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Course – **B.Ed (Ist Year)**

Course III- Contemporary India and Education

UNIT-V-Education in Indian Constitution

Topic: Constitutional Provisions for Education.

NOTE-I: 12 Major Constitutional Provisions on Education in India

Some of the major constitutional provisions on education in India are as follows:

There are some changes regarding the 42nd Amendment to the Constitution. During 1976 our constitution was amended in many of its fundamental provisions. Under the Constitution of India, the Central Government has been specifically vested with several educational responsibilities.

Below are given constitutional provisions on Education:

1. Free and Compulsory Education:

The Constitution makes the following provisions under Article 45 of the Directive Principles of State Policy that, “The state shall endeavour 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.”

The expression ‘State’ which occurs in this Article is defined in Article 12 to include “The Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.” It is clearly directed in Article 45 of the Constitution that the provision of Universal, Free and Compulsory Education becomes the joint responsibility of the Centre and the States.

In the Constitution it was laid down that within 10 years, i.e., by 1960 universal compulsory education must be provided for all children up to the age of 14, But unfortunately, this directive could not be fulfilled. Vigorous efforts are needed to achieve the target of 100 percent primary education. The Central Government needs to make adequate financial provisions for the purpose. At the present rate

of progress it may, however, be expected that this directive may be fulfilled by the end of this century.

2. Education of Minorities:

Article 30 of the Indian Constitution relates to certain cultural and educational rights to establish and administer educational institutions.

It lays down:

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

(ii) 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.

3. Language Safeguards:

Article 29(1) states “Any section of the citizen, residing in the territory of India or any part there of having a distinct language, script or culture of its own, shall have the right to conserve the same.” Article 350 B provides for the appointment of special officer for linguistic minorities to investigate into all matters relating to safeguards provided for linguistic minorities under the Constitution.

4. Education for Weaker Sections:

Article 15, 17, 46 safeguard the educational interests of the weaker sections of the Indian Community, that is, socially and educationally backward classes of citizens and scheduled castes and scheduled tribes. Article 15 states, “Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes.”

Under Article 46 of the Constitution, the federal government is responsible for the economic and educational development of the Scheduled Castes and Scheduled Tribes

It states. “The state shall promote with special care the educational and economic interests of the weaker sections of the people and in particular, of the Scheduled castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.” It is one of the Directive Principles of State Policy.

5. Secular Education:

India is a secular country. It is a nation where spirituality based on religion, had always been given a high esteem. Under the Constitution, minorities, whether based on religion or language, are given full rights to establish educational institutions of their choice. Referring to the constitutional provisions that religious instructions given in institutions under any endowment or Trust, should not be interfered with even if such institutions are helped the State.

Article 25 (1) of the Constitution guarantees all the citizens the right to have freedom of conscience and the right to profess, practice and propagate religion.

Article 28 (1) states, “No religious instruction shall be provided in any educational institution if wholly maintained out of state fund.”

Article 28 (2) states, “Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or Trust which requires that religious instruction shall be imparted to such institution.”

Article 28 (3) states, “No person attending any educational institution by the state or receiving aid out of state funds, shall be required to take part in any religious instruction that may be imported in such institutions or to attend any religious

worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person a minor, his guardian has given his consent thereto.”

Article 30 states, “The state shall not, in granting aid to educational institution maintained by the State or receiving aid out of State funds, on grounds only of religion, race, caste, language or any of them.”

6. Equality of Opportunity in Educational Institutions:

Article 29(1) states “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds, on grounds only of religion, race, caste, language or any of them.”

The Fundamental Rights of the Indian Constitution has also adopted the fourfold ideal of justice, Liberty, Equality and Fraternity. Our Constitution laid down that in the eyes of law, everyone should have an equal status, to no one the justice be denied, everyone should have liberty of thought, expression.

The fundamental right of equality clearly signifies that in the eyes of law no distinction can be made on the basis of any position, caste, class or creed. Side by side the right of equality of opportunities to all is also provided. The equality of opportunity is meaningless, unless there are equal opportunities for one’s education.

