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**An Assessment of Right to Elementary Education for a Girl Child
in India: A Review of International and National Law**

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ABSTRACT

Gender inequality in education is one important aspect of educational disparity, an issue which was addressed by the feminist movement. As a result of this movement and other developments, there has been a growing recognition in international law of the right of the girl child to education. The underlying approach of this article is the extent to which these developments have been replicated in India. At one level, the Constitution promised universal education for all children under 14 years of age. More recently, this has been supplemented by the 86th Amendment of 2002 of the Constitution and The Right of Children to Free and Compulsory Education Act, 2009. Nevertheless, the article also suggests that various factors including role of judiciary appears to ensure that there is unsatisfactory fulfilment of the right to education of the girl child in relation to elementary education.

KEYWORDS

Elementary Education, Fundamental Right, Feminism, Indian Constitution, International Law.

1. FEMINIST STRUGGLE FOR EDUCATION: AN INTERNATIONAL LAOCONIC OF THE PAST

Jean Jacques Rousseau, the political scientist and preacher of 'Social Contract Theory', while commenting on feminism and female education said, 'Educate women like men, and the more they resemble our sex the less power will they have over us.'

On this Mary Wollstonecraft, a feminist replied 'I do not wish them to have power over men, but over themselves.'

Education is a human right with immense power to transform. On its foundation rest the cornerstone of freedom, democracy, and sustainable human development. Education is desired, as it opens up a vast world of opportunities and ideas to the educated person. It is also of great instrumental value in the process of economic growth and development. Education plays a critical role in demographic transition, female education, in particular, is seen as important in the process of economic growth and development (Bajpai, 2006: 332).¹ The right to become educated has been long sought after by women. The history of women's education parallels the beginning of feminism. Women have made huge strides towards receiving an equal education, but there is still much more to be done. Education has been the stumbling block keeping women from attaining equal status in society, separating them from their male counterparts. It has also been the door to the elusive dream of equality. Before women gained the right of education, they were perceived as low-class citizens, not worthy of voting or owning property, or any number of other inalienable rights. However, many believed that they should not hold the power to influence politics or even make decisions about their own property. Women were stripped off their dignity and privileges by men of the community and even by their own husbands. They were finally able to break free from these social constraints through education. It is often observed that most of the early feminists were set apart from their fellow ones by education. They were educated and through this knowledge gained a sense of self-worth and the power to change history.

The struggle for women's education has been an uphill battle that has not yet reached its end. The journey took root in the Victorian Era and continues to be a source of struggle even in modern times. During the mid-eighteen century, hundreds of women were expected to live against feminine ideas. This common ideology, required women to be 'pure, pious, domestic and submissive.' It was believed that none of these ideals would be achieved through education. In fact, receiving an education in the Victorian Period was considered an 'act of nonconformity.' A woman could not fill her preordained place in society if she was wasting her time gaining knowledge. Education was thought to make women discontented with their current status, and possibly even irritated with men. Education for women was thought *firstly*, to disrupt the social balance of the time and *secondly*, educated women risked brain fever or sterility. The earliest push for Victorian women to become educated was because they were mothers of men and eventually teachers of men. It was not until the twentieth century that women began to desire knowledge for themselves as individuals (Women's Issues: Then & Now, 9July, 2007).²

In *The Vindication of the Rights of Women, 1793*, now considered a classical work of feminist history, Mary Wollstonecraft, (Britannica, 2004: 196)³ argued primarily for the right of women to be educated. She believed that it is through education that emancipation would come. In defending this right, Mary Wollstonecraft, accepts the definition of her time that

women's sphere is the home, as she doesn't isolate the home from public life as many others did. For her the public life and domestic life are not separate, but connected. She also argues that educating women will strengthen the marriage relationship. A stable marriage is a partnership between a husband and a wife, a marriage is a social contract between two individuals. However, Rousseau, the defender of personal rights, did not believe that such individual liberty was for women. Woman, for Rousseau, was incapable of reason, and only man could be trusted to exercise thought and reason. Thus, for Rousseau, women could not be citizens, only men could. Mary Wollstonecraft was a critique of Rousseau as she argued that bringing together feeling and thought, rather than separating them and dividing them, one for women and the one for man, was not a socially correct theory (Lewis, 9 July, 2007).⁴

