UNIT 1 CONSTITUTIONAL PROVISIONS FOR EDUCATION

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1.1 INTRODUCTION

When India got Independence in 1947, there were many questions in the air. How will India emerge as a democratic republic? What will the future of democracy? How will it prepare its future generations for becoming the citizens of country?... and to answer many such questions, India adopted its Constitution on January, 26, 1950. Our constitution has taken care all the issues and challenges emerged at that time and also has provisions of rectifications/additions/deletions, whenever required for the benefit of its citizens. There are provisions for almost all sections of the society and all the important aspects have been included in it, and education is one of these.

If you try to analyze provisions made in Constitution of India and their implications on education, you need to start from the preamble of the Constitution itself. All the fundamental core values of the Constitution could be achieved through education. The unit will start with a discussion on core values of our constitution and their educational implications.

At many places in our Constitutions, there are articles addressing the issues related to education, all such important articles have been discussed in this unit. Education was not a fundamental right for long. In the year 2009, it was made a fundamental right, unit will also highlight its provisions.

*Section 1.3 to 1.8 have been adopted from IGNOU, DELED, BES-004, Block-2

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Constitutional Provisions and Policy Perspectives

Citizens of India have rights which ensure dignity being a human. Our Constitution has several provisions to ensure human Rights, based on which bodies like NCPCR are functioning. Role of such bodies will also be discussed in the Unit. Also, various constitutional provisions to ensure the rights of people with disabilities and acts associated to it will be explained.

1.2 OBJECTIVES

After going through the unit, you will be able to:

- explain the implications of core values of the Constitution for education,
- identify the articles in Indian Constitutions related to education,
- highlight important provisions of RTE-Act, 2009,
- analyze the role of NCPCR and SCPCR in ensuring child’s rights, and
- critically reflect on implications of constitutional provisions for promoting Education of Persons with Disabilities.

1.3 PREAMBLE OF THE CONSTITUTION

“The preamble of Indian Constitution is the soul of Independent India.”, if you read the preamble and try to analyze it, you will not find any reason to disagree with this statement.

Our Constitution is here to ensure that all the people of India are considered equal. All have equal rights to express themselves without fear and prejudices, all have equal access to justice and all have equal rights to access the opportunities along with provisions of equity to facilitate those, who need it. You can say, equality and equity are among key core values of our Constitution. Let us begin our discussion with dimensions of equality to ensure equal rights and opportunities for everyone.

1.3.1 Striving for Equality

The struggle for freedom from British rule included within it the struggle of large groups of people, who not only fought against the British but also fought to be treated more equally. Dalits, women, tribals and peasants fought against the inequalities they experienced in their lives.

When India became an independent Nation in 1947, our leaders too were concerned about different kinds of inequalities that existed. Those who wrote the Constitution of India, a document that laid out the rules by which the nation would function, were aware of the ways in which discrimination had been practiced in our society and how people had struggled against this. So these leaders set out a vision and goals in the Constitution to ensure that all the people of India were considered equal.
This equality of all persons is seen as a key value that unites us all as Indians. Everyone has equal rights and opportunities. What makes people equal? We will focus on the dimensions of equality which need to be addressed to ensure equal rights and opportunities for everyone.

**Dimensions of Equality**

While identifying different kinds of inequalities that exist in society, various thinkers and their ideologies have highlighted three main dimensions of equality namely: political, social and economic. It is only by addressing each of these three different dimensions of equality, can we move towards a more just and equal society?

**Political Equality**

In democratic societies, political equality would normally include granting equal citizenship to all the members of the State and granting rights which are considered necessary to enable citizens to develop themselves and participate in the affairs of the State. These are legal rights, guaranteed by the Constitution and laws. There cent Right to Education Act (2009) is an example of a fundamental and legal right (we will discuss about it in detailed in upcoming sections of this unit).

**Social Equality**

Political equality or equality before the law is an important step in the pursuit of equality but it often needs to be supplemented by equality of opportunity. While the former is necessary to remove any legal hurdles which might exclude people from a voice in government and deny them access to available social goods, the pursuit of equality requires that people belonging to different groups and communities also have a fair and equal chance to compete for those goods and opportunities.

