandate.

UNESCO’s constitutional mandate for the right to education becomes even more pertinent today. This is owing to increasing recognition of the centrality of education in people’s lives. Education is considered to be of key importance a “human right in itself and an indispensable means of realizing other human rights.” It is essential to socio-economic development process. The right to education is thus an overarching right. The ideal of “education of humanity for justice and liberty and peace”, and “full and equal opportunities for education for all”, enshrined in UNESCO’s Constitution, are of perennial importance. Education for All (EFA) as UNESCO’s priority responds to its institutional mission as the principle of equal

428 Art 1 (2) (b) of UNESCO’s Constitution.
429 General Comment No. 13 on the Right to Education (Art 13 of the Covenant), adopted by the (Committee on Economic, Social and Cultural Rights at its twenty-first session in 1999 E/C. 12/1999/10. 2 December 1999 (para. 1).
educational opportunities is intertwined with EFA in UNESCO's Constitutional mandate.

Instruments elaborated by UNESCO in the field of education have their genesis in UNESCO's Constitutional mandate for the right to education. In these normative texts, the fundamental principle of equal educational opportunities occupies a prominent place. The *Convention against Discrimination in Education, 1960*[^30] which occupies the foremost place among UNESCO's normative instruments develops the fundamental principles of non-discrimination and equality of educational opportunities into international norms.[^31] Provisions contained in Article 4 of the Convention relate both to Article 13 of the *International Covenant on Economic, Social and Cultural Rights, 1966* and the *Dakar Framework for Action*. Article 4 imposes upon the States Parties to the Convention the obligation to: "undertake furthermore to formulate, develop and apply a national policy which, by methods appropriate to the circumstances and to national usage, will tend to promote equality of opportunity and of treatment in the matter of education and in particular"

(a) To make primary education free and compulsory; make secondary education in its different forms general, available and accessible to all; make higher education equally accessible to all on the basis of individual capacity; assure compliance by all with the obligation to attend school prescribed by law.

(b) To ensure that the standards of education are equivalent in all public educational institutions of the same level and that the conditions relating to the quality of the education provided are also equivalent.

(c) To encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity.

(d) *To provide training for the teaching profession without discrimination*[^431]

The principle of non-discrimination in education is also reflected in the *Convention on Technical and Vocational Education, 1989*. Furthermore, both these

[^30]: The Convention was adopted by the General Conference of UNESCO on 14 December 1960 at its Eleventh Session, held in Paris and came into force on 22 May 1962. So far, 91 States have adhered to the Convention.

[^31]: The Convention defines 'Discrimination' to "includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose of nullifying or impairing equality of treatment in education". (Art 1 of the Convention)
Conventions are mentioned in the *Revised Recommendation concerning Technical and Vocational Education, 2001* which recognizes that the “Technical and vocational education is included in the term ‘education’ as defined in the Convention and the Recommendation against Discrimination in Education, 1960”. This Recommendation should be understood as setting forth general principles, goals and guidelines to be applied by each individual country according to its socio-economic needs and available resources in a changing world.

The *Convention, against Discrimination in Education* lays down the obligation of States to “assure compliance by all with the obligation to attend school prescribed by law”

It obligates States Parties “to encourage and intensify by appropriate methods the education of persons who have not received any primary education or who have not completed the entire primary education course and the continuation of their education on the basis of individual capacity”. Thus, the Convention provides for the state an obligation for expanding educational opportunities for all those who remain deprived of primary education.

Respecting the diversity of national education systems, the Convention protects the educational rights of national minorities. The States Parties to the Convention agree that “it is essential to recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language, provided however. (a) that this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty; (b) that the standard of education is not lower than the general standard laid down or approved by the competent authorities. The States Parties to this Convention have undertaken to take all necessary measures to ensure the application of these principles.

### 3.21 Other instruments elaborated by UNESCO

Recommendations and declarations, that do not have the force of law, provide normative basis for equality of opportunity in education and have normative implications for EFA. They have moral force and can be characterized as ‘soft law’.

---

433 Art 4(a).
434 Art 4(c) of the Convention.
435 Art 5(1) (c).
Among them, the Recommendation on the Development of Adult Education, 1976\textsuperscript{436} and the Hamburg Declaration on Adult Learning, 1997\textsuperscript{437} are aimed at promoting inclusive approaches to education. They provide for continuing education and learning opportunities for youth and adults. The recommendation on the Development of Adult Education stipulate that the education of young people should “progressively be oriented towards life-long education” and learning. The recommendation stipulates that “the place of adult education in each education system should be defined with a view to achieving a rectification of the main inequalities in access to initial education and training, in particular inequalities based on age, sex, social position or social or geographical origin.” Deep-seated changes that had occurred since the adoption of the Recommendation, warranted the inclusion of the new concepts highlighted by the International Commission on Education for the Twenty-first Century, mentioned above steps in that direction were taken in 1997 when the Hamburg Declaration on Adult Learning, 1997 was adopted. This Declaration Postulates that “the State remains the essential vehicle for ensuring the right to education for all, particularly for the most vulnerable groups of society, such as minorities and indigenous peoples, and for providing an overall policy framework”. It develops the new conception of education that extends ‘throughout life’. The Declaration contains the main principles and concepts adopted so far in the context of the right to education and makes them generally applicable to the population as a whole.

As UNESCO’s normative instruments show, equal opportunity, equitable and universal access to education are often inter-linked. This is illustrated by the World Declaration on Higher Education for the Twenty-first Century, 1998\textsuperscript{438} This Declaration expresses the conviction that “education is a fundamental pillar of human rights, democracy, sustainable development and peace, and shall therefore become accessible to all throughout life”. Article 3 of the Declaration is entitled ‘equity of accesses’. Article 4 (d) provides that “access to higher education for members of some special target groups, such as indigenous peoples, cultural and linguistic minorities, disadvantaged groups, peoples living under occupation and those who suffer from disabilities, must be actively facilitated, since these groups as

\textsuperscript{436} The Recommendation was adopted by the General Conference of UNESCO at its 19\textsuperscript{th} session in Nairobi, on 26 November 1976.

\textsuperscript{437} The Declaration was adopted at the Fifth International Conference on Adult Education, 14-18 July, 1997.

collectivities and as individuals may have both experience and talent that can be of
great value for the development of societies and nations”. It is pertinent to note that
the Recommendation concerning the Status of Higher-Education Teaching Personnel,
1997 contains provisions relating to the duties and responsibilities of institutions
that is institutional autonomy and institutional accountability and to the rights and
freedoms of the teaching personnel that is individual rights and freedoms, academic
freedom, and publication rights. The Recommendation states that higher education
shall be directed to human development and to the progress of society, who’s
financing is public investment. The interplay of ideas and information among higher
education teaching personnel throughout the world is vital and should be encouraged.
For the follow-up provisions the recommendation provides that member states and
higher education institutions should take all feasible steps to improve the conditions
of higher education teaching personnel, and to apply the provisions to give effect,
within their respective territories, to the principles set forth in this recommendation.
Besides, the Recommendation concerning the Status of Teachers, 1966 is of critical
importance in face of overall decline in the status of teachers. It provides that “since
education is a service of fundamental importance in the general public interest, it
should be recognized as a responsibility of the State. It calls for the application of
a set of common standards and measures” which it sets out. The Recommendation
stipulates that “all facilities should be made available equally to enable every person
to enjoy his right to education without discrimination on grounds of sex, race, colour,
religion, political opinion, national or social origin, and economic condition.”

Thus, standard-setting instruments elaborated by UNESCO provide normative
bases for EFA. They establish the right to education for all, for national, ethnic,
religious and linguistic minorities, for the indigenous people, for socially and
economically marginalized, for the vulnerable groups, for immigrants, for disabled
and handicapped, for refugees, for the rural-urban poor and for millions of those
deprived of education on account of poverty. Moreover, they provide normative bases
for education in its diverse forms such as adult education, community education,

---

439 The Recommendation was adopted by the General Conference of UNESCO in Paris on, 11
November 1997.
440 Recommendation concerning the Status of Higher-Education Teaching Personnel (1997) at Part X:
Utilization and Implementation.
441 Recommendation concerning the Status of Teachers, 1966 at para C.
442 Ibid at para 10(b).
special education, etc. They embody certain key concepts such as inclusive approaches to education as well as continuing education and life-long learning.

