

## CHAPTER—2

## CONSTITUTIONAL PROVISIONS for EDUCATION

The constitution of a country is a very important document. It is the basic document which is recognized as the source of legislation. The constitution of any country clearly reflects the collective will of a nation about the way it wants to order its life. It lays down the major principles which are to govern national development, and gives the direction in which the nation should go ahead to achieve its aims. If special emphasis is laid in it on a subject, it indicates the priority that particular subject has in the life of the nation. On the other hand, if a subject like Education is totally absent, or is only marginally mentioned, the indications are very different.

**Government of India Act 1935 and the Indian Independence Act of 1947**

When Pakistan achieved its independence, it acquired an Interim Constitution in the form of the Government of India Act 1935<sup>(1)</sup> and the Indian Independence Act of 1947. Under the Government of India Act 1935, a number of aspects of Education were placed in the Seventh Schedule (Legislative Lists) under the Federal Legislative List and the Provincial Legislative List. The following entries are concerned with Education:

**List I          Federal Legislative List**

**Entry No. 11:** *“Libraries, museums and similar institutions controlled or financed by the Federation.”*

**Entry No. 12:** *"Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies."*

**Entry No. 13:** *"The Benaras Hindu University and the Aligarh Muslim University."*

## **List II Provincial Legislative List**

In the Provincial Legislative list, the following entries are concerned with education:

**Entry No. 17:** *"Education, including Universities other than those specified in paragraph 13 of list I."*

**Entry No. 20:** *"Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases, veterinary training and practice; ponds and the prevention of cattle trespass."*

The above-mentioned entries show that at the time of independence, institutions controlled or financed by the Federation and Federal Agencies for the purposes of research, professional or technical training and special studies, were under the legislative domain of the Federation. Education of various levels, including universities, and agriculture education and research in particular, were the responsibility of the provincial government.

## The Objectives Resolution

After about a year and a half of independence, the Constituent Assembly of Pakistan adopted "The Objectives Resolution" in March 1949.<sup>(2)</sup> It was adopted to formulate the objectives and principles on which the new constitution was to be based. The Objectives Resolution guaranteed fundamental rights such as:

*"Equality of status, of opportunity and before law, social, economic and political justice and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality."*

In the Objectives Resolution no mention was made of the subject of Education. "Education" was not recognized as a fundamental right for the citizens of the newly established state.

Subsequently, Pakistan framed its first Constitution in 1956. Education found a mention in article 29(d), which reads as under:

*"The State shall endeavour to provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment."*

It may be noted that this particular provision pertains only to those citizens who are permanently or temporarily unable to earn their livelihood, and does not enjoin upon the state to provide such facilities to the entire population.

### **Constitution of 1956 <sup>(3)</sup>**

In the 5<sup>th</sup> Schedule, Article 106 of the 1956 Constitution, the subject of Education fails to find a mention in the Federal List, or even in the Concurrent List. Education is mentioned at Items No.20 and 23 of the Provincial List.

**Entry No. 20:** *“Education, including Universities, technical education and professional training.”*

**Entry No. 23** *“Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.”*

This list merely lays down that Education, including universities, technical education and professional training will be in the legislative domain of the provinces, and the coordination and determination of standards in institutions for Higher Education or research and scientific and technical institutions shall be the responsibility of the provincial government. The Constitution of 1956 did not spell out any mandatory responsibility of the state.

### **Constitution of 1962 <sup>(4)</sup>**

The Constitution of 1962, while enumerating Fundamental Rights in Chapter 1, article 12(3) states that:

*“No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste, or place of birth.”*

In Chapter 2, laying down the **Principles of Policy**, it has been mentioned at article-7 that:

“Illiteracy should be eliminated, and free and compulsory primary education should be provided for all, as soon as is practicable.”

The Constitution fails to mention a deadline by which the government is expected to achieve this goal, and merely mentions in general terms a desirable objective. The result was that Education never got the priority that it deserved, and resources were never adequately apportioned for meeting these goals.

### **Constitution of 1973** <sup>(5)</sup>

The Constitution of 1973 was framed in the light of some of the experience gained and lessons learnt from the traumatic breakup of the country. It was realized that apart from contributing towards achieving material progress, the Educational System also plays a great role in national integration and social cohesion. It was perceived that if the potential of the Educational System to bind the nation together is not harnessed, or if it is allowed to be taken control of by parochial or disruptive elements, then the result can be disastrous.