For this, it is necessary to minimise the effects of social and economic inequalities and guarantee certain minimum conditions of life to all the members of the society: adequate health care, the opportunity for good education, adequate nourishment and a minimum wage, among other things.

It is here that education assumes a significant role in the absence of such facilities it is exceedingly difficult for all the members of the society to compete on equal terms. Where equality of opportunity does not exist, a huge pool of potential talent tends to be wasted in a society.

In India, a special problem regarding equal opportunities comes not just from lack of facilities but from some of the customs which may prevail in different parts of country, or among different groups. Women, for instance may even be discouraged from going in for school and higher education. In such cases the role of the State has been to offer equal legal rights to all, to make policies to prevent discrimination or harassment of women in schools or employment, to provide incentives to open up education or certain professions to women, and other such measures.

**Economic Equality**

At the simplest level, we would say that economic inequality exists in a society if there are significant differences in wealth, property or income between individuals or classes. Most democracies today try to make equal opportunities available to people in the belief that this would at least give those who have talent and determination the chance to improve their economic condition.
1.3.2. **Education and Equality**

Being cognizant of the deep-rooted inequalities in Indian society, the founding fathers of the Indian Constitution were quite conscious of the limitation of political democracy. This is amply clear from Dr. B. R. Ambedkar’s final address to the Constituent Assembly of India on 25 November 1949. He said:

**Democracy without equality and fraternity**

‘On the social plane, we have in India a society based on the principles of graded inequality which means elevation of some and degradation of others.

On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th January, 1950, we are going to enter into a life of contradictions. In politics, we will have equality and in social and economic life we will have inequality. In politics, we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions?

How long shall we continue to deny equality in our social and economic life?

If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy’.

Therefore, he mentioned:

“... what we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy.

What does social democracy mean? It means a way of life, which recognises liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them ....”

Education is assigned a revolutionary role in Ambedkar’s concept of social progress and in his vision of a just and equal society. Education for the socially oppressed and access to education has been a focal point in his struggle for equity and social justice. This vision for education in the emancipation of socially deprived people of India is adequately expressed in his words:

“Coming as I do from the lowest order of the Hindu society, I knew what is the value of education. The problem of raising the lower order is deemed to be economic, this is a great mistake. The problem of raising the lower order in India is not to feed them, to clothe them and make them serve the higher order… the problem is to remove from them that inferiority complex which has stunted their growth, … to create in them the consciousness of the significance of their lives for them and for the country… of which they have been cruelly robbed by the existing order.... Nothing can achieve this except the spread of education. This,
in my opinion, is the panacea of our social troubles.”

Not only Ambedkar, we find movements to abolish the caste system and end discrimination, all over the world, have always proposed education as the primary means to overcome oppression (Omvedt, 1993).

On the one hand, education is expected to maintain hallowed traditions, respect for authority, obedience to the law patriotism and the like. On the other hand, education is expected to promote political, economic and social development and change.

The issue of equality of educational access through expansion, equal opportunity and the possibility of achieving social equality through education has been debated for a long time. The relationship between social change and education is complex and critical. Therefore, disregard of equal educational opportunity may endanger the potential of social change through education. What is the social change we are talking about? What is the significance of education? Why is it important to ensure enrolment to and completion of schooling? Why is it so important to close the educational gaps and to remove the enormous disparities educational access, inclusion and achievement?” The significance of education is articulated by Amartya Sen in the following words:

- for making the world more secure and fair;
- when people are illiterate their ability to understand and invoke their legal rights can be very limited leading to their alienation. Women’s security is linked to their ability to read and write;
- illiteracy leads to low level of political participation and inability to express demands;
- health problems and epidemics are better dealt with by people who are educated; and
- women’s well-being and respect are strongly influenced by their literacy and educated decision making within and outside the house.