During the time of the ideal subservient woman, a few bold women and events internationally stand out as milestones in history. The first is in 1833, when Oberlin College was founded. It was the first university to accept women and black students. The other important event was the *Seneca Falls Convention, July 19-20 1848* (Britannica, 2004: 15).⁵ The Declaration has been called the single most important document of the nineteenth century American women's movement. Appearing in addition to issues of suffrage was education and employment. Elizabeth Blackwell, a citizen of the UK, became the first woman in USA to graduate in medicine in 1849 (Britannica, 2004: 24).⁶ In 1877, Helen Magill became the first woman in the USA to earn her PhD. (Women's Issues Then & Now, 9 July, 2007).⁷ There are many other events along the path to education that helped women to achieve the status they enjoy today. However, obtaining education remained largely a privilege rather than a right, till mid twentieth century. The above brief chronology merely traces a few of the hundreds of thousands of victories women had to win in order to become educated. The next part of the article will discuss the role of United Nations in the development of international legal provisions granting and safeguarding the educational rights of women.

2. INTERNATIONAL LAW ON FEMALE EDUCATION UNDER THE UNITED NATIONS

*'Investing in girls' education delivers well-known returns.
When girls' are educated, they are more likely to earn higher wages and obtain better jobs,
to have fewer and healthier children and to enjoy safer childbirth.'*

United Nations Secretary-General Ban Ki-moon

2.1 GENERAL OVERVIEW

Over the past six decades, different modes of interpretations and meaning on the idea of gender equality, a value reflected in the UN Charter, have emerged. A new constituency in UN politics called 'women' was created and the entry of a powerfully endorsed idea called 'women' in UN thought. The quest for what equality actually means for women has never ceased both within and outside the UN system. As the institutional focus and composition of the UN evolved over the decades, and as the themes, slogans and formulae for realizing the organization's goals changed and expanded, women worked to ensure that the idea of overcoming inequality was recognized in all these transformations. Women's participation with the UN's work in development basically questioned and changed the foundations of its knowledge base, especially as regards its practice. Education as a human right was always on the agenda of the UN⁸; however, the international body targeted the issue of female illiteracy

exclusively. In 1949, the UN sent questionnaires to thirty-two countries concerning opportunities for women in education and the professions. It also launched a complementary study on the extent to which these opportunities were actively realized in the field of women's education. The study aimed to establish the nature and causes of the obstacles that hindered full equality of educational opportunities for women.

Although statistics were collected from member countries, the UN used non-governmental and inter-governmental organizations to obtain qualitative information. It set up a committee of experts that consisted of mostly women educationists and social workers, including representatives from the *Inter-American Commission of Women* and the *Muslim-Arab League*. According to the Committee of Experts of the United Nation's Educational Scientific and Cultural Organisation (UNESCO),

'[I]f women do not possess the same educational facilities as men, it is not for any psychological or pedagogical reason that could justify the existing qualitative and quantitative difference between the opportunities offered to boys and girls. The only established differences in intellectual aptitudes are differences between individuals and not differences between sexes' (Jain, 2006: 31).⁹

The above initiative was the first step by this international organization, after similar attempts undertaken by the League of Nations towards the education of women.¹⁰ This was favoured by the various conventions, declarations etc; both at international and regional levels, for taking effective steps for imparting education to women. Some of these provisions under various documents are discussed below. The scope of education is quite vast and so the proceeding parts of this article will mainly deal with elementary education¹¹ of the girl child internationally as well as nationally.

2.2 CONVENTION AGAINST DISCRIMINATION IN EDUCATION, 1960

This Convention was the result of eleventh session of UNESCO in Paris from 14th November to 15th December, 1960. The Convention's Article 1 provides that the State can establish or maintain separate educational systems or institutions for pupils of the two sexes, only if their educational systems or institutions offer equivalent access to education. Under Article 4, an obligation is imposed on State parties to promote and develop a national policy with the capacity to provide equality of opportunity and to make at least primary education free and compulsory.

2.3 CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979

The Convention reaffirms the faith in fundamental human rights, in dignity and worth of the human beings and in the equal rights of men and women. Article 10 provides that the state parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education. The article also states that state parties shall work towards the reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely.