Consequently, in Chapter 2, laying down the **Principles of Policy**, in article-37 it has been mentioned that the State shall:

- a) *“Promote, with special care, the educational and economic interests of backward classes or areas;”*
- b) *“Remove illiteracy and provide free and compulsory secondary education within the minimum possible period;”*

- c) *"Make technical and professional education generally available, and higher education equally accessible to all on the basis of merit."*

The Constitution of 1973 has also provided some articles which have an indirect bearing on Education. Article 20 b declares that:

*"Every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions."*

Similarly Article 22(1) guarantees that:

*"No person attending any educational institution shall be required to receive religious instruction or take any part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own."*

Article 12(3) of the Constitution of 1962 has also been repeated in the constitution of 1973 as Article 22(2b).

It is thus for the first time in the Constitution of 1962 and 1973 that a mention has been made in an elaborate fashion of the importance of Education and the imperative of making the nation literate. The Constitution of 1962 mentioned that free and compulsory Primary Education should be provided to all, while the 1973 Constitution goes one step ahead by laying down that free and compulsory Secondary Education would be provided. However, once again the law makers failed to mention any deadline by which this target could be achieved. The result is quite evident that even after 28 years, the goal mentioned in the 1973 Constitution has not yet been achieved. The importance of the universalization of education for the success of democracy has not been adequately stressed.

In article 38(d) of Chapter 2 on the Principles of Policy laid down in the 1973 Constitution, it has been stated that:

*"The State shall provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment".*

This article also does not make it compulsory for the government to provide Education to all the citizens of the country.

It is apparent that no constitution in the history of Pakistan has recognized the importance of Education as a fundamental right for its citizens. The provision of free compulsory primary or secondary education has been made in the constitutions of 1962 and 1973 under the Principles of Policy, and not under Fundamental Rights. The only point related to Education which has been laid down under chapter-1 of Fundamental Rights is article-22 (2.b) in the Constitution of 1973 and article-12 (3) in the Constitution of 1962 which states that:

*"No citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth."*

It may be mentioned that Principles of Policy are non-justiciable rights, whereas Fundamental Rights are justiciable rights and can be enforced through a court of law. The

Principles of Policy are intended to lay down the broad guidelines of state policy. They are really in the nature of instructions issued for future legislation, and addressed to the executive for its guidance. If the state is unable to take any positive action in the furtherance of the directive principles, no action can be brought against it in a court of law, or no action can be taken against any state or organ or person on the ground that their actions are inconsistent with the principles of policy. It has been mentioned under article-30(2) of the 1973 Constitution:

*"The validity of any action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State, any organ or authority of the State or any person on such ground."*

Similarly it has been mentioned under article-29 (2) that:

*"In so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose of, the principles shall be regarded as been subject to the availability of resources."*

In short, the Principles of Policy can be described as little more than a manifesto of aims and aspirations. The result of not recognizing Education as a Fundamental Right is that the nation is still far away from realizing its constitutional goal. The conversion of article-37(a), (b), & (c) into fundamental rights might have compelled successive governments to allocate adequate funds to achieve this goal. There is the need that Education should become a constitutional right of a citizen. Under the present noncommittal situation, Education will never get the resources required for it.

The break away of East Pakistan showed that Education is too important and sensitive an issue to be left totally to the provinces. The cohesive and positive role that Education can play in the life of a nation was fully recognized. Consequently, a number of aspects of Education which had previously been totally left to the provinces, were placed on the Federal Legislative List and the Concurrent Legislative List as contained in the 4<sup>th</sup> Schedule [Article-70(4)]. At item No. 15,16 and 17 of the Federal Legislative list is mentioned:

*Entry No. 15: "Libraries, museums, and similar institutions controlled or financed by the Federation.*

*Entry No.16: "Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies".*

*Entry No.17: "Education as respects Pakistani students in foreign countries and foreign students in Pakistan".*

Similarly at Entry No.38and 39 of the Concurrent Legislative list is mentioned:

*Entry No.38: "Curriculum, syllabus, planning, policy, centres of excellence and standards of education".*

*Entry No.39: "Islamic Education".*

The Federation for the first time has assumed the responsibility for making education a tool not only for development, but also to be used for social cohesion and national integration.