It is indeed evident that education helps an individual and the society to transform in many ways. It is therefore important that quality educational opportunities are made accessible to every child in the school going age. It is only when all children irrespective of caste, religion, gender, or class can get educated as per their fullest potential can we expect social change. Providing opportunities to education is, however, not enough. The important role played by the curriculum, both hidden and explicit, also plays a role in bringing the desired socio-economic change.

Our Constitution makers were cognizant of the role education could play in creating an equitable society. That is why, education has been assigned an important position and role in the Constitution. In fact, free and compulsory education has now become a fundamental right.

1.4    FUNDAMENTAL RIGHTS AND EDUCATION

Consider the following situation:

_Vimla lives in a village close to Delhi and earns her living by doing households chores. She has two daughters and she is very keen to admit them to school. She feels that if they are educated, they will not have to spend their lives, like her, working in other people’s houses._
They will be able to stand on their feet by opting for a job of their choice. She takes them to a nearby ‘English medium school’ where her daughters are denied admission on the grounds that the parents are not educated and since they come from a lower caste, the other parents might object to her daughter attending the same class as their children.

Activity 1.1
Does the Constitution extend fundamental rights to a poor and uneducated woman like Vimla? Do you think Vimla’s rights have been violated? What fundamental rights have been violated in this case?

A democracy must ensure that individuals have certain rights and that the governments will always recognise these rights. During our freedom struggle, the leaders of the freedom movement had realised the importance of rights and demanded that the British rulers should respect rights of the people. There were no two opinions on the inclusion and protection of rights in the Constitution. The Constitution listed the rights that would be specially protected and called them ‘fundamental rights.’

Fundamental Rights of citizens given in the Constitution have established the spirit of quality and have helped to preserve individual liberty. These rights act as limitation (with certain exceptions) on the powers of the Legislature and the Executive. The following Articles in the category of Fundamental Rights have a special bearing on education in India.

Right to Freedom, Equality and Liberty, are the two rights that are most essential to a democracy. It is not possible to think one without thinking of the other.

ARTICLE 14 Strives for ensuring ‘Equality before Law’. It states “The State shall not deny to any person equality before law or equal protection of the laws, within the territory of India”. Modern States exercise powers over the individual.

The Right to Equality is intended to ensure that the powers of the State are not used in any discriminatory way. In relation to education it is invoked to regulate rules of admission and thus it acts for ensuring reach of education to all.

ARTICLE 15: This Article guarantees prohibition of discrimination on grounds of religion, race, caste, sex or place of birth by the State. It also ensures equality in educational opportunities in India.

ARTICLE 15(4) enabled the government to make special provisions for the advancement of backward classes including the Scheduled Castes (SCs) and Scheduled Tribes (STs).

ARTICLE 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under State.
**ARTICLE 16(4):** the government can make reservations in favour of any backward class of the citizens.

**ARTICLE 21A:** It grants Right to Free and Compulsory Education to all the children of the age six to fourteen years in a manner as the State may, by law, determine. Inserted by the 86th Amendment in December, 2002, this Article has accorded education the status of right for ensuring quality in educational expansion at elementary level.

At the commencement of the Constitution, education was included as a Directive Principles of the State Policy in Article 45 under Part IV of the Constitution.

**ARTICLE 24** - states that no child below the age of fourteen years shall be employed in work in any factory or mine or engaged in any hazardous employment.

**ARTICLE 28** – The institutions run by the State will not preach any religion or give religious education nor will they favour persons of any religion. This has been done to sustain and nurture the principle of secularism. Under provisions of this Article, neither the State nor any other agency can impart religious instruction in any school wholly managed by State funds. However, there is an exemption for the institutions established under any trust or endowment which requires that religious education be imparted in such institutions. The Article further provides that no person, attending State recognised and aided school, can be compelled to take part in any religious instruction without parental consent. This implies that while institutions established by minority communities are eligible for grant in aid from the State, they cannot compel students to follow the religious instruction imparted in the institution. They are allowed to maintain their religious character without imposing their religious ideology on any unwilling student.