2.4 UN DECADE FOR WOMEN (1976-85)

2.4.1 *The 1st International Women's Year Conference, 1975*

The first world conference on the status of women targeted full gender equality and the elimination of gender discrimination in all areas including education of women. The long

term plans were for the compulsory elementary education for girls. (1st World Conference on Women 1975; 11 August, 2007).¹²

2.4.2 The 2nd International Women's Year Conference, 1980

It discussed the lack of awareness among women about the opportunities available to them, one of the factors that led to this kind of discrepancy. It also made a passing reference to educational rights of the women. (2nd World Conference on Women, 1980; 11 August 07).¹³

2.4.3 The 3rd International Women's Year Conference, 1985

Also known as the Nairobi Conference ended with the Lagos Plan of Action which added a new chapter 'women and development'. It was a detailed blueprint of women's economic empowerment, calling for education of women to prepare them for employment in business, commerce, industry and handicrafts, and small scale industries.

2.4.4 The 4th International Women's Year Conference, Beijing Declaration, 1995

The declaration elaborately discussed gender discrimination in the field of education. Equality of access to and attainment of educational qualifications is necessary if more women are to become agents of change. On the regional level, girls and boys have achieved equal access to primary education except in some parts of Africa and Central Asia, where access to education facilities is still inadequate. The strategic objectives¹⁴ for the governments were to ensure equal access to education.

Apart from it the Beijing Declaration, held that literacy of women is an important key for improving health, nutrition and education in the family and to empower women to participate in decision making in society. Investing in formal and non-formal education and training for girls and women, with its exceptionally high social and economic return, had proved to be one of the best means of achieving, sustainable development, and economic growth that is both sustained and sustainable (Jain, 2006: 75-80).¹⁵

2.5 WORLD DECLARATION ON EDUCATION FOR ALL

The necessity to redress this neglect, which is that formally recognized equal rights do not change unequal access to education, was acknowledged in this declaration. It was held that the most urgent priority is to ensure access to and improve the quality of education for girls and women and to remove every obstacle that hampers their active participation. Numerous measures are necessary to make equal access to education for girls effective for which certain guidance was provided by UNICEF.¹⁶ A conscientious decision at all levels needs to be made, to have the maximum number of girls enrolled and educated in the given project area (Chatterjee, 2005: 215-16).¹⁷

The impact of feminist struggle for education and the contribution made by United Nations in this field was quite encouraging. India as a founding member of the UN could not have remained untouched by these international developments, and so the attainment of independence marked a watershed in the history of women's education in India. The proceeding part of this article will deal with the expansion of women education in post independence era.

3. LEGAL ESCALATION OF EDUCATION IN INDIA: AN APPRAISAL OF DERELICT QUARTER OF THE GIRL CHILD'S RIGHT TO EDUCATION

‘A world where all girls and boys are empowered through quality education to realize their full potential and contribute to transforming societies where gender equality becomes a reality.’

UNGEI Global Advisory Committee in Kathmandu, Nepal.

3.1 GENERAL PERSPECTIVES

The idea of treating women as equal and providing social justice was reflected in the Indian Constitution which guaranteed equality to everyone. The Constitution makes certain provisions for the advancement and empowerment of women whereby the State can discriminate in favour of women against men but it cannot discriminate in favour of men against women.¹⁸ Moreover, the special status given to women and children under Article 15(3) is wide enough to cover the entire range of State activity. Article 15(3) is a special provision in the nature of a proviso qualifying the general guarantees contained in Articles 14, 15(1), 15(2), 16(1) and 16(2), which safeguard the interests of women in India (Jain, 2006: 907).¹⁹ However, gender inequality in education is one important aspect of educational disparity. As far back as more than 60 years ago, the Constitution of India promised to provide universal education to all children up to the age of 14 years. The goal was to be achieved by 1980. While considerable progress has been made in this regard in the decade of the 1990s, much still remains to be done for girl’s education. Enrolment rates at the primary level have risen considerably but many of the girl students, who enroll, drop out and only a very small number manage to get beyond the primary stage. The table below depicts the condition of female literacy in India since independence. The comparative data of males and females reveals the literacy gap between them in the Indian society.

Comparison between Male-Female Literacy Rates

Census Year	Females	Males	Persons	Male-Female Gap in Literacy Rate
1951	8.86	27.16	18.33	18.30
1961	12.97	34.44	24.02	21.49
1971	18.70	39.45	29.45	20.75
1981	20.76	56.38	42.51	26.62
1991	30.29	64.13	52.21	24.84
2001	54.16	75.85	65.38	21.69

Source: Census of India, 1951 to 2001.