As a result of the above entries in the Constitution, the Parliament passed three Acts to give the Federal Government the necessary powers to discharge its obligations.

These Acts were:

- (a) University Grants Commission Act of 1974.
- (b) Centres of Excellence Act of 1974.
- (c) Federal Supervision of Curricula, Textbooks, Maintenance of Standards of Education Act of 1976.

(a) **University Grants Commission Act of 1974** <sup>(6)</sup>

Act No. XXIII of 1974 was passed to provide for the establishment of a University Grants Commission with a view to coordinate Higher Education more effectively. It is said in the Act that:

*"Whereas, in the interest of education planning and laying down a uniform policy as also to secure coordination between the universities, it is expedient to provide for the establishment of a University Grants Commission, and for matters connected therewith or incidental thereto."*

The main function of the UGC, as laid down in the University Grants Commission Act, in section 2, is:

*"Promotion and coordination of university education, the determination and maintenance of standard of teaching, examination and research in universities, the promotion of national unity and solidarity, the orientation of university programmes to national needs".*

b) **Centres of Excellence Act of 1974** <sup>(7)</sup>

Act No.XXIV of 1974 came in force to provide for the establishment of Centres of Excellence in universities for conducting high-level teaching and research.

c) **Federal Supervision of Curricula, Textbooks, Maintenance of Standards of Education Act of 1976** <sup>(8)</sup>

Act No.X of 1976 was passed to make provision for the federal supervision of curricula, textbooks and maintenance of standards of Education. This act was passed, keeping in view the need to provide for the building of national cohesion by promoting social and cultural harmony, and designing curricula relevant to the nation's changing social and economic needs, compatible with the basic national ideology, and providing massive shift from general education to more purposeful agro-technical education; and to make provision for the federal supervision of curricula, textbooks for various classes, and maintenance of standards of Education.

Under the powers conferred upon the Federal Government, by sub-section (I) of section 3, it has appointed the following two as the competent authorities for carrying out the purposes of the said Act:

- a) National Bureau of Curriculum and Textbooks (Curriculum Wing), Ministry of Education, Government of Pakistan, for purposes of the said Act, relating to classes I-XII, and to all Certificates and Diplomas not awarded by Degree awarding Institutions and Universities.

- b) University Grants Commission for purposes of the said Act relating to education beyond class XII at the Bachelor's level and onwards, and to all Degrees, Certificates and Diplomas awarded by Degree Colleges, Universities and other institutions of Higher Learning.

### **THE ROLE of the UN:**

**The United Nations issued the Universal Declaration of Human Rights in 1948. It provides the following on the subject of Education under Article 26: <sup>(9)</sup>**

1. *"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit".*
2. *"Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".*
3. *"Parents have a prior right to choose the kind of education that shall be given to their children".*

The importance of Education has been recognized universally. In addition to the Universal Declaration of Human Rights, various other global declarations and conventions have also stressed that every person has the right to Education. The following are some provisions for Education in various global declarations:

**1. The Declaration of Rights of the Child (1959) :**

According to principle-7 of the Declaration of the Rights of the Child (1959):

*"The child is entitled to receive education".*

The declaration on the rights of the child requires that the child shall be given an Education which will promote his general culture, and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

**2. The UNESCO Convention against Discrimination in Education (1960):**

Article-4 of the convention has made a provision implying free and compulsory primary education and secondary education to be generally available and accessible to everyone, and higher education equally accessible to everyone on the basis of individual capacity.

**3. The International Covenant on Economic, Social and Cultural Rights (CESCR) of 1966:**

In the International Covenant on Economic, Social and Cultural Rights, Article-13 recognizes the right of everyone to Education. In article-13(2) of the Covenant it is stated that:

*"Primary education shall be compulsory and available free to all."*

#### 4. **The Convention on the Rights of the Child (1989):**

The Convention on the Rights of the Child of 20 November, 1989, under article-28 (1) (a), confirms the principles of compulsory and free primary education. It also states that:

*"States parties shall, in particular, encourage the development of different forms of secondary education, make them available and accessible to every child, and take appropriate measures such as introducing free education and offering financial assistance in case of need."*

#### **Some Other Countries: Constitutional Provisions on Education:**

It would be worthwhile to examine the provisions regarding Education in the Constitutions of some other countries, as under:

**The Constitution of India** provides the following on the subject of Education:- <sup>(10)</sup>

In part-IV, while laying down the **Directive Principles of State Policy**, it has been mentioned at article-45 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 constitution of India has also provided for the promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections of society. Article-46 of the constitution declares under the Directive Principles of State Policy that:

*"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation".*

Article-350 A envisages that:

*"It shall be the endeavor of every state and of every local authority within the state to provide adequate facilities for instructions in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups".*

In part-III, while laying down the **Fundamental Rights**, it has been mentioned in article-28(1) that:

*"No religious instruction shall be provided in any educational institution wholly maintained out of state funds".*

Similarly, article-29 (2) guarantees that:

*"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".*

Article-30 (1) declares that:

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

It has been further guaranteed in article-30 (2) that:

*"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."*

A number of aspects of Education which have been placed on the Union List, State List and the Concurrent List are as below:

**List-1            UNION LIST**

In the union list the following entries are concerned with education:

*Entry No.63: The institutions known at the commencement of this constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University; [the University established in pursuance of Article-371-E], any other institution declared by Parliament by law to be an institution of national importance.*

**Entry No.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 No.65:** *Union agencies and institutions for –*

- a) *professional, vocational or technical training, including the training of police officers; or*
- b) *the promotion of special studies or research; or*
- c) *scientific or technical assistance in the investigation or detection of crime.*

**Entry No.66:** *Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.*

**List-II STATE LIST**

In the State List the following entries are concerned with Education:

**Entry No.12:** *Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those [declared by or under law made by Parliament] to be of national importance.*

**Entry No.14:** *Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.*

**List-III      CONCURRENT LIST**

*Entry No.25 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.*

**The Constitution of Malaysia** provides the following on the subject of Education: <sup>(11)</sup>

In part II, while enumerating the Fundamental Liberties, it has been mentioned at article 12 that:

*"1. Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth---*

*(a). in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees: or*

*(b). in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).*

*"2. Every religious group has the right to establish and maintain institutions for the education of children in its own religion, and there shall be no discrimination on the grounds only of religion in any law relating to such institutions or in the*

*administration of any such law; but it shall be lawful for the Federation or a State to establish or maintain or assist in establishing or maintaining Islamic institutions or provide or assist in providing instruction in the religion of Islam, and incur such expenditure as may be necessary for the purpose."*

In part VI of the Constitution, while defining the relations between the Federation and States, it has been mentioned at Article 94 (1) of chapter 6: "Federal Surveys, advice to States and inspection of State activities", that:

*" The executive authority of the Federation extends to the conduct of research, the provision and maintenance of experimental and demonstration stations, the giving of advice and technical assistance to the Government of any State, and the provision of education, publicity, and demonstration for the inhabitants of any State, in respect of any of the matters with respect to which the Legislation of a State may make laws; and the agricultural and forestry officers of any State shall accept any professional advice given to the Government of that State under this Clause."*

In the Ninth Schedule, Article 181, Part XIV, the subject of Education has been mentioned in the Federal List and the Concurrent List.

**List I                      Federal List**

In the Federal List, the following item is related to Education:

*Item 13: "Education, including-----*

*(a). Elementary, secondary, and university education; vocational and technical education; training of teachers; registration and control of teachers,*

*mangers and schools; promotion of special studies and research; scientific and literary societies;*

*(b). Libraries; museums; ancient and historical monuments and records; archaeological sites and remains."*

**List III                      Concurrent List**

In the Concurrent List the following item relates to Education:

*Item 2: "Scholarships."*

**Conclusions / Recommendations :**

In the last few pages, various articles/provisions related to Education in the Universal Declaration of Human Rights of 1948 and in the Constitution of India, Malaysia and the Nordic countries have been mentioned. A comparison of various provisions having direct or indirect bearing on Education with the constitutional provisions of the different Constitutions of Pakistan, highlights some important areas in which Pakistan's Constitution is deficient.