**ARTICLE 46** of the Constitution clearly states that the State shall promote with special case the educational and economic interests of the weaker sections of the people, and, in particular, of the SCs and the STs and shall protect them from social injustice and all forms of

**Check Your Progress**

**Notes:** a) Write your answer in the space given below.

b) Compare your answers with those given at the end of the unit

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<tr>
<th>1) Which Fundamental Right(s) will the following situations violate?</th>
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<tr>
<td>A. If a 13 year old child is working in a factory manufacturing carpets.</td>
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<td>B. If a group of people are not given permission to open a Telugu-medium school in Kerala.</td>
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<td>C. If a landlord’s son is given admission in a village school over the daughter of a wage labourer working in the landlord’s farm exploitation.</td>
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In a democratic country like India, where people are divided in terms of religion, language, caste, race, culture and socio-economic factors, one of the tasks of the framers of the Constitution of India was to devise safeguards for the country’s different minorities. The aspirations of minorities, their specific identity and rights were often suppressed under the pretext of majority decision. In such a situation, specific consideration of minorities was a prerequisite of democracy.

Article 29 of the Constitution of India provides explicit guarantees for protecting the interests of minorities:

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

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

Having stated the right of minority people to maintain their own language and culture, the Constitution adds on the explicit protection of the rights of minorities to provide their own education in their own language, certainly an important part of language maintenance.

Article 30 - details this right along with protection against discrimination in the receiving of government grants for education are as follows:

1. All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

1A. In making any law providing for the compulsory acquisition of any property of any educational institution established and administered by a minority, referred to in clause 1, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause. The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

This final clause does not keep the State from regulating for educational standards, but does protect against regulations concerning medium of instruction, a provision for minorities that has also been upheld in the courts.

Besides these general safeguards, the Indian Constitution includes a section titled Special Directives where language and education issues beyond simple protection for minorities are explicitly addressed.

Article 350 guarantees the right of all people to use a language they understand in “representations for redress of grievances.” In the Seventh Amendment to the Constitution made by the Constitution Act of 1956, two articles were added addressing linguistic minority issues:
Article 350A facilities for instruction in mother-tongue at primary stage. It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

Article 350B - Special Officer for linguistic minorities.

1) There shall be a Special Officer for linguistic minorities to be appointed by the President.

2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

Check Your Progress

Notes: a) Write your answer in the space given below.
b) Compare your answers with those given at the end of the unit

2) Which of the following is a correct interpretation of the Cultural and Educational Rights?
   a) Only children belonging to the minority group that has opened educational institution can study there.
   b) Children belonging to a minority group cannot study in government schools.
   c) Government schools must ensure that children of the minority group will be introduced to their belief and culture.
   d) Linguistic and religious minorities can demand that their children must not study in any educational institution except those managed by their own community institution can study there.

1.6 Directive Principles of State Policy and Education

The makers of our Constitution knew that Independent India was going to face many challenges. Foremost among these was the challenge of bringing about equality and well-being of all citizens. They also thought that certain policy direction was required for handling these problems. As the same time, the Constitution did not force future governments to be bound by certain policy decisions.

Therefore, some guidelines were incorporated in the Constitution but they were not made legally enforceable; it thought that the moral force, behind these guidelines would ensure that the government would take them seriously.

The chapter on Directive Principles lists mainly three things:

- the goals and objectives that we as a society should adopt;
- certain rights that individuals should enjoy apart from the fundamental rights; and
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- certain policies that the government should adopt.

Directive Principles of State Policy are included in Articles 36 to 51 in Part IV of the Constitution. There are three guiding provisions under this category which provide the basic framework for national policies and priorities in education. These are:

**ARTICLE 41:** It directs the State to make effective provision for securing the right to work and right to education for all within the limits of, its economic capacities and development.

**ARTICLE 45** being a very significant Article in the Directive Principles, this Article laid down the foundation of free and compulsory education in the country.