3.22 International Sanctions towards Right to Education

Discussing the matter of sanctioning the right to education raises questions as to the legal force of commitments made and the nature of the obligations imposed upon those in charge of its enforcement. When the right established for the individual’s benefit forms part of a convention that is properly ratified and incorporated into a State’s internal order, there by rendering it legally binding on that State, he or she can use every available legal means to secure compliance, recourse to law courts, for instance, where the judge ultimately has the power to examine whether there is a breach of the States’ legal obligations, and to come to a decision. Technically speaking, of course, individuals do not necessarily have to take such action themselves, groups enjoying legal status and with a stake in the matter unions, public service users’ or parents’ associations, etc. may take such action on behalf of their members. Furthermore, general international law irrespective of whatever specific mechanisms any particular instrument may have additionally established to ensure compliance provides similar means of sanctioning the right to education internationally within the realm of inter-state relations. If for instance, individuals living abroad find themselves to be the victims of discriminatory measures in their State of residence that prevent them from exercising their right to education as laid down in a legally binding instrument e.g. the Convention against Discrimination in Education of 14 December 1960, and failing domestic remedies, their State of origin will be free to exercise diplomatic protection on their behalf with a view to ensuring that the State of residence meets its commitments. Hence and, in a sense, indirectly one State can be compelled to meet its treaty obligations by another.

The right to education has been devised to benefit both the individual and the society. The situation is different with respect to the society as its beneficiary for its development and for social progress, tolerance and harmony within the group to ensure that its members enjoy generalized access to education. Since society per se lacks legal status, however, it cannot claim the benefits of that right through the above-mentioned legal channels. As a matter of fact, the State tends to meet its obligations of its own accord because they help foster the well-being and progress for
which it is responsible; and the only pressure that can be brought to bear is the political and moral influence exerted by society and its constituent parts.

3.23 Obligations Undertaken by Governments for Achieving Education for All

The right to education as reaffirmed at the World Education Forum carries an obligation for Governments to ensure that basic education is made accessible to all. At the first meeting of the High Level Group on Education for All, convened at UNESCO Headquarter in October 2001 by the Director General of UNESCO, Mr. Koichiro Matsuura gave expression to "the core responsibility of governments for education, and especially to provide free and compulsory quality basic education for all". In the pursuit of EFA goals as a priority, the Governments responsibility for providing basic education for all is underlined in the joint statement of 26 April 2002, made by UNDP and the World Bank UNFPA, UNICEF on the occasion of the second Dakar anniversary of the World Education Forum,

"Governments have the responsibility of providing basic education for all. Access to education is a fundamental human right. Millions of people legitimately expect to have access to quality education".

Indeed, moral and legal force of the Dakar Framework for Action adopted at the World Education Forum is analogous to the declarations and recommendations of the United Nations containing political commitments of the governments. Primacy given by the Dakar Framework for Action to the national level action is very much akin to the spirit of Article 14 of the International Covenant relating to the right to education. This Article requires each State party which has not been able to secure compulsory primary education, free of charge, to undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory primary education free of charge for all.

The legal implications of the Dakar Framework for Action were examined during a meeting on the Right to Education and follow-up to the World Education Forum, organized by CESCR in cooperation with UNESCO in May 2002. Although the Dakar Framework Action might not have the legal force of an international convention, it constituted a strong moral obligation for signatories and was a powerful instrument for change when used in conjunction with existing legal obligations. It
draws some legal force from references to relevant international instruments. It was clear from a comparison of the *Dakar Framework for Action* and the *International Covenant* that the political commitments undertaken under the former were also legal obligations under the latter. The *Dakar Framework for Action* could be taken as imposing legal obligations on signatories insofar as it was based on rights recognized in existing international instruments. CESCR and UNESCO should analyze legislative developments affecting the right to education and encourage the development of national legislation. The constitutional changes introduced by Governments in keeping with their responsibilities under the *International Covenant* and the *Dakar Framework for Action* should be analyzed. Finally, the need to make the connection between the right to education and the Millennium Development Goals agreed upon at the Millennium Assembly, 2000 must be recognized.

In the context of follow-up to the *World Education Forum*, certain crucial questions arise, how governments fulfill their primary responsibility in universalizing primary/basic education how these obligations and commitments are incorporated into Constitutional Provisions and translated into educational laws and policies? How the education policies and laws are undergoing modifications and are being reformulated in response to Government responsibilities undertaken at the World Education Forum? What are the trends in policy developments promoting the universal access to the realization of the right to education?

### 3.24 International Legal Obligations Relating to the Right to Education

The jurisprudence that has evolved in India upholds fully the fundamental principles of non-discrimination and equality of educational opportunities enshrined in UNESCO's Constitution and in the *Convention against Discrimination in Education* as well as other United Nations instruments. India is a party to the *International Covenant on Economic, Social and Cultural Right, 1966*. India's international obligations under the *International Covenant* relating to the right to education as fundamental human rights have been cited in the rulings given by the Supreme Court of India. As regards Constitutional law and the enforcement of the right to education, the Supreme Court took into account the State obligation under the international treaties namely the *International Covenant on Economic, Social and Cultural Rights* vide Article 13 of the Covenant that is right to education.\(^{443}\) India's

\(^{443}\) *M.C. Mehta vs. State of Tamil Nadu and Others* (1996) 6 SCC 756.
experience and approach have special significance as regards the enforcement of the Constitutional nature of the right to education.444

his is a highly significant phenomenon in promoting the justiciability of the right to education. The judgments by the Supreme Court of India bring into limelight the importance of Article 14445 of the Constitution of India which prohibits discrimination in any form. India recognizes that discrimination at its worst form would be violative of the basic and essential feature of the Constitution of India. Though India has not yet ratified the Convention against Discrimination in Education, a number of judgments delivered by the Supreme Court of India are illustrative as regards the protection of rights enshrined in the Convention and their enforceability. India’s approach and position as regards national level action for giving effect to international legal obligations relating to the right to education deserves to be highlighted for promoting the normative action. Moreover, India’s jurisprudence as regards affirmative action and positive measures goes even beyond the provisions of the Convention. India’s legal framework and jurisprudence relating to the right to education is richly supportive of the Convention and is exemplary in many ways as regards the measures member States are required to take for the implementation of the Convention. It is worthwhile to mention Vishaka judgment, in which the Supreme Court held that if there are no domestic laws occupying the subject, the content of the International conventions and norms are significant for the purpose of interpretation of the provisions of State statute.446

In Shri Ram Krishna Dalmia’s case, the Supreme Court of India categorically held:

"It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (a) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (b) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different

444 J.P. Unni Krishna vs. State of A.P. (1993)1 SCC 645. The Supreme Court held in M.C. Mehta vs. State of Tamil Nadu and Others (1996) 6 SCC 756 that Article 45 in Part IV of India’s Constitution was casting a duty on the State to endeavour to provide free and compulsory education to children.
445 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
446 Vishaka vs. State of Rajasthan, AIR 1997 SC 3011.
bases, namely, geographical, or according to objects or occupations, or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 of the Constitution of India condemns discrimination not only by a substantive law but also by a law of procedure".447

A Constitution Bench of the Supreme Court in Km. Chitra Ghosh and Another vs. Union of India and Others448 stated the law with respect to the application of the fundamental principle of equality of educational opportunities: "Now, the primary imperative of Article 14449 is equal opportunity for all across the nation for education and advancement and, as pointed out by Krishna Iyer, J. in Jagdish Saran vs. Union of India,450 "this has burning relevance to our times when the country is gradually being 'broken up into fragments by narrow' domestic wails, by surrender to narrow parochial loyalties". What is fundamental, as an enduring value of our polity, is guarantee to each of equal opportunity to unfold the full potential of his personality. The philosophy and pragmatism of universal excellence through equality of opportunity for education and advancement across the nation is part of our founding faith and Constitutional creed.