The rise of primary education has been a spatial spread, an increase in infrastructure facilities, and wider coverage of children and increased availability of primary schools. Nevertheless

the national goal of primary education for all children continues to be elusive. Three factors have been commonly acknowledged to be important obstacles to universal primary education in India. Firstly, the problem of poverty. Secondly, low quality of schooling and school infrastructure. Thirdly, lack of motivation among parents and children. Thus, the Indian population is characterized by a low overall rate of literacy. There are however, wide variations across regions, states, castes, classes and sexes (Bajpai, 2006: 332).²⁰

More recently, the National Sample Survey Organisation (NSSO) issued a press note on 19 May, 2010 on its Report No. 532, entitled ‘*Education in India, 2007-2008: Participation and Expenditure.*’²¹ According to the Report the following is the literacy rate among rural and urban males and females in India. The table below depicts the literacy and completed educational level of the population in the country.

Literacy and Completed Educational Level

Age Group				Literacy rate (%)					
Rural				Urban			Rural & Urban		
	Female	Male	Total	Female	Male	Total	Female	Male	Total
All ages (age 0 & above)	51.1	68.4	60.0	71.6	82.2	77.1	56.3	72.1	64.5
Age 7 & above	56.7	77.0	67.0	78.1	89.9	84.3	62.3	80.5	71.7
Age 15 & above	47.5	71.8	59.7	74.6	88.7	82.0	54.9	76.7	66.0

Source: National Sample Survey Organisation, 2007-2008.

Literacy rate for population of age seven and above in major states are: States with relatively high literacy Kerala (94%), Delhi (85%), Assam (84%), Maharashtra (81%), Himachal Pradesh and Tamil Nadu (80% each), Punjab and West Bengal (76% each).

States with relatively low literacy are: Bihar (58%), Rajasthan (62%), Andhra Pradesh (64%), Jharkhand (65%), Uttar Pradesh (66%) and Jammu & Kashmir and Orissa (68% each).

Percentage distribution of persons of age 15 & above by completed level of education: 34% were not literate, 24% were literates of level up to primary, 16% of level middle and remaining 26% were of level secondary & above.

Hence, it can be said that universal primary education was the agenda on the Indian Constitution; however, the policies made thereafter did not get success to reduce the gender gap in the field of education. Likewise, Constitution, the Indian Judiciary too played an important role in making right to education a reality. Some of the important judgements given by Supreme Court and various High Courts interpreting education and its related fields are briefly discussed in the next part of the paper.

3.2 INTERPRETATIONS ON EDUCATION BY INDIAN JUDICIARY

Before the Constitution (86th Amendment) Act, 2002, the right to education was prescribed by Articles 45 and 46 of the Constitution. Although both of these are Directive Principles of State Policy,²² yet the courts have interpreted the right to education as a fundamental right by incorporating it within the fundamental rights under Article 21. The trend has been to hold that the right to life under Article 21 and the dignity of the individual cannot be assured unless it is accompanied by the right to education and that the provisions in Part III and IV of the Constitution are supplementary and complementary to each other. Some of the important observations made by the Supreme Court on India on the issue of fundamental right to education in various judgements are briefly discussed below.

3.2.1 *International Law and Indian Constitution on Fundamental Rights*

Fundamental rights (also called human rights or basic rights) are of two kinds; the classical rights and the economic (and social) rights. In the Universal Declaration of Human Rights, 1948, no difference was made between these two kinds of rights. All of them were regarded as equally fundamental rights. The distinction was later made between political and civil rights, on the one hand, and economic and social rights on the other hand, in the human rights covenants primarily because the former were more easily enforceable than the latter. In the initial drafting of the Constitution of India the rights embodied in Part III and Part IV of the Constitution were all listed as fundamental rights. Later they were divided into two for the same reasons. However, once the State take action by Legislation or other wise to make the right to education available to every eligible person, the statutory right or statutory facility should stand in practice (if not in theory) on the footing of a fundamental right. The Court quotes both the covenants²³ and compares them with Part III and Part IV of the Indian Constitution.²⁴

3.2.2 *Directive Principles of State Policy and Fundamental Rights*

The court held that the Directive Principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III of the Indian Constitution. These principles have to be read along with the fundamental rights. Both are supplementary and complementary to each other. The State is under a Constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all. Without making right to education a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.²⁵

3.2.3 *Meaning of Education*

Education is both the development of the mind and personality of the individual and his/her development as a useful member of the society. If education had consisted only of the former, then there would have been no need for schools, colleges and universities. Every person would educate himself by self study or correspondence without educating bodies. But this would not fulfill the other equally important aspect of education, namely, the social element. One of the primary social functions of education is to prepare the individual to participate in the democratic process which is the very life of the nation.²⁶