The well-known Kothari Commission, 1964-66 recommended that Central Government should undertake the responsibility in education for the equalization of educational opportunities with special reference to the reduction of inter-state differences and the advancement of the weaker section of the community.

7. Instruction in Mother -Tongue:

There is diversity of languages in our country. After the dawn of Independence, Mother- Tongues have received special emphasis as medium of instruction and subjects of study. In the Constitution of India, it has been laid down that the study of one's own language is a fundamental right of the citizens.

Article 26 (1) states, "Any section of the citizens, residing in the territory of India or any part there of, having a distinct language, script or culture of its own, shall have the right to converse the same."

Article 350 A directs, "It shall be endeavour of every state and every local authority to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups."

Secondary Education Commission, 1952-53 recommended that the mother tongue or the regional language should generally be the medium of instruction throughout secondary school stage subject to the provision that for linguistic minorities, special facilities should be made available. Kothari Commission, 1964-66 has also said that at college and university stage, mother-tongue should be the medium. The medium of instruction at school level is already mother-tongue. This is not a new proposal.

8. Promotion of Hindi:

The Indian Constitution makes provision for the development and promotion of Hindi as national language. Article 351 enjoins the Union, the duty to promote the spread of the Hindi language.

Hindi accepted as the Official Language of India as laid down by the Constitution in following words:

"It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression of all the elements of

the composite culture of India.” In practice, Hindi is already largely in use as a link language for the country. The educational system should contribute to the acceleration of this process in order to facilitate the movement of student and teacher and to strengthen national Unity.

9. Higher Education and Research:

Parliament has the exclusive rights to enact legislation in respect of institutions and Union Agencies mentioned in entries 63, 64, 65, and 66 of List. The entries which give authority to the Government of India in education are mentioned below:

Entry 63 of the Union List:

The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim and the Delhi University, and any other institution declared by Parliament by law to be an Institution of National importance.

Entry 66 of the Union List:

Co-ordination and determination of standards in institution for higher education or research and scientific and technical institutions.

10. Women’s Education:

One of the unique features of Modern Indian Education is the tremendous advancement of Women’s Education. Education of the girls is considered to be more important than that of the boys.

The Constitution makes the following provisions under different articles:

Article 15(1) provides that the State shall not discriminate any citizen on groups only of sex.

Article 15 (3) reads: “Nothing in this article shall prevent the State from making any special provision for women and children.”

The well-known National Policy on Education was concerned about the status and education of women in the country. It envisages that education would be used as a strategy for achieving a basic change in the status of women. It opined that the national system of education must play a positive role in this direction.

The Policy states, “Education will be used as an agent of basic change in the status of women. In order to neutralize the accumulated distortions of the past, there will be a well conceived edge in favour of women.”

11. Education in the Union Territories:

Article 239 of the Constitution states, “Save as otherwise provided by Parliament by Law, every Union Territory shall be administered by the president acting to such extent as he thinks fit through an administrator to be appointed by him with such designation as he may specify.”

12. Educational and cultural relations with foreign countries:

Entry 13 of the Union List reads. Participation in international conferences, associations and other bodies and implementing decisions made there at.

NOTE-II:

CONSTITUTIONAL PROVISIONS ON EDUCATION IN INDIA

The “Constitution” of the society contains the answer to all such questions which it has for itself. People write and adopt a Constitution because they want to make a fresh start in their system of governance. The Constitution represents a break from the past, yet it is influenced from the past in what it accepts and what it rejects.¹ A Constitution may be briefly defined as a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of these organs. It is the basic or fundamental document of a society or a country and contains the basic, the fundamental, the first law of the country. Constitution of a state cannot be conceived merely as a set of rules and laws framed for governance of the people. It represents the hopes and aspirations of the people; ideals, norms and values of their life to be maintained. It reflects the social ethos and philosophy with which a nation is to live and develop. A Constitution exerts a comprehensive influence on life of the people, their feeling, thought and activity.