It is quite evident from Article 26 of the Universal Declaration of Human Rights that much importance has been given to the rights related to Education. The universal importance of Education as a major instrument for economic and social development is clearly evident in the Universal Declaration that every one has a right to Education, and Elementary Education shall be compulsory. The right to Education has been recognized as one of the thirty Basic Human Rights by this Declaration. All the members of the United Nations agree that these rights should be provided to all individuals, irrespective

of race, religion, caste or place of birth. Pakistan, being a member of the United Nations, agrees in principle with this Declaration, but its Constitution does not provide these rights to its own citizens. Similarly, the Constitution of Denmark also recognizes that every one has right to free education in primary schools. In addition, the International Covenant on Economic, Social and Cultural Rights of 1966 has also clearly stated that Primary Education shall be compulsory and available free of charge to all. If the provision of Education has been universally recognized as a **Fundamental Right**, so why can not it be recognized as either a Basic or Fundamental Right for the citizens of Pakistan, also?

As early as 27<sup>th</sup> November, 1947, the Government of Pakistan had organized an Educational Conference at Karachi in which a message was sent by the Quaid-i-Azam. In his message the Quaid stated: <sup>(12)</sup>

*“There is an immediate and urgent need for giving scientific and technical education to our people, in order to build up our future economic life and to see that our people take to science, commerce, trade and particularly well planned industries.*

*“At the same time we have to build up the character of our future generations. We should try, by sound education, to instil into them the highest sense of honour, integrity, responsibility and selfless service to the nation. We have to see that they are fully qualified and equipped to play their part in the various branches of national life in a manner which will do honour to Pakistan”.*

Despite the clarity of the message about the importance of Education, it is regrettable that different Constitutions of Pakistan did not think it important enough to include Education as a Fundamental Right. No doubt, in general terms the importance of Education has been mentioned in the Principles of Policy. Even here, no time-frame has been laid down by which the government has to achieve the desired goals.

Now 54 years after independence, the policy makers should realize that without Education, the commitment which the country has for its people cannot be met. This is an age of international competitiveness, and Education has emerged as the sole determinant, distinguishing nations who have progressed towards Self-reliance and have become independent and sovereign in a real sense, from those who have become dependent. The present constitutional position of Education clearly shows that the importance of Education for national independence and sovereignty has not yet been recognized. It has to be accepted that the main aim of enforcing the Constitution, as envisaged in the Preamble to the 1973 Constitution is: *“that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the world and make their full contribution towards international peace and progress and happiness of humanity.”*

This can only be achieved through the development of Education. Hence, there is a need that Education should become a **FUNDAMENTAL RIGHT** for the citizens of Pakistan.

A comparison of the Constitution of the two countries, Pakistan and India, which 54 years back were governed by the same Government of India Act 1935 and the Indian Independence Act of 1947, also points out various issues in which the Constitution of Pakistan is deficient. Although the provision for free and compulsory primary education has been made under the Principles of Policy in the Constitutions of both India and Pakistan, it is not under the Fundamental Rights. The Indian Constitution lays down a definite time period of 10 years, thereby giving the government of the day a clear goal to be achieved. The Constitution of Pakistan, on the other hand, has not laid down any deadline by which illiteracy could be eliminated and the desired goal be achieved. Similarly, it has been mentioned in article-45 of the Constitution of India that the State shall endeavour to provide Education to children until they complete the age of 14 years. But the Constitution of Pakistan is deficient to the extent that it has not specified any age of children upto which they would be provided Free and Compulsory Education.

Pakistan is a predominantly agricultural country, and will remain dependent on agriculture for a very long time to come. The Government of India Act of 1935 mentions Agriculture Education and Research in the Provincial List. However, none of Pakistan's Constitutions has highlighted Agricultural Education and Research. The Constitution of India mentions Agriculture Education and Research in the State List.

In view of the facts which have been stated above, and a comparison with the provisions of some other constitutions, it is suggested that the following changes in the Constitution of Pakistan may be considered:

- i. The subject of Education should be included as one of the Fundamental Rights, and the State should be enjoined upon to provide facilities for all citizens to receive Education in accordance with their ability.
- ii. Universities should be brought on the Concurrent Legislative List.
- iii. Specific mention should be made in the Concurrent Legislative List of Agriculture Education and Research, considering that agriculture will play a dominant role in the economy for a long time.
- iv. Specific mention should be made in the Concurrent Legislative List of Training of Teachers, besides Standards of Education.

The Constitutional provisions have a direct bearing on the working of the government and various Commissions and Committees set up by it. In many ways this is reflected in the recommendations contained in the different Educational Policies and the proceedings of the Commissions dealt with in the next chapter.

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