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NAVIGATING THE RIGHT TO EDUCATION: STATUTORY MANDATES, JUDICIAL INTERPRETATION AND STRUCTURAL BARRIERS

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This article presents a comprehensive socio-legal analysis of the Right to Education (RTE) in India by examining the constitutional foundations, legislative evolution, and judicial interpretation. It traces the transition of education from Article 45 to Article 21A of the Constitution through the 86th Constitutional Amendment Act 2002, mandated free and compulsory education for children aged 6 to 14 years. This article views about the constitutional framework of RTE with Judicial pronouncements such as *Pramati*, *Mohini Jain*, *Unni Krishnan* and subsequent cases on defining the scope of right to education and regulations to minority institutions. This article focuses on the key provisions of the Right to Education Act 2009 that emphasized their need on providing free education to underprivileged children, and commissions like Radhakrishnan, Mudaliar, Kothari, and Ramamurti committees, and central schemes such as Five year plan, ICDS, DPEP, SSA in shaping national educational policy. The analysis also highlighted persistent challenges with regard to infrastructure, quality of teaching, governance disparities, financial constraints and continuous exclusion of children below 6 years of age, underscoring the complexities involved in realising the constitutional promise of universal and equitable education.

Keywords: Education, Constitution, Right to education, 6 - 14 years

CONSTITUTIONAL FRAMEWORK OF THE RIGHT TO EDUCATION

A. Education and Equality

Article 14 ensures “Equality before law and Equal protection before law” to all people regardless of their citizenship. Education is the fundamental element being used in this provision to get a direct access to education without any discrimination. This Article ensures legal and substantive equality on accessing education.

Education is one of the components in Article 14 where no student can be denied admission or be treated unequally based on their protected attributes. This is especially important for marginalised groups to get an equal opportunity in the spectrum of

education.

The core principles of this aspect are:

1. The state cannot discriminate arbitrarily in providing access to education; policies and admission procedures must treat all individuals equally.
2. Article 14 has been judicially interpreted to mean that any classification (such as quotas or reservations in education) must be reasonable and non-arbitrary, promoting genuine educational equality.

Article 14 is applicable to all institutions irrespective of the status, compels them to admit students on merit, subjected to permissible reservation, wherein merit inter se has to be followed.

This is applicable to state institutions where it “cannot be excluded from the supplemental effort/activity.” The implication of this statement is that even private institutions are required to admit students on merit alone. The policy of admissions should not be based on money considerations but on merit. Meritorious but poor students ought not to be excluded by unmeritorious but rich students. Merit should be a consideration for admission in private college.¹

Article 14 is not absolute in nature and it is a general provision in which education is one of the factors. The 86th Amendment 2002 has brought Article 21-A ie: Free and Compulsory education from 6 to 14 years of age; made completely as a fundamental right and given its legal backing. And through this, they have even added as the eleventh duty in Fundamental duties under Article 51A of constitution.

In the case of *Society for Unaided private school of Rajasthan v. Union of India (2012)*², contested the validity of Section 12 of Right to Education Act which mandated that all schools irrespective of the institutions (private or public) must admit a minimum of twenty five percent of the student body from disadvantaged groups. The court held that the Act is “child centric and not institutional centric” and they reaffirmed the need of Article 21-A, based on children's education being the paramount interest and the burden on private schools was immaterial.

¹ M.P. Jain, INDIAN CONSTITUTIONAL LAW (8th edition. Lexis Nexis 2018)

² (2012)6 SCC 1, AIR 2012 SC 3445

B. Article 15: Non discrimination, Reservation and Education

This Article focuses upon the prohibition of discrimination by the state on grounds of religion, race, caste, sex and place of birth and there are special provisions pertaining to education.

- Article 15(1): prohibits discrimination in general, including access to education.
- Article 15(4): state to take advancement of backward classes and SC/ST in education.
- Article 15(5): extends reservation rights to private educational institutions, except minority institutions under Article 30(1).
- Article 15(6): extends ten percent reservation rights to the Economic Weaker Section in all institutions including private.³

The inclusion of backward classes, ST/SC, EWS in this provision identifies the upliftment of them on getting educational opportunities; in this several amendments played a pivotal role on balancing the different interests on the ambit of education:

- 1st Amendment (1951): includes special provision on advancement of SEBC and ST/SC. ie: Article 15(4)
- 93rd Amendment (2005): extended the reservation rights on education towards all educational institutions which includes private institutions aided by the state, for socially and educationally backward classes and SC/ST. ie: Article 15(5)
- 103rd Amendment (2019): added a new provision on inclusion of the Economically Weaker Section in government reservation and employment beyond the pre-existed reservation.