The Indian Constitution which came into effect from the 26th January, 1950 has its totality of influence on the people. It was basically aimed at reorientation and reorganisation of the socio-economic, political, cultural and educational situation of the country after the independence. Education and more particularly primary education is a major aspect that affects socio-economic development of a country at its grass-root level. Education is the backbone of a nation. The all-round development of a nation very much depends upon the system of education. For successful running of democracy, it is necessary for every person to be educated and be familiar with his right and duties. In this context, education is

considered as very important in a democracy and efforts are taken to make education compulsory up to a certain level. It is because, if the society is not educated, democracy will not be successful and despotism, dictatorship will take its place. Therefore, there are certain rights in the field of education for every citizen in a democracy, which is an obligation upon the state in order to eradicate illiteracy and ignorance of the people which are considered as the root cause of all socio-legal problems of the country. Our Constitution makers had deeply realised this truth and accordingly made certain significant provisions in it to this effect. The Constitution had guaranteed certain rights and privileges to the people and has safeguarded their educational interest in order to ensure equality and social justice. The Constitution had the remarkable feature of its own called the preamble. The preamble has been described as the inner soul of the Constitution and the major aims and objectives of the Indian Constitution were laid down in the preamble in order to ensure the basic principles of democracy viz., justice, liberty, equality and fraternity to the people. Although the working out of these principles largely depended on education and enlightenment of the mass people in the country. Incidentally the percentage of literacy of the Indian people on the eve of our independence was only 19.78%. It implied that near about 80% of the Indian people remained illiterate and ignorant. The Constitution makers were, therefore, quite aware of the delicate sociocultural and educational situation that prevailed in the Indian society due to lack of mass education. Owing to this reason necessary constitutional provisions were made in this regard to preserve, protect and promote the cultural, religious and educational interest of the people.

Part III of the Constitution of India guarantees certain fundamental rights because they are considered necessary for the development of human personality. These rights enable a man to chalk out his own life in the manner he likes best. The fundamental rights are manifests of man's inviolable and fundamental freedoms. The fundamental rights are calculated to protect the dignity of the

individual and create conditions in which every human being can develop his personality to the fullest extent. These rights recognise the importance of the individual in the affairs of the state and seek to assure to every citizen full freedom to enjoy life, liberty and happiness as he likes. The development of a citizen's personality the pursuit of his profession or vocation and the manner in which he seeks to enjoy the pleasure and comforts of life are basically his individual concern and the state can interfere with his basic right only if consideration of public good justifies such interruption. The fundamental rights included in Part III of the Constitution have been given special importance. The Supreme Court observed that fundamental rights are not gift from state to its citizen. Individuals possess basic human rights independently of any Constitution by reason of basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Fundamental Rights form the basic structure of the Constitution and, therefore, they may be abridged by Constitutional amendment but this cannot be abrogated or destroyed. Therefore, at present the Constitution of India guarantees six Fundamental Rights which are as diagrammatically given below:

FUNDAMENTAL RIGHTS IN CONSTITUTION OF INDIA

The various Constitutional provisions regarding education in India are in accordance with our political, economic, social and cultural needs. These provision aims at fulfilling the aspiration of the people through the medium of education. They are

Right to Equality,

Right to Freedom,

Right against Exploitation,

Right to Freedom of Religion,

Cultural and Educational **Rights**, and

Right to **Constitutional** Remedies.

The Constitution of India has provided a large number of clauses and articles, which have a direct or indirect bearing on education. These are as follows-

EDUCATION FOR WOMEN AND CHILDREN ARTICLE 15(3) The basic right to equality provides education for women and children. Article 15(3) is one of the two exceptions to the general rule laid down in clause 1 and 2 of Article 15. It stipulates for making any special provision for women and children. Women and children require special treatment on account of their very nature. Article 15 (3) empowers to make special provisions for them whether in the field of education, reservation etc.

EDUCATION FOR THE BACKWARD CLASSES ARTICLE 15(4) The Court gave a literal interpretation to the Constitutional provisions which lead to the insertion of Clause (4) in Article 15. This Clause was added by the Constitution (First Amendment) Act, 1951. It merely confers discretion on the State to 12 Article 15 of the Constitution of India –

1) The State shall not discriminate against any citizens on grounds only of religion, race, caste, sex, place of birth or any of them.