Further, while describing the meaning of education it was held by the Supreme Court of India that education is the continuous growth of personality, steady development of character, and the qualitative improvement of life. A trained mind has the capacity to draw spiritual nourishment from every experience, be it defeat or victory, sorrow or joy. Education is training of the mind and not stuffing the brain. We want that education by which the character is formed, strength of mind is increased, the intellect is expanded, and by which one

can stand on one's own feet. The end of all education, all training should be towards the complete making of the human person. The end and aim of all training is to make the humans to grow. The training by which the current and expression of will are brought under control and become fruitful is called education. In short, education is national wealth, essential for the nation's progress and prosperity.²⁷

3.2.4 Need for Right to Education

Justice Kuldeep Singh said that education is the bottom-line of all other rights incorporated in various parts of the Constitution. The right to freedom of speech and expression and other rights cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his/her individualistic dignity.²⁸

3.2.5 Right to Education and Constitution

The Indian Constitution highlighted the importance of education through three modes. Firstly, the framers of the Constitution made it obligatory for the State to provide education for its citizens. Secondly, the objectives set forth in the Preamble of the Constitution cannot be achieved unless education is provided to the citizens of this country. Thirdly, the Preamble also assures dignity of the individual. Without education dignity of the individual cannot be assured.²⁹

3.2.6 Right to Education under Article 21 of Constitution

The word 'life' in Article 21 of the Constitution does not simply mean physical life, but also covers other expressions of life. It is something more than a mere biological existence of a human body. Life also includes education, personality, and whatever is reasonably required to give an expression to life, its fulfillment, and its achievements. The education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral, and emotional development.³⁰ Citizens have a fundamental right to education. The right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 41 and 45. The right to free education is guaranteed till 14 years, thereafter; his right to education is subject to the limits of economic capacity and development of the State.³¹

3.2.7 Accountability of the State for Providing Right to Education

Today, education is perhaps the most important function of State and Local Governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a 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.³²

Right to education is also a fundamental right guaranteed under Article 21 of the Constitution unless the economic capacity and development of the State prohibits enforcement of the same. In the absence of any material placed before the court as to the economic incapacity of State, the petitioners have fundamental right to education. Imparting education is a public duty imposed by the Constitution and hence, it can be enforced by the writ of mandamus.³³

With a view to convert the equality of women from *de jure* to *de facto* female education plays an important role. The Judiciary has no doubt given landmark judgements for making right to education a reality, but it had failed to address the issue of female education exclusively. In

spite of the Constitutional provisions nothing much is done by the Government of India and the Judiciary for the women and their development. As A.S Anand notes,

‘Out of every 20 people in the world 3 are Indians, out of those 3, one is illiterate, and out of 10 illiterates in India, 6 are girls. Even at the stage of enrolment of girls and boys in school there is a growing gap of 21.7% points. There is also a high drop-out rate among girl students as compared to boys at various levels. Articles 14 and 15 of the constitution are violated in the case of girls with impunity. Studies have shown that failure to educate a girl child has a negative impact on infant mortality, maternal mortality, health, and hygiene(Anand, 2008: 9).’³⁴

There have been some legislative developments made in the field of education, that complement the courts’ intervention in making the right to education a fundamental right. A critical assessment of these developments follows.

3.3 THE 86TH AMENDMENT ACT, 2002

The President of India appointed a National Commission to review the working of the Constitution in February, 2000. The Commission worked for two years and submitted its report in March, 2002 (Pillai, 2006: 137).³⁵ When the Constitutional Review Committee submitted its Report, the 2002 Constitutional Amendment on making education a fundamental right, was being discussed. Taking note of the fact that the proposed amendment covered education only between ages six to fourteen, the Review Committee proposed under its recommendation number 30-C, that every child shall have the right to free education until he reaches the age of fourteen years; and in the case of girls and members of the scheduled castes and the scheduled tribes, until they reach the age of eighteen years. The subject of free and compulsory education was also dealt by the Law Commission of India in its 165th Report. The report proposed the Free and Compulsory Education for Children Bill, 1998 (Reports of Law Commission of India, 2007: 165.44-165.48).³⁶