**Before 86th Constitutional amendment,** this Article has stated that “the State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years”. Consequent upon the insertion of Article 21 A, making elementary education a fundamental right of all children between the age group of 6-14 years, **Article 45 has been amended so as to restrict its scope to pre-primary education up to 6 years of age.**

No article in the Constitution works in isolation. The same is true for Article 45. It ensures equality of educational opportunity to all on the lines of Article 29(2) according to which admissions cannot be denied to anyone on the basis of race, caste, language in any institution maintained by the State.

Article 21(A) which makes free and compulsory education to all as fundamental right attaches utmost importance to Article 45. Also, the five Articles - 15, 29(2), 15(3), 46 and 29(1) entrust responsibility of equalisation of educational opportunity in all parts of the country to the Government of India and to that end, to give special assistance to the backward areas or States.

**ARTICLE 46:** It says the “State shall promote with special care the educational and economic interests of the weaker sections of the people in particular of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation”. Thus, Article 46 along with other relevant articles pertaining to education ensures equality in educational opportunities even by making special provisions for those who have been left behind due to various reasons.

It is possible to see both Fundamental Rights and Directive Principles as complementary to each other. Fundamental Rights restrain the government from doing certain things while Directive Principles exhort the government to do certain things. Fundamental Rights mainly protect the rights of individuals while Directive Principles ensure the wellbeing of the entire society.

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**Check Your Progress**

Notes: a) Write your answer in the space given below.

   b) Compare your answers with those given at the end of the unit

3) What changes have been made in Article 45 with 86th Constitutional amendment?

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1.7 LANGUAGE POLICY

For the writers of the Constitution respect for diversity meant ensuring that people have the freedom to speak their language and that no one language should become compulsory for all to follow.

1.7.1 Medium of Instruction

India being a multi-lingual society, a uniform medium of instruction was not found practically viable. The importance of mother tongue for maximising reach of education was recognised. ‘Article 354’, in the Constitution of India, in this context, recommends that, “It shall be the endeavor of the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups and the President may issue such directions to any State as he considers necessary or proper for securing the provisions of such facilities”.

The language policy which emerged as a political consensus in the formative years of Independence is an illustration of democratic processes in the Indian context. The three-language formula emerged as a policy or a strategy after a quarter of a century of debate and deliberations from political and academic perspectives by educational advisory bodies and politicians representing national and regional interests.

The Central Advisory Board on Education (CABE), the oldest statutory body on education in India, initiated the discussion on languages in school education in the 1940s and this continued to be a major concern in their discussions until 1960. CABE identified five major issues which required attention:
1. the number of languages to be taught at various levels of school education;
2. introduction of second and third languages;
3. place and role of English;
4. place and role of Hindi; and
5. teaching of Sanskrit and minor language(s) in school.

1.7.2 Three Language Formula

A comprehensive view of the study of languages at school was undertaken and concrete recommendations were made by the Education Commission (1964-66). The Commission, having taken account of the diversity of the Indian context, recommended a modified or graduated three-language formula:
1. the mother tongue or the regional language;
2. the official language of the Union or the associate official language of the Union so long as it exists; and
3. a modern Indian or Foreign language not covered under (1) and (2) and other than that used as the medium of instruction.

The Commission’s observation on the status and role of English is of importance from the point of view of language planning and the way the language was also perceived by policy planners.

The NPE (1986) noted that the regional languages are already in use at the primary and secondary stages. At the secondary stage, the State Governments should adopt and vigorously implement the three-language formula which includes the study
of a modern Indian language, preferably one of the southern languages, apart from Hindi and English in the Hindi speaking States, and of Hindi along with the regional language and English in the non-Hindi speaking States.

National Education Policy (2020) has also advocated use of mother tongue/local language/regional language as medium of instruction at school level.

In point no. 4.13 of NEP-2020, it is mentioned that

*The three-language formula will continue to be implemented while keeping in mind the Constitutional provisions, aspirations of the people, regions, and the Union, and the need to promote multilingualism as well as promote national unity. However, there will be a greater flexibility in the three-language formula, and no language will be imposed on any State. The three languages learned by children will be the choices of States, regions, and of course the students themselves, so long as at least two of the three languages are native to India. (NEP, p. 14)*

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**Check Your Progress**

Notes: a) Write your answer in the space given below.

b) Compare your answers with those given at the end of the unit

4) What are major points of three language formula?