In a recent judgment451 the Supreme Court of India held that ‘linguistic and religious minorities are covered by the expression minority’. Since the organization of the States of India has been on linguistic lines the unit for the purposes of determining minority will be the state and not the whole of India and therefore religious and linguistic minorities, who have been placed at par in Article 30452 have to be considered State wise. Article 30453 of the Constitution of India gives religious and linguistic minorities the right to establish and administer educational institutions of their choice and therefore even professional educational institutions are covered therein.

The criteria of merit as basis for admission to the higher education institutions, enunciated in the Universal Declaration of Human Rights, 1948 and reiterated in the

447 Cited in Writ Petition (civil) No. 29 of 2003, Saurabh Chaudri and Others vs. Union of India and Other.
448(1969) 2 SCC 228.
449 The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
450 AIR 1980 SC 820.
452 Right of minorities to establish and administer educational institutions.
453 Ibid.
World Declaration on Higher Education for the Twenty first Century has been upheld by the Supreme Court of India. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not tantamount to mal-administration. Even an unaided minority institution ought not to ignore the merit of the students for admission while exercising its right to admit students to the colleges aforesaid, as in that event, the institution will fail to achieve excellence”.

3.25 Foundations of the Right to Education in National Legal System

The rulings by the Supreme Court of India have resulted in strengthening the foundations of the right to education in national legal system. This is also the predominant concern in the collaboration between UNESCO and CESCR in monitoring the implementation of the right to education, as mentioned above.

The implementation of UNESCO’s Convention against Discrimination in Education contributes to incorporating the principle of equality of educational opportunities into national legal system. Its importance has been enhanced in the context of EFA as a global movement. As the EFA Global Monitoring Report 2002 mentions, the rights-based approach to education has gathered pace in recent years, providing the basis for comparative assessments of national progress against international commitments, including those made at the World Education Forum. Providing the right to education is an obligation of governments and requires that they translate their international commitments into legislation which provides for its citizens legal recourse. Without legislation it is difficult to monitor and enforce obligations, so mobilizing governments to develop and modernize national legislation is a critical element of implementing the Dakar.

According high priority to EFA, UNESCO is currently emphasizing the importance of the Constitutional and legislative foundations of the right to education and universalizing rights based access to basic education for all. In this process, national level strength is imparted to UNESCO’s normative action for promoting equal educational opportunities for education for all. Need for promoting normative

454 (2000) 8 SCC 481.
action with a view to universalizing access to basic education is recognized in UNESCO's Medium-term Strategy, 2002-2007. As the Strategy stipulates, "a major task for UNESCO will be to support member states in policy reforms, especially the design and implementation of EFA policies and action plans as well as of legal instruments for promoting universal access to basic education".456

Bearing in mind the key importance of Constitutional and legislative foundations of the right to education, UNESCO has recently initiated activities aimed at providing advisory services to member States in the process of Constitutional reforms as well as modernizing/developing national legislation in the field of education, especially the right to education. While providing such assistance, foremost importance is given to principles and norms embodied in international instruments elaborated by UNESCO and the United Nations in the field of the right to education. UNESCO thus makes available its expertise with a view to giving prominence to State obligations and Government commitments for the realization of the right to education for all. Such technical assistance enables further to link the international legal obligations under existing instruments with the national education policies and development process. Review of normative action in area such as provision for free, compulsory primary education, the status and training of teachers; institutional responses to lifelong learning; gender equality, equal opportunity in education for all, inclusive education also access to education by children in emergencies and difficult situations etc., is crucial in a spirit to ensure that they are in conformity with the international legal obligations and political commitments of governments.

The case law in this area has involved challenges to the admission practices of educational institutions. In one set of cases, female students have been denied or restricted access to particular schools and colleges. This restricted access has been challenged as discrimination on the basis of sex, and thus, in violation of Article 15.457 The Courts have generally upheld the restrictions. The grounds have been varied, but the approaches have predominantly been narrow and technical, focusing for example on the meaning of discrimination and/or the significance of 'only on the basis of sex'. The Courts have generally been unwilling to find such admission practices to be discrimination on the basis of sex. In considering these restrictions

457 'Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
under Article 15(3), the courts have emphasized the objective of the practices, namely, the attempt to promote schools and colleges specifically for women. The admission practices are thereby seen as preferential treatment as authorized by Article 15(3). While the result could be supported by a substantive model of equality, the discourse of the decisions remain informed by a model of formal equality.

In *Anjali Roy vs. State of W.B.*, an order of the Director of Public Instruction directing that no more women students be admitted to College A, but only to College B was challenged as violating Article 15. The High Court held that there was no discrimination within the meaning of Article 15(1) and upheld the restricted access. The Court adopted the technical approach of ‘only on the ground of sex’, and concluded that no ‘discrimination was made against the appellant only on the ground that she was a woman.’ The refusal to admit the appellant was, according to the Court, not only on the ground of sex but ‘due to the introduction of a comprehensive scheme for the provision of education facilities to both male and female students.

The cardinal fact is that she was not refused admission merely because she was a woman, but because under a scheme of better organization of both male and female students at Hooghly, which covered development of the Women’s College as a step towards the advancement of female education.

The holding is consistent with a corrective approach to gender difference and a substantive model of equality, that is, women’s difference must be recognized to overcome historic disadvantage, yet the decision of the Court was firmly located within a formal model of equality. While recognizing that discrimination involves individual distinctions, the Court adopted the formal equality approach to the relationship between Articles 15(1) and 15(3), and as such, could hold that special provisions for women were legitimate, although they allowed individual

---

458 Nothing in article shall prevent the State from making any special provision for women and children.
459 Ibid.
460 AIR 1952 Cal. 825.
461 See supra note 203.
462 The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
463 Ibid.
464 Ibid.
465 Ibid.
466 The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
467 Nothing in article shall prevent the State from making any special provision for women and children.
discrimination against men. The Court did not consider individual discrimination within the broader context of substantive inequalities, but only within a formal equality context, such that invidious discrimination can be directed equally at men as at women. The only difference is that Article 15(3) permits the former, and not the latter.

The Court subsequently noted the exclusion of sex from Article 29(2) which deals specifically with admission to educational institutions.

The framers of the constitution may have thought that because of the physical and mental differences between men and women and ‘considerations incidental thereto, exclusion of men from certain institutions serving women only, and vice versa would not be hostile or unreasonable discrimination.’

This passing reference to ‘physical and mental differences between men and women’ is significant. While the Court does not specifically endorse this explicit statement of natural and essential gender differences, the failure to interrogate the assumptions suggests that it is not seen as controversial, and in fact, reinforces this view of essential differences.

In University of Madras vs. Shanta Bai an order directing that women students not be admitted to affiliated colleges without receiving special permission was challenged as violating Article 15. The Court held that the university was not part of the State within the meaning of Article 12, and is therefore not subject to the prohibitions of Article 15. However, the Court then considered the relationship between Article 15 and Article 29(2) of the Constitution and held:

---

468 Ibid.
469 Ibid.
470 Article 29 of the Constitution provides:
(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
(2) No citizen shall be denied admission into any educational institution maintained by the State of receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
472 Ibid. But the Court declined the rule on the relationship between Articles 29(2) and 15.
473 AIR 1954 Mad. 67.
474 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
475 No person shall be deprived of his life or personal liberty except according to procedure established by law.
476 Educational institutions will fall within the scope of Article 15 only if they are state maintained; the University of Madras is state-aided, but not state maintained.
477 The omission ‘sex’ in article 29(2) would appear to be a deliberate departure from the language of Article 15(1) and its object must have been to leave it to the educational authorities to make their own rules suited to the conditions and not to force on them an obligation to admit women.