However, it was on 13th December, 2002, that the Constitution (86th Amendment) Act, 2002,³⁷ came into force, which made primary education a fundamental right through the inclusion of a new Article 21-A. The reason behind the amendment was that the goal of Article 45 was not achieved by the country even after many years of independence, even though the task of providing education to all children in this age group gained momentum after the National Policy of Education (NPE) was announced in 1986. The Government of India, in partnership with the State Governments, have made strenuous efforts to fulfill this mandate and, though significant improvements were seen through various educational indicators, the ultimate goal of providing universal and quality education still remains unfulfilled. In order to fulfill this goal, it was felt that an explicit provision should be made in the part relating to Fundamental Rights of the Constitution. The amendment made in the Constitution to seek the goal of independence, that is, fundamental right to education, though it is considered just an eyewash by some sections of society. The 2002 Amendment Act does not justify the recommendations of the Law Commission of India and the Constitutional Review Committee. The main recommendations provided by Constitution Review Committee have been totally ignored and hence, the right to education incorporated in Part III of the Indian Constitution gave no special attention to the girl child.

3.4 THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

Also known as Right to Education Act, 2009, this legislation seeks to make education a fundamental right of every child in the age group of six to fourteen years of age. The Act is a

vigorous initiative taken by the Central Government of India towards achieving the goal of 'Education for All.' However, there are several fault lines in the Right to Education Act. Some of these are discussed below.

Firstly, the Act contradicts India's commitment on the International Jomtien Conference, 1990, and Supreme Court judgment,³⁸ acknowledging the development of early childhood care and development activities. The provision of the Act makes education free and compulsory for age group six to fourteen years only and ignores children before the age of six years. This is a direction given to State under Article 45 of Directive Principles of State Policy.

Secondly, India has signed and ratified various international declarations and conventions like The Convention on the Rights of the Child, 1989, which provides the right of a child, including the girl child, to education and makes provisions to enhance their literacy level. The newly enacted law on free and compulsory education is silent on the issue of basic elementary education to this section of society. The recommendations provided by the Constitution Review Committee have also been totally ignored. The Committee suggested free and compulsory education till the age of eighteen years for girls.

Thirdly, the conventional view of illiteracy is that it is closely linked with poverty, which is true especially in developing countries like India. The definition of 'free education,' which was incorporated in the Bill,³⁹ is not a part of the Act as passed. The hidden charges of education are again a big barrier to female education. The Indian National Sample Survey Organization (NSSO) clearly reveals the average expenditure per student pursuing primary education in rural India; expenditure of some of the states are, State of Nagaland Rs.1210/- per student, Punjab Rs.890/-, Chandigarh Rs.635/- etc (Chandrasekhar, 2006; 3797-3804).⁴⁰

Fourthly, the act is silent on the issue of literacy gap between boys and girls. It also fails to address the problem of drop-out among the girl students. Moreover, the act gives no incentives to encourage female education like flexible school timings, free transportation, special governmental schemes and scholarships etc., for girl child. Various studies show that these are considered to be major barriers in female education in India.

Fifthly, physical insecurity of girls in schools is a common complaint made by parents, which discourage them to send their daughters to school. To put a check on this problem there is a need to recruit more qualified female teachers in school. This crucial subject is also not addressed by the act.

The crucial issue of female's elementary education is not a matter at the forefront of strategic thinking for Indian policy makers, and hence the country is not able to achieve the target of universal education. The national law on education, 2009, and the various state laws and their provisions are also not very much embattled towards female illiteracy. There is hardly any clause which gives special attention to female education in the country. The role of Indian Judiciary on girl child's education has also not been much encouraging. Various judgements on education discussed reveal this hard fact. The Indian Judiciary is completely silent on the subject. No guidelines have ever been given by the judiciary for female education. Looking at the gravity of the problem it is sad to perceive that both the Indian Legislature and the Indian Judiciary failed to concentrate on the subject of female illiteracy and work for imparting education equally for both the sexes in the country. The subject of female education needs attention from all state agencies as dismal state of education is increasing the problem of illiteracy and other crimes against women, like early marriages, dowry demands, honour

killing etc. Illiteracy among the female folk is one of the root causes of these kinds of crimes against because an educated mind is not only an asset to society but it can make its own life worth living. Various sociological and physiological studies reveal that an educated and economically sound person has more confidence level as compared to others. As Mary Wollstonecraft in her 'A Vindication of the Rights of Women' said, '*the neglected education of my fellow-creatures is the grand source of the misery I deplore.*' Hence, the issue needs out-of-the-box thinking and major surgical operation. All this requires foresightedness of the Judiciary and Political will. Mere tinkering with the problem of female illiteracy would not do.