2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

a) access to shops, public restaurants, hotels and places of public entertainment; or

b) the use of wells, tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

3) Nothing in this article shall prevent the State from making any special provision for women and children.

Clause 4 of Article 15 of the constitution provides -Nothing in this Article or in Clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Clause (4) of Article 15 enables the State to make special provisions for advancement which has a wide expression and should not be construed in a restricted sense as meaning only social and educational advancement. The expression also covers many more things, such as financial assistance, free medical, educational and hostel facilities, scholarships, free transport, concessional or free housing and so on besides mere reservation of seats in college.

PROVISION FOR RESERVATION OF BACKWARD CLASSES S.C. AND S.T. IN PRIVATE EDUCATIONAL INSTITUTIONS

ARTICLE 15(5) The Constitution (93rd Amendment) Act, 2005 has inserted a new Clause (5) after Clause (4) in Article 15. The new Clause enables the State, to make, by law, special provisions, for the advancement of any socially and educationally backward classes or for the Scheduled Castes or the Scheduled Tribes citizens regarding their admission to educational institutions, including private educational institutions, whether aided or unaided by the State, other than minority educational institutions as envisaged in Clause (1) of Article 30.

RIGHT TO EDUCATION--ARTICLE 21A-- The Constitution (86th Amendment) Act, 2002 has added a new Article 21 A after Article 21 and has made education for all children of the age of 6 to 14 a fundamental right. Therefore, this provision makes education a fundamental right. Article 21(A) may be read with new substituted Article 45 and new Clause (K) inserted in Article 51A under same amendment Act, 2002. Stressing that educational empowerment was the way to economic empowerment, Dr. M. H. Joshi, the then Human

Resource Development Minister, called the “Right to Education”, “the dawn of the second revolution in the chapter of Citizens’ right”. To ensure proper implementation of the provisions of the 86th Amendment, 2002, in terms of not just the funds spent but the content of the implementation, Dr. Joshi said that a monitoring system would be put in place. It is hoped that the measure adopted would herald the nation’s march to cent per cent literacy.

RELIGIOUS EDUCATION--ARTICLE 28--The Republic of India is secular state. The 42nd Amendment Act, 1976, has inserted the word ‘secular’ in the preamble of our Constitution of India. In the educational matter also, the secular character of our state are tried to be maintained under the provisions of the constitution. Article 21A provides that “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law determine.

Article 28 provides – 1) No religious instruction shall be provided in any educational institution wholly maintained out of State Funds. Article 28 provides that no religious instructions shall be provided in any educational institution wholly maintained out of state funds but has been established under any endowment or trust which requires that religious instructions shall be imparted in such institution, or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, it such person is a minor, his guardian has given his consent thereto. Article 28 was enacted to ensure that the peaceful atmosphere of educational institutions should not be disturbed by the controversies with regard to the truthful character of any particular religion and the erroneous character of the other. It was to provide for a path of complete safety.

EQUAL OPPORTUNITIES FOR EDUCATION--ARTICLE 29(2)-- The Constitution of India provides equal opportunities in education for all individual without any kind of discriminations whatsoever. This Article has given the right

to seek admission to any educational institution maintained by the state or receiving aid out of the state funds without having regard to their, religion, race, caste, language or any of them. 2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution. 3) No person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached there to unless such person or, if such person is a minor, his guardian has given his consent there to.

Article 29 provides –

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

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

MINORITIES RIGHT TO RUN EDUCATIONAL INSTITUTIONS--

ARTICLE 30--Article 30 is a charter of educational right. It guarantees in absolute terms the right of linguistic and religious minorities to establish and administer educational institutions of their choice and at the same time claim grants in aid without any discrimination based upon religion or language. The right contained in Article 30(1) is available only to minorities whether based on religion or language. Article 30 is held to be more in the nature of protection for minorities and is not immuned from regulatory control. It is to ensure equality

with minority and not intended to place them in a more advantageous position vis-a-vis majority.