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**1.8. THE FEDERAL STRUCTURE**

The Constitution declared India was a Union of States and the Indian Union is based on the principles of federalism. The Constitution originally suggested a two-tier system of governments, the Union Government or what we call the Central Government representing the Union of India and the State Governments. Later, a third tier of federation was added in the form of Panchayats and Municipalities.

The Constitution clearly provided a three-fold distribution of legislative powers between the Union Government and State Government. Thus, it contains three lists such as: Union, State and Concurrent List.

**1.8.1 Division and Decentralisation of Powers**

There is a trifurcation of legislative powers in India. The Seventh Schedule of the Constitution contains three lists - The Union List with 99 entries which include subjects of national importance (defence, foreign affairs, banking, etc.) in respect of which the Parliament has exclusive powers to legislate, the State List with 61 entries contains subjects of State and local importance (police, trade, commerce, agriculture) in respect of which State Legislature has exclusive powers to make laws and the Concurrent List with 52 entries includes subjects of common interest where both Central and State Governments have legislative powers (supremacy of the central government prevails in case of conflict between Central and State legislation). Education appears in all the three lists.

**Union List:**

Out of 99 entries included in the Union List, six entries pertain to education. These are:
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for Education

Entry 13: Educational and cultural relations with foreign countries.

Entry 62: Institutions of national importance like National Library, the Indian Museum, the Imperial War Memorial, the Victoria Memorial and the Indian War Memorial; any other institution like these wholly or partly financed by government and legally declared as institution of national importance.

Entry 63: The institutions known at the commencement of this Constitution as Banaras Hindu University, Aligarh Muslim University and Delhi University and any other institution legally declared as institution of national importance.

Entry 64: Institution of scientific or technical education partly or wholly financed by the government and legally declared as the institution of national importance.

Entry 65: Union agencies and institutions for (a) professional, vocational or technical training, including the training of police officers (b) the promotion of special studies or research and (c) scientific or technical assistance in the investigation or detection of crime.

Entry 66: Coordination and determination of standards in institutions of higher education & research, and scientific and technical institutions.

State List:

Two out of 61 items enlisted in the State List pertain to education.

Entry 11: It lays down that “education including universities, subject to the provisions of entries 63, 64, 65 and 66 of the Union List and entry 25 of the Concurrent List should be State subject”.

Entry 12: keeps under State jurisdiction the libraries, museum and other similar institutions controlled or financed by the State as well as ancient and historical monuments and records (other than those declared as of national importance)

Concurrent List:

Entry 20: Economic and social planning.

Entry 25: Education, including technical education, medical education and universities, vocational and technical training of labour.

Entry 262: Legal, medical and other profession.

Entry 28: Charities and charitable institutions.

Entry 39: Newspaper, books and printing presses.

Interestingly, education was enlisted as a legislative item originally in the State List. It was subsequently transferred to the Concurrent List by means of a Constitutional Amendment in 1976. Today, entry 25 of the Concurrent List reads as follows:

“Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.”

Purpose and implications of transfer of education from State List to Concurrent List

Through 32nd amendment in Constitution on December 18, 1976 education was put on Concurrent List. Before that it was in the State List, the amendment was suggested by Sh. Swaran Singh Committee, which was of the view that “agriculture and education are subjects of prime importance to country’s rapid progress towards achieving desired socio-economic changes. The need to evolve all India policies in relation to these two subjects cannot be overemphasized.”
1.9 EDUCATION AS A FUNDAMENTAL RIGHT

Since long, Education was not a fundamental right in Indian Constitution. It was the year 2002, when education was made a fundamental right thorough 86th constitutional amendment. Through this amendment, following three changes were made in Indian Constitution:

1. A new Article 21A namely right to education, was inserted after Article 21, which states:

   Article 21A: “The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

2. Substitution of new article for article 45 for making provision for early childhood care and education to children below the age of six years.