4. ENDNOTES

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1Bajpai Asha (2006) Child Rights in India: Law Policy and Practice (New Delhi: Oxford University Press).

2 Women's Issues Then and Now: A Feminist Overview of the Past 2 centuries, retrieved on 9th July 07, for more information visit: <http://www.cnrl.vtescas.edu/uirich/feminist/educatoins.html>

3Wallstonecraft Mary (April 27, 1759-Sep 10, 1797) was an English writer. Her early writings 'Thoughts on the Education of Daughters' (1787) foreshadowed her matrix work on the place of women in society 'A Vindication of the Rights of Women' (1792), whose core is a plea for equality in the education of men and women. The Vindication is widely regarded as the founding document of modern feminism. For more information see Britannica Ready Reference Encyclopedia (2004) Vol. 10 (New Delhi: Encyclopedia Britannica (India) Pvt. Ltd).

4Lewis Johnson Jones What Rights? – The Arguments of Wollstonecraft in a Vindication of the Right of Women retrieved on 9th July 07, <http://womenshistory.about.com/library/weekly/aa083099a.htm>

5The assembly held at Seneca Falls, New York that launched the US women suffrage movement. Initiated by "Elizabeth Lady Stanton" (who lived in Seneca Falls) and Lucretia Mott the meeting was attended by more than 200 people, including 40 men. The group passed the declaration of sentiments a list of grievances and demands modeled on the declaration of independence that called on women to organize and petition for their rights. A controversial demand for the right to vote passed by a narrow margin. For more information see Britannica Ready's Reference Encyclopedia (2004) Vol. 9 (New Delhi: Encyclopedia Britannica (India) Pvt. Ltd).

6Blackwell Elizabeth(Feb 3, 1821- May 31, 1910), British born US physician. Medical Schools rejected the applications until she was accepted at the Geneva Medical (later Hobart) college in 1847. She is also founder of London School of medicine for women. For more

information see Britannica Ready Reference Encyclopedia (2004) Vol.2 (New Delhi: Encyclopedia Britannica (India) Pvt. Ltd.).

7 Women's Issues Then and Now: A Feminist Overview of the Past 2 centuries, retrieved on 9th July 07, for more information visit:

<http://www.cnrl.vtescas.edu/uirich/feminist/educatoins.html></>

8 UN on Education: Universal Declaration of Human Rights (1948), International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Rights of Child (1989), World Declaration on Education for All (1990), Jomtien Declaration (1990), World Education Forum Dakar Senegal (2000), Education for all Assessment (2000).

9 Jain Devika (2006) Women Development and United Nations (Hyderabad: Orient Longman).

10 League of Nations on Female Education: Women at Paris Peace Conference (1919), International Commission on Intellectual Co-operation, International Bureau of Education (1926), Committee of Experts on the Legal Status of Women (1937).

11 Right of Children to Free and Compulsory Education Act, 2009, Section 2(f), 'elementary education means the education from first class to eighth class.'

12 1st World Conference on Women, Mexico (1975) retrieved on 11th August 2007, for more information visit: http://www.choike.org/nuevo_eng/informes/1453.html

13 2nd World Conference on Women, Copenhagen (1980) retrieved on 11th August 2007, for more information visit: http://www.choike.org/nuevo_eng/informes/1454.html/

14 The Strategic Objectives fixed was that the year 2000, provide universal access to basic education and ensure completion of primary education by at least 80% of primary school age children, close the gender gap in primary and secondary school education by the year 2005, provide universal primary education in all countries before the year 2015. The objectives are summed up into various categories. They are: To reduce the female illiteracy rate to at least half its 1990 level, with emphasis on rural women, migrant, refugee and internally displaced women and women with disabilities; Provide universal access to and seek to ensure gender equality in the completion of primary education for girls by year 2000; Eliminate the gender gap in basic and functional literacy, as recommended in the World Declaration on Education for All; Another strategic objective lists down actions to promote life- long education and training for girls and women. It draws the action to be taken by the governments, educational institutions, and communities. These are as follows: Ensure the availability of a broad range of educational and training programmes that lead to ongoing acquisition by women and girls of the knowledge and skills required for living in, contributing to and benefiting from their communities and nations; Provide support for child care and other services to enable mothers to continue their schoolings; Create flexible education, training and retraining programmes for life-long learning that facilitate transitions between women's activities at all stages of their lives.