176
“The true scope of Article 15(3) is that notwithstanding Article 15(1), it will be lawful for the State to establish educational institutions solely for women and that the exclusion of men students from such institutions would not contravene Article 15(1). The combined effect of both Articles 15(3) and 29(2) is that while men students have no right of admission to women’s colleges the right of women to admission in other colleges is a matter within the regulation of the authorities of these colleges.”

The Court further discussed the reasons underlying these admission policies, namely the insufficient number of women’s colleges to accommodate the demand. In a later set of cases, the allotment of seats for female students within educational institutions has been the subject of Constitutional challenges. In Balaji vs. State of Mysore, for example, the Supreme Court held that Article 15(4) could not be interpreted so as to render 15(1) nugatory, and therefore, that reservations could not exceed 50 per cent. An issue that has subsequently arisen is whether the allotment of seats for women constitutes a reservation within the meaning of 15(4), and thus whether the allotment of these seats are to be considered in calculating the permissible 50 per cent. The judicial approach to the issue has been divided. Sometimes this allotment of seats for women has been held to be a reservation. Other times the allotment has been designated as an ‘indication of source’ and not a reservation.

---

478 Ibid. 479 AIR 1964 SC 649. 480 Nothing in this article or in clause (2) of this article 29 shall prevent the State from making any special provision for advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. 481 The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. 482 Supra note 226. 483 In Subhash Chandra vs. State. AIR 1973 All. 295, the court held that the allotment of seats for women in medical school was a reservation, and thus, to be taken into account in calculating the total reservation of seats. The court held: ‘[the Sub-articles (3) and (4) of Article 15 classify women and children, socially...as distinct groups. If the State Government makes reservations for these groups it cannot be said that classification is not based on rational differentia. The objective of these reservations in favour of various categories of candidates is obviously to make special provision for their advancement’]. The Court thus concluded that such reservations neither were within the scope of Article 15(3), nor did not offend Article 15(1). 484 In Sukhvinder Kaur vs. State, AIR 1974 H.P. 35 the High Court refused to treat the allotment of seats for women, as well as those allotted for other diverse categories which did not come within the definition of backward classes as ‘reservation’. In Padmaraj Samarendra vs. State of Bihar and Another, AIR 1979 Pat. 266, the Court held that the allotment of seats for female students was not a reservation in the strict sense. Reservations involve the allotment of seats ‘for the reasons that the persons for whom the seats are earmarked should be educationally, socially or culturally backward and require protection.’ In this case, according to the Court, the allotment of seats for women was not for this reason, but rather, based on the state’s need for more female doctors in government hospitals. Thus, the Court held that the allotment was not a reservation, but an allotment of source. The Court further held that since the reason for the allotment was the state need for female doctors, the allotment was not ‘only on the grounds of sex’, and thus, did not violate Article 15(1).
3.26 Education Policy of Government for Women’s Equality

With the introduction of the National Policy on Education 1986, 'education for women’s equality' came to be accepted as a legitimate part of government strategy. Advocates for women’s empowerment greeted this unprecedented section of the policy with enthusiasm.

The oft-quoted section of the policy reads:

"Education will be used as an agent of basic change in the status of women. In order to neutralize the accumulated distortions of the past, there will be a well-conceived edge in favour of women. The National Education System will play a positive, interventionist role in the empowerment of women. This will be an act of social engineering. The policy of non-discrimination will be pursued vigorously to eliminate sex stereotyping in vocational and professional courses and to promote women’s participation in non-traditional occupations, as well as in existing and emergent technologies."

What did this mean in actual terms for adult women? Can the government play a positive interventionist role in the empowerment of women? How can the adult education programmes geared towards literacy alone accommodate this agenda? While the policy itself was received well, the programme of action did not spell out any strategy to achieve this goal. The existing adult education programme and the new literacy campaign failed to address this. Therefore, the government resorted to the time-tested practice of creating an ‘innovative’ programme outside the mainstream.

When the problem of women’s access to income was raised in the early 1980s, the government responded by introducing the programme ‘Development of Women and Children in Rural Areas’. DWCRA, as it is popularly known, seeks to transfer a small sum of money to women’s groups with 15 members to take up income generation work. While this did not ameliorate the condition of millions of poor women in search of a livelihood, the government could now say that it was doing something for women. The mainstay of the Government of India’s rural development programme, the Integrated Rural Development Programme (IRDP) remained gender-neutral. Similarly, the Central Social Welfare Board was set up to channel limited

funds to set up women’s hostels, crisis centres, child-care centres, and so on. Again, this token programme was a response to a long-standing demand from the women’s movement. Thus, when women started demanding the implementation of Chapter IV of the National Policy on Education, the government responded, once more, with an innovative programme. *Mahila Samakhya*, a Dutch-assisted project in three states of India, thus came into being. It was rather ironic that even though there was a major shift at the policy level, the education system was at a loss to accommodate the government’s own policy in existing programmes and schemes.

Can literacy be a vehicle for the attainment of other development goals, namely, improvement in the quality of life of poor women, enhanced income, and control over income access to information and the tools of knowledge to negotiate in a hostile environment? Linking education to the survival issues of the poor, especially women, has remained a challenge. Women’s organizations and social activists engaged in ‘hard core’ development were actually educating women, even though literacy was not a necessary input. Women’s struggles to gain legitimate access to forest produce, common property resources, credit, skill-training and employment were seen by these activists as ‘education’. Yet, literacy remained on the backburner.

The 1980s and 1990s brought with them yet another daunting challenge. The expansion of the market economy, industrialization and globalization increased inequalities, resulting in loss of livelihoods, erosion of natural resources, and with it decreased women’s access to water, fuel, fodder and traditional survival resources. It also brought new forms of exploitation displacement, tourism, sex trade, retrenchment to mention a few. Women were being pushed into less productive sectors. Increased pressure on rural resources accelerated migration to urban areas in search of livelihood. People from backward regions, tribal communities, disadvantaged castes and the displaced communities were being pushed against the wall. Women in such communities shouldered the brunt and this phenomenon was labeled ‘feminization of poverty’. What were the implications for poor women?

At a common level of understanding, survival refers to issues of food, clothing, shelter and livelihood, i.e. issues of economic growth. However, rapid industrialization and globalization have had numerous non-economic fall-outs. Indigenous knowledge systems have been eroded, ecosystems with which people’s lives are so intertwined have been devastated, and communities have been displaced. Communities today have to struggle not only for material and physical subsistence,
but for the survival of their traditional knowledge, culture and language which affects both their self-image and self-esteem. Culture is far from static. There is a continuous process of interaction between tradition and modernity. The point is that global culture mediated by the market is reducing plurality and diversity. And this current, rapid pace of change severely impacts the coping mechanisms of the poor. New coping mechanisms have to be evolved to deal with fresh problems. New skills, knowledge and information need to be accessed and absorbed. This is where education has a critical role to play. While it certainly cannot be assumed that the poor and marginalized do not ‘survive’ in the absence of education, it can be said that they do not necessarily learn to negotiate this unequal world from a position of strength. This raises the question, what kind of education is relevant? When and how does education become meaningful to those on the margins? 486

It is this link between education and survival that has informed the debate within the women’s movement. It is argued that literacy per se means little to poor women unless it leads to a perceptible change in the lives of the poor. When Mahila Samakhya was being formulated, a series of 42 consultations were organized between March 1988 and April 1989 with women’s groups, activists and voluntary organizations on ‘meaningful education’. It was this dialogue that led to the formulation of a programme that paid little attention to literacy per se. Why is education not accessible to poor women? Two clear reasons emerge:  
(a) Because she is poor. The sheer business of survival drains her of all energy, and education is hardly a priority in her every-day battle for survival.  
(b) Because she is a woman. Among the poor, education is not perceived as being of critical importance to women. Women are caught in a vicious circle where their inability to educate themselves lends credence to the stereotype that education is irrelevant to women; and this stereotype itself is responsible for women’s inability to educate themselves.