RIGHT TO WORK, TO EDUCATION AND TO PUBLIC ASSISTANCE IN CERTAIN CASES ARTICLE 41 The principle enshrined in Article 41 read with Article 45 provides that it is not only necessary but also desirable for the performance of the State's ultimate duty and responsibility, to provide education to all citizens.³¹ It has been held that Articles 29 and 30 relating to cultural and Educational Rights should be read in the backdrop of Articles 41 and 45..

PROVISION FOR EARLY CHILDHOOD CARE AND EDUCATION TO CHILDREN BELOW THE AGE OF SIX YEARS ARTICLE 45 The Directive contained in Article 45 had been held to be a fundamental right forming part of the Right to Life secured by Article 21. Article 41 requires that "the State, shall within the limits of its economic capacity and development, make effective provision, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want".

PROMOTION OF EDUCATIONAL AND ECONOMIC INTERESTS OF S.C. AND S.T.AND OTHER WEAKER SECTION ARTICLE 46 The expression "weaker section of the people" is not defined in the Constitution. This Article mainly provides for the upliftment of the weaker section of the people by giving special care both educationally and economically and also to protect them from social injustice and all forms of exploitation. Mandal Commission case, the Court laid down that the expression 'weaker sections of the people' was wider than the expression "backward classes of citizens" or "socially and educationally backward classes" or Scheduled castes and Scheduled Tribes". The expression included all sections of the society, who were rendered weaker due to various causes including poverty and natural and physical handicaps. The State may make such provisions or reservations for the betterment and amelioration of the weaker

and economically backward sections and to implement the Directive Principles contained in Article 46.

FUNDAMENTAL DUTY ARTICLE 51A (K) The 86th constitution Amendment Act, 2002, inserted a sub-clause in Article 51 clause A in the nature of fundamental duties. Now Article 51 clause (A) sub-clause (K) reads as that who is parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age six and fourteen years. With reference to Article 51A (K), which imposes a Fundamental Duty on Parents / Guardians, that the emphasis would be “to encourage and prompt” parents to bring children to schools, rather than to punish the economically weak parents. It was explained that the Government would endeavour to target children to economically weak parents / guardians through Sarva Shiksha Abhiyan and a Series of measures and facilities.

DISTRIBUTION OF POWER BETWEEN CENTRE AND STATES ARTICLE
The Indian Constitution stated a very elaborate scheme of Centre State distribution of powers and functions within three lists namely Union list, State list and Concurrent list in the seventh schedule. The union list consists of 97 subjects. Among them the following are concerned with education:

ENTRY 63 The institutions known at the commencement of this constitution as the Banaras Hindu University; the Aligarh Muslim University and the Delhi university; any other institution declared by parliament by law to be an institution of national importance.

ENTRY 64 Institutions for scientific or technical education financed by the government of India wholly or in part and declared by parliament by law to be institutions of national importance.

ENTRY 65 Union agencies and institution for a) professional vocational or technical training of police officers; or b) the promotion of special studies or

research, or c) Scientific or technical assistance in the investigations or detection of crime.

ENTRY 66 Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. According to Article 239, education in the Union Territories comes under the central responsibility. The state list consists of 66 subjects. Among them following are concerned with education.

ENTRY 12 Libraries, museums and other similar institutions controlled or financed by the state; ancient and historical monument and records other than these (declared by or under law made by parliament) to be national importance..

ENTRY 25 Education, including technical education, medical and universities subject to the provisions of entries 63,64,65 and 66 of list 1; vocational and technical training of labour. By having education in the “concurrent list”, the centre can implement directly any policy decision in the states.

FACILITIES FOR INSTRUCTION IN MOTHER TONGUE AT PRIMARY STAGE **ARTICLE 350A** Article 350A was inserted by the Constitution (Seventh Amendment) Act, 1956. Under Article 350 A, the constitution imposes a duty on every state to provide adequate facilities for instructions in the mother tongues at the primary stage of education to children belonging to linguistic minority groups and empowered the president of India to issue direction which he may consider necessary to any state for securing the provisions of facilities under this Article.