   Article 45: “The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

3. Amendment of article 51A

   In article 51A of the Constitution, after clause (J), the following clause was added:

   ”(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”.

In order to ensure the implementation of these changes, in the year 2009, The Right of Children to Free and Compulsory Education Act was enacted by the Parliament, which was implemented from April. 01. 2010.

The title of the RTE Act incorporates the words ‘free and compulsory’. ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6–14 age groups. With this, India has moved forward to a rights-based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

1.9.1. Salient features of the RTE Act:

- Every child of the age of six to fourteen years shall have a right to free and compulsory Education in a neighbourhood school till completion of elementary education.

- Neighbourhood school means a primary school in vicinity of one kilometer and an upper primary school in the vicinity of three kilometers of every habituation.

- Unaided Private recognized schools and schools of special category to admit 25% children from economically weaker section and disadvantaged group in Class-I and re-imbursement thereof.

- No capitation fee and screening procedure for admission.
Constitutional Provisions for Education

- No child shall be denied admission in a school for lack of age proof and in extended period of admission.
- The Act prohibits holding back in any class and expulsion of child admitted in a school till completion of elementary education.
- Prohibition of physical punishment and mental harassment to child.
- Constitution of School Management Committee in every school except unaided private, recognized schools. 75% representation from parent members. 50% representation from women. Representation from SC/ST and disadvantage group.
- The National Commission for the Protection of Child Rights shall review the safeguards for rights provided under this Act, investigate complaints and have the powers of a civil court in trying cases.

Let us discuss role and functioning of NCPCR and SCPCR for protection of child educational rights in detail.

1.9.2. Role of NCPCR and SCPCR in context of RTE Act

The National Commission for Protection of Child Rights (NCPCR) was set up to protect, promote and defend child rights in the country. The National Commission for Protection of Child Rights (NCPCR) emphasizes the principle of universality and inviolability of child rights and recognizes the tone of urgency in all the child related policies of the country. For the Commission, protection of all children in the 0 to 18 years age group is of equal importance. Thus, policies define priority actions for the most vulnerable children. This includes focus on regions that are backward or on communities or children under certain circumstances and so on.

National Commission for Protection of Child Rights has been mandated under Section 31 of the Right of Children to Free and Compulsory Education Act, 2009 to examine and review the safeguards of the rights provided under the act and to recommend measures for its effective implementation; to inquire into complaints relating to violation of child’s right to free and compulsory education and to take necessary steps as provided in the Commission for Protection of Child Rights, 2005. States constitute a State Commission for the Protection of Child Rights (SCPCR). Any person wishing to file a grievance must submit a written complaint to the local authority. Appeals will be decided by the SCPCR. Prosecution of offences requires the sanction of an officer authorized by the appropriate government.

NCPCR has been effectively monitoring the implementation of the children’s right to education through undertaking research studies, conducting fact finding enquiries, organizing public hearings, inquiring into and taking Suo motu cognizance of complaints, making field visits to interact with all the relevant stakeholders like officials from State education departments, school management committees, civil society organizations and district collectors; and to investigate and obtain the information regarding the gaps and challenges in the decentralized implementation of education to all children. A special toll free helpline to register complaints is set up by NCPCR for this purpose. NCPCR invites all civil society groups, students, teachers, administrators, artists, writers, government personnel, legislators, members of the judiciary and all other stakeholders to join hands and work together to build a movement to ensure that every child of this country is in school and enabled to get at least eight years of quality education.
Constitutional Provisions and Policy Perspectives

The Commission has also been writing letters to Ministry of Education on issues related to children’s right to education that requires policy intervention. The Commission has also endeavored in organizing consultations and meets at the national, regional and state level, strengthening convergence and coordination between the State Commissions for Protection of Children Rights (SCPCR) and other allied departments of the Government.

Towards realizing its commitment of Universalizing Elementary Education, the Commission has undertaken varied activities providing for equity, inclusive, quality and sustainable education in India.