Thus there is a need to look at the whole issue of women’s education from a fresh perspective. The answer to these questions does not lie only in the education

system; but in the socio-economic milieu in which poor women have to struggle for survival. We have to first understand the constraints under which women live.487

Addressing the constraints that prevent poor women from reaching out to literacy and education was the starting point. This opened doors for a more nuanced debate on the role of education in women’s empowerment. Organizations working with poor women on a wide range of issues could relate to this approach. Notwithstanding this ‘acceptance’, women’s organization still resisted literacy, till such time as the women themselves demanded it. In a recent report488 it was observed that:

“Twenty years ago serious policy discourse hardly admitted the argument that women’s education needs required different focus as distinct from men. The literacy classes and condensed courses offered had no takers. Mahila Samakhya Programme 1988 was responsible for a radical policy departure in as much as it shifted the focus from a delivery design to conditions that make education possible for poor rural women. The assumption was that gender stereotypes should first be questioned seriously by women and accepted by the community. This alone would counter the reason for women’s non-access to the world of education. Facilitating access through questioning was the first step, Mahila Sangha (women’s groups) as a forum for such questioning emerged as a strategic choice in the programme”.

3.27 Mahila Samakhya: Education for Empowerment

The Mahila Samakhya programme was formulated in 1987-88 as an effort to operationalize a bold new policy statement. As discussed earlier, there was a general feeling in administrative circles that while the spirit behind the policy was understandable, the chapter on Education for Women’s Equality could not be implemented. Therefore, when the first conceptual framework was made public the first reaction was one of disbelief; not only about implementing elusive concepts like empowerment and equality, but that such a ‘touchy-feely’ project was located in the Department of Education! Some ‘hard questions’ were asked at the first brainstorming meeting held in September 1987. How can one arm of the government mobilize women to struggle against another arm? Can the government sponsor social

revolution? How can women be organized without any 'concrete benefits', i.e., without any tangible results by way of enhanced income, health care, nutrition, etc. 'Where is the carrot?' 'Where is the meat?' Drawing upon past experiences, some basic principles were enunciated in the conceptual framework of the 1987 report. These are today known as the non-negotiable tenets of the programme. They provided the foundation on which Mahila Samakhya 'was built.'

(a) The programme must be shaped and determined by the people it seeks to reach. In other words, the ultimate form, nature and content of the programme in a given village will not be determined by a set of external planners, but the women who are its participants. The external forces, individuals, institutions and agencies who are its 'catalyst', if you like, will only work out how this can be done in a specific context.

(b) In order to do this, the programme must first and foremost create a time and space for women to meet, be together, and begin the process of thinking and reflecting on their situation, its meaning, and where they wish to go. This process must not be hurried or short-circuited.

(c) Education and literacy should not be confused. The conditions outlined above will create an environment of learning, but what women decide to learn first may not necessarily be reading and writing. In fact, experience seems to show that poor women rarely see the relevance of literacy per se at the start of their journey to new types of knowledge and skills. Forcing literacy on them, or making it a condition of their participation, only serves to reduce interest and involvement.

(d) The meaning of education itself, therefore, has to be redefined in our programme. The 'banking' approach to education, where we merely 'deposit' various sets of information and skills in people so that at the end of a given period their 'accounts' are supposedly full, must be broken. History shows that this approach does not necessarily equip people to think, analyze, apply, or innovate. Instead, education must be understood as a process which enables us to question, conceptualize, find answers, act, reflect on our actions, and raise new questions. If the pilot programme under consideration does not set in motion such a process, but merely imparts literacy or even advanced scholastic milestones, it can truly be said to have failed.

(e) The educational process must be based on total respect for women’s existing knowledge, experience and skill. For too long, teaching and learning have occurred within an equation of power. This power relationship always favours the teacher and demeans the learner. But women’s own perception of their place in society stems from low self-esteem. Therefore, we cannot help women build a positive and strong self-image, if we consider the knowledge and skills they already have to be of little worth, or of less value than what we seek to impart.

(f) This has enormous implications for the training of functionaries in this programme. Even the most sophisticated training methods will be futile if the trainees, at all levels, do not emerge with such a sense of respect, if they fall into the traditional trap of superiority as ‘teachers’, if they use their training and their position to intimidate, rather than empower the woman they reach.

(g) The above points may seem to give little room or importance to the ‘external’ mechanisms, trainers, teachers, planners, resource persons and institutions, in fact this is not so. The type of process described here, adherence to these principles in fact demand a great deal more of everyone than any traditional educational approach. This kind of training can only be achieved with the backing of a strong support system. At each level, continuous inputs will be needed in the form of training, supervision, resource material, analysis, planning, concrete support, and troubleshooting. Otherwise, the entire process will die quickly and quietly. The role of all functionaries, therefore, will be the all-important one of keeping the process alive, nurturing it, and helping it grow until it is strong enough to live on its own. If the recipient women are the nucleus of this programme, then the support system is the womb, which must nourish them until they can survive on their own.

(h) Finally, we believe that every intervention and interaction, which occurs in this programme, must itself be an innovative of the larger process of change. The relationships, the processes, the questioning, which we hoped would empower women, must first be experienced within the programme. Whether in a classroom Mahila Mandal, women’s group, vocational training centre, discussion group, or meeting, the environment of learning, the respect and equality, the time and space, the room for individual variation and uniqueness, must be present. In other words, the cliché ‘practice what you preach’ must be diligently observed. If the little niches
created by this programme for women and girls lack these qualities, we can never hope to ‘empower’ women for battles in the outside world. If the above principles are observed in both letter and spirit, if they are infused into the training of functionaries and in the implementation of the pilot programme, we believe that ‘education for women’s equality’ can become a reality.

Did this happen? Mahila Samakhya continues to be a programme with a difference, the only government programme that tries to address the constraints that prevent women and girls from accessing education.

3.28 Where is Mahila Samakhya today?

(a) Recent evaluations and reports show that the programme today reaches out to poor rural women in 2,500 villages in the UP, Gujarat, Andhra Pradesh and Karnataka and 1,300 in Bihar. It is far less than what was anticipated in 1988. The formation and sustaining of women’s groups in the villages covered has not been easy. In some areas women leaders have emerged, but groups have not been consolidated. There is no uniform ‘model’ and open-ended guidelines of the project have been interpreted differently in different regions. For example, Andhra Pradesh does not have any paid worker at the village level, and all the 252 villages covered so far have functioning women’s groups.

(b) These women’s groups or informal gatherings around rural women leaders are the fulcrum around which the programme revolves. Information, real-life education, demand articulation, monitoring schools and other government services, struggles all these happen at this level.

(c) Education is advancing and it still retains the thrust of the conceptual framework of the programme. Acquiring self-confidence, being able to deal with authority, acquiring knowledge of one’s body and health issues, feeling more in command of one’s situation, shedding helplessness, and some reading and writing, education, viewed in this light, permeates all of the MS programme. Mahila Samakhya has empowered women at various levels, especially grassroots facilitators, women leaders and functionaries.

(d) In the last five years, the education of children, adolescent girls and women’s literacy have intensified. Where feasible, the programme has plugged into the literacy

---

490 Ibid.
campaign. But the experience of the programme with women’s literacy has been mixed. In some areas like Sabarkanta in Gujarat, literacy for women was taken up at an early stage. But in most other areas, women have come to appreciate the relevance of literacy and education, largely for their daughters. One can say with confidence that the programme has created a positive environment for education and learning.

(e) Mahila Shikshan Kendra’s, women’s education centres are residential condensed programmes for out-of-school girls and dropouts, and have been a major success in the last five years. Adolescent girls, young women and women leaders have responded to this with enthusiasm. Despite increasing demand the programme has not been able to create more residential centres, and this has been acknowledged as a problem area. Recent evaluation reports point to the lack of sustained educational resource support for the development of the curriculum, teaching and learning materials, and training support. Nirantar a Delhi-based education resource group, provides intensive back-up support to the programme in Banda. However, similar support organizations do not exist everywhere.