15 Jain Devika (2006) Women Development and United Nations (Hyderabad: Orient Longman).

16 UNICEF Suggestions: Recruiting and training teachers locally and providing schools within the villages are factors which repeatedly characterize successful programmes. The reality for many families is that their children need to help in household and farming chores as a matter of survival. When cultural practices place the bulk of this burden on girls, it is critical that educational activities do not clash with these responsibilities. For many girls have remained out of school for the reason.; For very poor families, this means that education must be free, including no hidden costs, such as uniforms, shoes, or examination fees. Costs of girls schooling also need to be lowered by providing scholarships and day- care facilities for siblings and by adjusting school timings to fit schedules of rural children; Special efforts to recruit local females and train them locally not only improve the enrolment levels of girls but also provide important role models for them. While designing educational projects and programmes, attention must be paid to target girls as the main beneficiary of programmes.

17 Chatterjee Mohini (2005) Women's Human Rights (Jaipur: Aavishkar Publishers).

18 Constitution of India, Article 15(3).

19 Jain M.P (2006) Indian Constitutional Law (New Delhi: Wadhwa and Company Nagpur) .

20 Asha Bajpai, 2006, Child Rights in India: Law Policy and Practice, Oxford University Press, New Delhi.

21 National Sample Survey Office, Ministry of Statistics and Programme Implementation, Government of India, Report No. 532, 'Education in India, 2007-08: Participation and Expenditure' (19th May, 2010) retrieved on 11th November 2010, for more information visit: http://www.press_note_NSS_Report_no_532_19may10.pdf

22 The Directive Principles of State Policy are guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. These provisions, contained in Part IV of the [Constitution of India](#), are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the [Directive Principles given in the Constitution of Ireland](#) and also by the principles of [Gandhism](#); and relate to [social justice](#), [economic welfare](#), [foreign policy](#), and legal and administrative matters. Directive Principles are classified under the following categories: [Gandhian](#), economic and socialistic, political and administrative, justice and legal, environmental, protection of monuments and peace and security.

23 International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966).

24 A.V. Chandel v. Delhi University, AIR 1978 Del 308, at 311.

25 Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.

26 A.V. Chandel v. Delhi University, AIR 1978 Del 308, at 311.

27 P.A. Inamdar v. State of Maharashtra, 2005 6 SCC 537.

28 Mohini Jain v. State of Karnataka, AIR 1992 SC 1858.

[29](#) J.P. Unnikrishnan and others v. State of Andhra Pradesh, AIR 1993 SC 2178.

[30](#) University of Delhi v. Ram Nath, AIR 1963 SC 1873.

[31](#) J.P. Unnikrishnan and others v. State of Andhra Pradesh, AIR 1993 SC 2178.

[32](#) Oliver Brown v. Board of Education of Topeka, (US Supreme Court Reports (1953) (8 Law Ed 873), as quoted in J.P. Unnikrishnan and others v. State of Andhra Pradesh, AIR 1993 SC 2178.

[33](#) M.Veera Siva Nagi Reddy v. Osmania University, Hyderabad, 1997(3) SLR (Andra Pradesh) 87.

[34](#) Anand A.S (2008) Justice for Women, Concerns and Expressions (Delhi: Universal Law Publishing Company).

[35](#) Pillai K.N Chandrasekharan (2006) Annual Survey on Indian Law: 2005 (New Delhi Indian Law Institute).

[36](#) Reports of the Law Commission of India (2007) Vol. No. 14 (Delhi: Universal Law Publication Company).

[37](#) Article 21-A, 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 shall by law, determine. Article 45, The State shall endeavour to provide early childhood care and education to children below the age of six year. Article 51A(k) It shall be the duty of every citizen of India, 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.

[38](#) J.P. Unnikrishnan and others v. State of Andhra Pradesh, AIR 1993 SC 2178.

[39](#) Section 2(h), free education means exemption from the obligation to pay tuition fee or other charges which schools usually collect from pupils in the schools. It extends to provision of free text-books, note-books and other study materials and may include health care and nutrition where the appropriate Government so declares by rules under the Act.

[40](#) CHANDRASEKHAR S., A. AND MUKHOPADHYAY (SEPT. 2-8, 2006) 'PRIMARY EDUCATION AS A FUNDAMENTAL RIGHT: COST IMPLICATIONS', *ECONOMIC AND POLITICAL WEEKLY*, VOL.XLI NO.35.