Let Us Know

NCPCR has developed comprehensive Manual for Safety and security of Children in Schools. The manual is a compilation of various guidelines, circulars, notifications, Government orders on safety and security related issues in schools issued from time to time. We can find detailed information through the following link:


Check Your Progress

Notes: a) Write your answer in the space given below.
b) Compare your answers with those given at the end of the unit

5) Discuss role of local bodies in implementation of Right to Education Act, 2009?

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1.10 PROVISIONS FOR PROMOTING EDUCATION OF PERSONS WITH DISABILITIES

Our Constitution guarantees Fundamental Rights to all its citizens. There are specific provisions in the Constitution of India that ensure social justice and empowerment to all citizens including “persons with disabilities” and other disadvantaged and marginalized groups.

Special provision was laid down in Article 45 of the constitution, stating, free and compulsory universal primary education for all children up to 14 years of age, budgetary provision for PwD was allocated in the various Five-Year Plan and as a landmark in this direction, education of children with disability in integrated settings was emphasized in the Kothari Commission (1964-66). This was reiterated in the National Policy of Education (1986). The RCI Act (1992) and National Trust Act (1999) were the subsequent major legislations in this field. The Persons with Disabilities Act, 1995 (PWD Act) has been a landmark in the path of legislations in welfare of people with disabilities. This act has been replaced by the Rights of Persons with Disabilities Act 2016.

Rehabilitation Council of India (RCI) Act (1992) deals with the development of manpower for providing rehabilitation services. The Act was amended by
the Parliament in 2000 to make it broad based. The RCI standardizes syllabi and maintains a Central Rehabilitation Register of all qualified professionals and personnel working in the field of Rehabilitation and Special Education. The Council also regulates and monitors the training of rehabilitation professionals and personnel, promoting research in rehabilitation and special education.

**Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act (PWD Act-1995)** is one of the key acts, which provides for education, employment, creation of barrier free environment, social security etc. of persons with disabilities. As per the Act, every child with a disability has access to free education in an appropriate environment until he or she attains the age of eighteen years. This Act has been replaced by Rights of Persons with Disabilities Act (RPWD Act), 2016.

The Rights of Persons with Disabilities Act (RPWD Act), 2016

As mentioned earlier, this Act Rights of Persons with Disabilities (RPwD) 2016 has replaced the existing PWD Act, 1995. The preamble of this Act clearly states that it aims to uphold the dignity of every Person with Disability (PwD) in the society and prevent any form of discrimination. The act also facilitates full acceptance of people with disability and ensures full participation and inclusion of such persons in the society. The new Act is in line with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is not only a signatory but one of the early countries to ratify.

1.11 LET US SUM UP

Education has always remained a key area of concern for both nation builders and policy makers. When the Constitution of India was written and adopted, due weightage was given to ensure opportunities for education to all. Equality and equity were the core values behind all provisions. Unit has discussed all major articles of the Constitution of India which are having educational relevance. In 2002, through 86th constitutional amendment, education became fundamental right of Indian citizens. The enactment of Right to Education Act, 2009 was a great turning point to implement it. Provisions to ensure linguistic and cultural diversities, educational rights of minorities, differently abled persons are the strong foundation for development of any policy/scheme for educational upliftment of marginalized sections, all these have been discussed in brief in the Unit.

1.12 UNIT END EXERCISES

1. What are the hurdles in implementing the three-language formula in its true spirit? Critically Reflect.

2. Education is in concurrent list of the Indian Constitution? What are benefits of placing it there? Elaborate.

3. What are the roles and responsibilities of teachers according to Right to Education Act-2009? Enlist.

4. Describe role of a teacher in facilitating learning of differently abled children?

1.13 REFERENCES AND SUGGESTED READINGS

Constitutional Provisions and Policy Perspectives


1.14 ANSWERS TO CHECK YOUR PROGRESS

1. Article 21A, 24
   Article 15
   Article 14

2. C

3. Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

4. A. the mother tongue or the regional language;
   B. the official language of the Union or the associate official language of the Union so long as it exists; and
   C. a modern Indian or Foreign language not covered under (1) and (2) and other than that used as the medium of instruction.

5. Reflect on the basis of your understanding of RTE-Act, 2009.