(f) Mahila Samakhya has mobilized women to send their daughters to school and this is acknowledged as a very significant outcome. Non-formal education centres, special coaching classes for girls, and educational fairs for children have been cited as the highlights of the programme.

(g) One of the major outcomes is women’s participation in local self-government institutions. Many women leaders across the country contested panchayat elections and emerged successful.

3.29 Kutch Mahila Vikas Sanghatan

The Kutch Mahila Vikas Sanghatan (KMVS) is an NGO working in Gujarat since 1989. Their experience is illustrative of the struggle between empowerment and ‘real life education’ and literacy. The first phase of their work with rural women in Gujarat involved asserting and highlighting the collective identity of women as artisans, understanding linkages with the market and creating a network of women’s groups. Building leadership skills, self-esteem and self-confidence was a painstaking process. Ensuring proper remuneration for the work of women artisans paid rich dividends. Creating institutional linkages, structures and accountability of the organization to its members was taken up as a priority. The second phase focused on the formation of an identity and education was information based. Women sought
information on a range of issues including an understanding of the body, reproductive health, laws, government schemes, and water harvesting systems. Women were able to identify with larger social and developmental issues. They also organized themselves to address domestic violence.

The third phase has been one of consolidating the identity of the federation of women's groups as a body controlled and managed by the women themselves. Effective decentralization has been a truly empowering experience.

The decentralization has spawned new educational needs, focusing around the ability and capabilities of its members to handle power positions use their power to strengthen the process of education and develop systems of power sharing, transparency and accountability. The training and education processes in this phase have been and are being organized around the Sanghatan's need to:

(a) Make development plans for their communities.
(b) Understand and handle money independently and generate an income for their Sanghatan.
(c) To run centralized service centres, such as banks, legal aid, fodder centres, etc., for the community.
(d) Become the main mobilisers and educators in the area, while KMVS develops tools by which the village leaders and facilitators could 'educate', mobilize and train.

After 5 years of failed literacy efforts, the Sanghatan leadership had finally started making concerted efforts to pick up literacy and fluency skills. It is not yet a widely held commitment, but it has at least become a widely expressed need.492

3.30 Education Guarantee Scheme (EGS) in Madhya Pradesh

This scheme was started in January, 1997 and seeks to put communities at the centre of the educational process. Under the scheme, the government guaranteed to provide a teacher, his/her salary, training of teacher, teaching-learning material and contingencies within 90 days whenever there was a demand from a community without primary schooling facility within a kilometer. The community had to show that at least 25 children in tribal areas, and 40 in non-tribal, would be enrolled; could

suggest a suitable local resident to be the teacher; and was expected to provide space for teaching.

The scheme rests on the idea that these are the critical basic inputs for transacting primary education. It recognizes the urgency of time in universalizing primary education. The time limit set for the government to respond resulted in more than 40 primary schools, on average, being opened on each day of the year in 1997. The objective of the EGS is ‘to mobilize the panchayat to attempt to create better primary schools than the formal schools that exist today in the system.’ The EGS has been able to provide access to schooling to disadvantaged groups; 54 per cent of all EGS schools are located in tribal areas, 56 per cent of total enrolment is of STs, and girls make up 45 per cent of total enrolment in these schools. Almost one-third of all EGS schools use an open space for teaching and learning.

While it is too early to pass any judgment on the scheme, it is clear that the state has been able to successfully initiate a process of decentralization and community participation in primary education. 493

3.31. NGO Initiatives in Improving Girls’ Access to Education

Keeping the above discussion in mind, it would be fair to state that NGO have so far concentrated on the pedagogical and institutional factors hindering girls’ participation in education; often establishing innovative educational programmes, sometimes in collaboration with governmental structures, the collaboration has demonstrated that ‘a well-run and energetic school not only attracts children but retains them’. Girls’ participation in particular has favourably improved. 494

Further, it has also become increasingly clear that the formal structure of the school has to be combined with innovative, non-formal initiatives which take into consideration the specific needs of girls who have to combine a number of roles, all of which cannot be accommodated within a structured school day. Questions of access to a better learning environment, improved physical facilities, child-care arrangements, incentives such as books, uniforms and so on as well as curricular reform have been addressed. There are innumerable NGOs in India today, many of whom deal with

education. The following analysis looks at some successful experiments and concludes with an overall assessment of strategies and possible directions.

(A) Non formal Education

Begun by the Indian Institute of Education, Pune, in the 1980s, PROPEL is an action-research project funded by the Government of Maharashtra and UNICEF based on a value-system which supports non-formal education through other community-based initiatives such as adult literacy programmes, women’s empowerment through collectives and of course early childhood care and education. Most importantly, the needs of the community were identified on the basis of village mapping and house to house surveys which indicated that the emphasis was to be on people and articulation of needs. A Village Education Committee decided on location and timings, mobilized the community to send its children to the centres as well as helped recruit teachers. Curriculum development was participatory and classes were small not more than 20 children in the 9 to 14 age group and did not take up more than two hours in the day. Apart from traditional subjects such as language, math and science, ‘attitudes and values were made a part of the course. Later phases took into account children in the 3 to 6 age group through a readiness programme; of particular significance is the fact that many children were withdrawn from work to attend the NFE centres which also prepared children for the formal system; a large majority of those attending were girls.

Initiated in 1991, the Lok Jumbish, people’s movement project in Rajasthan too views itself as a ‘developer, demonstrator, catalyst and transformer of the mainstream education system from the outside’ through community involvement, quality of learning and management of education. As with PROPEL, community mobilization as well as identification of needs through mapping are of vital importance. Maps not only show existing facilities but also identify impediments such as long distances and rivers which hinder participation, and their use has resulted in substantial increase in enrolments. The Mahila samoohs or women’s groups work towards a special focus of the project increasing girls’ enrolment and retention. If 50 new children are enrolled, a new primary school can be started and 20 children, a non-formal education centre, night school can be established. In turn, Lok Jumbish expects

495 Ibid at 104.
the community to contribute by building a boundary wall around the school, planting a hedge of raising donations for repairs and so on.

Believing that children will come to school if it is worth their while and they enjoy learning, Lok Jumbish stresses the interactive aspect of education where the teachers can be learners as well. Using an acceptable standard as a frame of reference for the curriculum as well as for evaluating pupil performance, teachers go through specific training programmes which make them competent to teach groups of children from more than one school grade. The non-formal centres which run parallel to the schools are setup after needs assessment of particular villages; as with PROPEL, girls attend these centres in disproportionate numbers as against boys who are concentrated in schools. The non-formal centres, called Sahaj Shiksha, emphasize equivalences with the school system as far as scholastic competencies are concerned; women are increasingly being inducted as teachers under the scheme.

Targeting children who cannot attend regular school, the alternative schools run by Rajiv Gandhi Prathmik Shiksha Mission in 20 villages in the Raigarh district of Madhya Pradesh has identified working children, those looking after their siblings and the disabled as the most vulnerable. These schools use innovative strategies, flexible structures, timings and processes so as to encourage children not only to attend but also to stay on. Like Lok Jumbish which also looks at demand, the Education Guarantee Scheme (EGS) begun by the Government of Madhya Pradesh in 1995 seeks to provide a ‘minimal essential educational input’ if 25 children from a tribal area or 40 children from a non-tribal area whom the community was to provide the space. The EGS is significant because ‘it is the first time that the community puts up a ‘demand charter’ to the government which binds the government to act on it. While the curriculum followed is the same as school, early reports indicate that more girls go to such schools than to the conventional primary school. Clearly, community articulated demand has a positive impact on girls’ enrolment.

(B)Towards an Improved Teaching-Learning Environment

In order to cope with problems of teacher absenteeism as well as indifference the Shiksha Karmi (SK) scheme which evolved in the Social Work and Research Centre (SWRC), Tilonia, Rajasthan in the late 1980s sought to replace the

school teacher by two educational workers *shiksha karmis chosen* from the community. Apart from introducing innovative teaching practices related to the immediate environment, ensuring parental participation as well as reaching drop-outs in the 6 to 14 age group, the scheme also targeted remote areas and categories as well as ensured that night classes would be available; Teachers under the scheme are being used by Lok Jumbish, Urmul as well as other NGOs in the state in formal schools as well as through *prahar pathshalas* or non-formal centres.

That the principle of community participation in education is becoming increasingly important in urban slums is evident from the two profiles of the Bodh Shiksha Samiti and Pratham. Bodh Shiksha Samiti was set up in Jaipur in 1984 by a group of academics and educators with the purpose of energizing primary education in the city; the unique character of each locality within which Bodh Shiksha Samiti functions is factored into the curriculum and pedagogic approaches and local women and adolescent girls who are trained to be employed as assistant or para-teachers referred to as mother and child teachers, provide an effective link. In the development of curriculum and material for pre-school education, teachers familiarize themselves with the children’s dialects, stories and songs; play and learning materials include pebbles, dried beans, and sticks and so on, and children are encouraged to collect and contribute to the process of learning.

Under its programme of reforming teaching practices, Bodh Shiksha Samiti introduces curriculum and methods through its teachers in selected government primary schools; apart from seeking to make education practices more acceptable and attractive, Bodh Shiksha Samiti teachers also train government teachers in their methods, using the expertise of professional psychologists as well as role-playing, story-telling and experience sharing as means of eliciting the best responses. The role of the community and women in particular becomes of vital importance as Bodh Shiksha Samiti teachers value home visits and intense parent-teacher interaction as an important means of ensuring better child participation in schooling.

Realizing that in a large metropolitan conglomeration it may not always be possible to recruit or introduce community-based teachers, Pratham in Mumbai believes in providing a platform for partnerships between the Municipal Corporation, NGOs and the corporate sector. Focusing on issues of easier and safe access, better attendance and the creation of an interesting teaching-learning experience, the
organization has come up with a number of low-cost innovative replicable models through its 50 full-time and 200 part-time volunteers. Meshing current management practices and methods with existing curricula and strategies to monitor and analyze problem areas, Pratham hopes to make the Municipal Corporation's investment in primary education more productive. Corporation officials, school managements and teachers are all part of this collaborative effort.

Improvement in school management systems has also been addressed by the Aga Khan Foundation with the aim of improving systems designs geared to greater productivity and cost effectiveness. Identification of problem areas for students, for instance, mathematics, on the principle of triage, a battlefield strategy whereby victims are sorted according to a system of priorities to maximize survivors, led to intensive coaching for weak and very weak students in separate groups. Workshops in financial management for principals, creativity camps for students as well as a software package to arrange for teacher substitution in the event of absenteeism and a question bank for examination papers were some of the other innovative reforms introduced in selected schools in Mumbai and Delhi.

Working in four slum areas in south Delhi, the schools run by Deepalaya draw heavily on the support of the community, in particular the mothers, local experiences, folklore and even the use of different dialects are fed into the curriculum so as to help the children many of whom come from migrant labour backgrounds develop a sense of identification with the educational process. A creative programme of dance, music and painting encourages self-expression and competitiveness. According to T.K. Mathew, its chief executive, an integral part of the organization's philosophy is that 'nothing comes for free: everybody has to become a stake- holder by paying for what he or she gets; yes, they provide everything uniforms, sturdy shoes, textbooks at subsidized rate; and we find that when they charge, the attitude is different, parents are interested and alert, wanting value for their money'. This spirit of the market led to introduction of the English medium, they want to attract as many children as possible and we know that in the slums attributing on elite colonies, an English-medium school will bring us success. Otherwise they'll lose out to teaching shops and tuition houses' added Mr. Pant, a project officer with Deepalaya's community-based activities.
Deepalaya feels that there is a symbiosis between the communities and in particular, women and the school, principles of cleanliness, discipline, and order, believe the school authorities, are transmitted back to the home by the child. The four schools have a special focus on girl children who form 48 per cent of the total enrolment. A number of strategies are combined to encourage girls to come to school; the animator plays an important role and goes from house to house in a particular slum, talking to mothers and enlisting their cooperation. Getting a girl child to go to school is only a part of the story mothers are then encouraged to enroll for skill development programmes as well as participate actively in school activities.

Apart from Deepalaya, a number of other NGOs as well as the government are thinking in terms of spatial reform as a basis for an improved teaching-learning environment. As Anant Mann and Siddharth Wig, two young Chandigarh based architects who recently won a design competition for rural primary schools commented after a survey of school buildings in Haryana villages, 'real education should open one’s mind’ which was not possible ‘through the existing rural primary education scenario’. Their design not only used available materials and technology, but ‘learning spaces were made conducive to greater interaction between the students and the teacher’ and ‘play areas were created through permanent landscaping to aid the learning process’.

In an insightful article in a special number of Architecture + Design on school architecture, A.K. Jain, a senior official of the Delhi Development Authority has argued that as ‘the built environment and quality of education are interdependent’ not only do existing structures need to be upgraded but also new ones must look to innovative classroom shapes which encourage group work, airy corridors and perhaps the use of the courtyard, a vital feature of traditional Indian educational architecture. For a well thought-out spatial organization is essential for ‘ease of maintenance; educational value and user participation’. Those planning new initiatives in education would do well to look to innovations in infrastructures as well as at content and methods.

3.32 Education with Fun: Ankur, Butterflies and Eklavya

As should be clear from the overview, it is not enough to assume that poverty is solely responsible for low enrollment and retention rates in schools,

teacher and administrative indifference, lack of facilities and tedious modes of transmitting unattractively presented knowledge as well as the general lack of relevance of what is being taught are also responsible. A number of NGOs have concentrated on making learning a more joyful experience through the development of interesting and challenging learning material. Through their attractive teaching packages Ankur which caters to children in slums, and Butterflies which works with street children have made the child and his or her different life experiences the focus. Both these Delhi-based NGO’s believe that ‘working children possess a lot of knowledge and experience that should form the basis for education geared to their needs and interests.’ As formal school with its rigid hours is not always an option, non-formal options are strengthen and the learning process which is advocated is that developed by the Environmental Studies Approach to Learning (ESAL) which relates learning to the lived environment. Hence, the emphasis is on games with which the children are familiar, simple exercises which relate to daily living as well as encouraging the children to share their views. Some of which then became incorporated into the teaching material.

An early pioneer in the field of using children’s experiences as well as local materials in curriculum development is the Madhya Pradesh-based NGO Eklavya. Programmes are evolved with the active participation of teachers, children and other resource persons; a special focus is on science education. Started in 1972, the school science programme, Hoshangabad Science Teaching Programme now covers 450 schools with over 50,000 students. The emphasis is on the methodology of science taught through experiments and field trips, using low cost kits made from local substitutes. Direct observation, analysis and group discussions have replaced a hierarchical classroom interaction based on descriptive information imparted by the teacher; children conduct experiments in groups of four, with the teacher moving between them in an informal manner. Thus, not only does Eklavya teach science in a participative manner, but also changes the “standard architecture of the classroom a free and easy atmosphere replaces the rows of silent children, glued to standard desks and schoolroom chairs. New methods have found expression in innovative curricula and textbooks for the social sciences as well.

3.33 Government and Local Initiatives

In order to improve school enrolments as well as rates of child survival and wellbeing, the government has implemented a number of schemes such as midday meals, scholarships, uniforms, free textbooks and so on. Some nutrition programmes, which are delivered through the integrated Child Development Scheme (ICDS) allow for NGO participation as well. When incentive schemes are successfully distributed among beneficiaries the results are positive; however, flaws in the delivery mechanism result in wastage, non-utilization and leakages at various levels. For instance, an analysis of government statistical data for the years 1987-88 showed that financial incentives were available to only 1.3 per cent urban and 2.4 rural students far lower than 5 per cent recommended by the Education Commission 1966.500

Despite criticism to the contrary, adulterated food grain, misappropriation of supplies and so on501, the midday meal programme can be an extremely successful incentive when introduced by NGOs on a small scale with an effective monitoring system. The Tamil Nadu experience through the TINPs -Tamil Nadu Integrated Nutrition Projects I, and II, as well as the Noon Meals Programme of the former Chief Minister, M.G. Ramachandran, has resulted in one of the most extensive child-care networks in the country: in fact, the success of this network is 'mainly due to the massive Noon Meals Programme' to which successive governments have been firmly committed. While the Noon Meals Programme for children under six years of age is integrated with the ICDS or TINP, the provision of noon meals to children above 5 is through the schools. According to recent estimates, at least 900,000 persons receive a midday meal; this includes preschoolers, school-going children, destitute old age pensioners and war widows502. It is hardly surprising that the state leads in child survival rates, antenatal care, and girls' school enrolment and so on.

Despite their obvious advantages, there has been some discussion on the question of incentives and their efficacy. For instance, it has drawn attention to the direct cost component of schooling and the comparative advantages of freeships,

500 Bhatty, Kiran; 'Educational Deprivation in India-A Survey of Field Investigations', Economic and Political Weekly, 4-10 July at 1731-40 and 11July at 1858-69, 1998.


502 Ibid at 9.
uniforms and textbooks as against midday meals which families can usually provide; however, in view of the fact that it may be easier monitor and organize the latter as well as that the benefits to the child are visible on a daily basis and through existing structures the midday meal is an option which NGOs can explore productively.

3.34 Child Care and a Focus on the Girl Child: Mobile Crèches and Nari Bikash Sangha

As already discussed earlier, a widespread network of institutionalized child care is noticeably absent in India. Numerous studies have indicated that, after their overstretched mothers, girl children are regarded as the next best caregivers; not unexpectedly, school enrolments are adversely affected. While anganwadis, the delivery centres of the government-run Integrated Child Development Scheme provide care for infants in the age group, a few NGOs working within the framework of Early Child hood Care and Education (ECCE) have concentrated on providing child care facilities as well.

Begun in 1969, the mobile crèches which has centres in Delhi, Mumbai and Pune, is perhaps the best-known NGO initiative in the area, its primary target is the migrant construction worker's child, divided mainly into three age groups: 0 to 3, 3 to 5 and 5 and over. Preschool education and non-formal learning is available in centres which range from thatched huts, labourer's shacks to sheds and concrete buildings. Children are provided with a food supplement of milk, a fruit and porridge. Older children are helped to come up to the requisite level and then admitted to municipal schools. The organization runs three kinds of training programmes, pre-service, in-service and extension. A large number of office workers, teachers, and volunteers take care of the growing number of children, centres and activities of the widespread network of this innovative scheme.

In a similar vein, realizing that working mothers needed to be assured of care for their infants and school for their older children, the Nari Bikash Sangha (NBS), a rural women’s organization in Bankura, West Bengal, runs nine crèches in the number

---

503 Supra note 250 at 1736.
of villages. Eighteen young married women from the community have been trained to teach the preschoolers the Bengali alphabet, singing and some simple arithmetic. In addition, it is their duty to collect the children from their homes before the crèches begin at 11 a.m. and take them home after 3:30 p.m., cook a simple snack at midday and maintain a record of attendance and subsequent school enrolment. ‘One of the big advantages of children having been to these crèches is that school-going is no longer a trauma, as per Narayan Banerjee of the Centre for Women’s Development Studies, New Delhi, which was instrumental in setting up the NBS. The crèche mothers are expected to ensure that all the children go on to primary school’ Banerjee held; ‘our focus is on the girl child, and it is important that all of them have so far gone on to school. If a child fails to enroll, we call for an explanation from the crèche mother.

A recent overview of eight projects and their ECCE programmes indicated that the reasons for starting these were (a) to free school-age children from child-care functions, (b) to provide preschool education in the area, (c) to provide day-care support to mothers.\(^506\) When SIDH started primary schools in the Jaunpur area of the Garhwal hills, it found that many girls did not attend because they had to take care of younger siblings; or when compelled to come to school, they brought the young ones with them, causing problems in class. The organization then decided to start balwadi or centres which would perform the dual function of day-care service and preschool education to prepare young children for school. A similar strategy was followed by Bodh Shiksha Samiti and the Garhwal Project of the Bhuvaneswari Mahila Ashram so as to enable girls to go to school.\(^507\)

\(^507\) Ibid.36
CHART 3.1: Male-Female Literacy Rate Differentials.

3.35 LITERACY STATUS IN SOME ASIAN COUNTRIES

TABLE 3.1

South Asian Countries

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Maldives</td>
<td>--</td>
<td>96</td>
<td>96</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>--</td>
<td>91</td>
<td>92</td>
</tr>
<tr>
<td>India*</td>
<td>268.42</td>
<td>61</td>
<td>73</td>
</tr>
<tr>
<td>Bhutan</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>Pakistan</td>
<td>48.81</td>
<td>50</td>
<td>63</td>
</tr>
<tr>
<td>Nepal</td>
<td>7.66</td>
<td>49</td>
<td>63</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>52.53</td>
<td>43</td>
<td>52</td>
</tr>
</tbody>
</table>

---

Education for All – Global Monitoring Report – 2007
### TABLE 3.2

<table>
<thead>
<tr>
<th>Country</th>
<th>Total Population (in millions)</th>
<th>Non-Literate Population 15+ (in millions)</th>
<th>Literacy Rate 15+ (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thailand</td>
<td>3.35</td>
<td>93</td>
<td>95, 91</td>
</tr>
<tr>
<td>Philippines</td>
<td>3.50</td>
<td>93</td>
<td>93, 93</td>
</tr>
<tr>
<td>Vietnam</td>
<td>4.90</td>
<td>90</td>
<td>94, 87</td>
</tr>
<tr>
<td>Malaysia</td>
<td>1.72</td>
<td>89</td>
<td>92, 85</td>
</tr>
<tr>
<td>Indonesia</td>
<td>15.10</td>
<td>90</td>
<td>94, 87</td>
</tr>
<tr>
<td>China</td>
<td>87.01</td>
<td>91</td>
<td>95, 87</td>
</tr>
<tr>
<td>Myanmar</td>
<td>3.20</td>
<td>90</td>
<td>94, 86</td>
</tr>
<tr>
<td>Iran</td>
<td>10.50</td>
<td>77</td>
<td>84, 70</td>
</tr>
<tr>
<td>Laos</td>
<td>1.01</td>
<td>69</td>
<td>77, 61</td>
</tr>
<tr>
<td>Afghanistan</td>
<td>9.04</td>
<td>28</td>
<td>43, 13</td>
</tr>
</tbody>
</table>
### 3.37 LITERACY STATUS IN NINE MOST POPULOUS COUNTRIES

#### TABLE 3.3

<table>
<thead>
<tr>
<th>Country</th>
<th>Total Non-literate Population 15+ age</th>
<th>Literacy Rate 15+ (%)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>Mexico</td>
<td>6.52</td>
<td>91</td>
<td>92</td>
</tr>
<tr>
<td>Indonesia</td>
<td>15.10</td>
<td>90</td>
<td>94</td>
</tr>
<tr>
<td>Brazil</td>
<td>17.36</td>
<td>89</td>
<td>88</td>
</tr>
<tr>
<td>China</td>
<td>87.01</td>
<td>91</td>
<td>95</td>
</tr>
<tr>
<td>Nigeria</td>
<td>--</td>
<td>--</td>
<td>--</td>
</tr>
<tr>
<td>India*</td>
<td>268.42</td>
<td>61</td>
<td>73</td>
</tr>
<tr>
<td>Egypt</td>
<td>14.21</td>
<td>71</td>
<td>83</td>
</tr>
<tr>
<td>Pakistan</td>
<td>48.81</td>
<td>50</td>
<td>63</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>52.53</td>
<td>43</td>
<td>52</td>
</tr>
</tbody>
</table>

---


200