Reservation in educational institutions are mainly used in admission purposes where questions raised on three predominant provisions hampers the core principle of Article 15. The long reservation is not infringing the right to non-discrimination as the classes are identified on the basis of rational, relevant and intelligible differentia, and the nexus between the differentia and object should be achieved.⁴ On the purview of private institutions, the distinction between aided and unaided institutions are immaterial under Article 15(4), other than minority institutions under Article 30(1).⁵ This Article confers

³ Janhit Abhiyan v. Union of India (2022) SCC Online SC 1540.

⁴ State of Madhya Pradesh v Nivedita Jain, AIR 1981 SC 2045: (1981) 4 SCC 296.

⁵ Pramati Educational and Cultural Trust and Ors vs Union of India and Ors 2014 (8) SCC 1

admission of a person should be based on merit basis and reservation must be reasonable and must not be arbitrarily in nature.⁶ The state ensures there must be a balance between meritorious and reserved students, and it is against public interest to lower the mark of reserved category as it will dilute the education standards.⁷

C. Article 19(1)(a) and Literacy

Article 19(1)(a) gives a wider interpretation on the regards of freedom of speech and expression, in which education has a part of this indirectly. Freedom of speech and expression has been considered as an individual and democratic development.

Information is a part of education on which every individual is entitled to impart or to receive knowledge that is required for his growth. Though in Article 19(1)(a), the concept of education has not been mentioned explicitly, yet the courts recognised freedom of speech and expression on a broader limelight where education is being a part. Education is not just a mere process of learning, but also develops the idea of individual conscience, freedom of thought and expression under this Article.⁸

The information we learn shouldn't be restricted on any grounds and must provide an intellectual autonomy to all regardless of difference. Institutions have the right to share and access knowledge freely to all, on the motto of providing fundamental and meaningful education.⁹ As like Article 19(1)(a), Article 19(1)(g) has given the privilege for establishing their own educational institutions with their own set of rules and regulations subjected to reasonable restrictions. Article 19(1)(g) has given the autonomy to establish and administer their educational institutions subject to state restrictions under Article 19(6) on the account of ensuring social justice.¹⁰

D. Right to life and education

Article 21 guarantees Right to life and liberty to every individual and education is one of the extended views of Article 21. The concept of life and liberty has been widened

⁶ Dr. Pradeep Jain v Union of India, AIR 1984 SC 1420.

⁷ Dr. Preeti Srivastava and Anr vs. The State of Madhya Pradesh and Ors (1999)3UPLBEC2179

⁸ Bijoe Emmanuel v State of Kerala (1986) 3 SCC 615.

⁹ Romesh Thappar v State of Madras 1950 AIR 124.

¹⁰ Modern Dental College and Research Centre and Ors vs. State Of Madhya Pradesh and Ors, (2012) 5 SCC 509.

by the case of *Maneka Gandhi v Union of India*¹¹, it is held by the Supreme Court that the Article 14, 19 and 21 are not mutually exclusive, but the trinity of the constitution. Post adjudication of the Maneka Gandhi case, the term “Personal Liberty” is widely amplified and involves various rights with regard to individuals. The right to education was an implicit right before the introduction of Article 21-A, as education is the essential component of right to life and liberty and practices like capitation fees which are excess beyond the requirement margin are infringing the right of an individual on accessing education.¹²

The main motto of having this as a fundamental right is to balance the welfare policies and punitive measures that includes financial assistance to destituted families.¹³ It was not concerned with Article 21, but also:

- Article 24: Prohibition of child labour in hazardous industries.
- Article 39(e) and (f) of Directive Principles of State Policy deals with children's health and rights.
- Article 41: right to work, public assistance and education.
- Article 45: duty to provide free and compulsory education.
- Article 47: duty to improve public health; on the aim of safeguarding children from exploitative environments and ensure that they can access their right to education and development.

Therefore contribution of various case precedents evolves right to education as a separate fundamental right rather than narrowing down from Article 21 through judicial interpretations. The State felt the requirement of having a legal backup on preserving the rights of education for children mostly from the marginalised community, that began to be the evolution of Article 21-A, Right to free and compulsory education for children aged 6 to 14 years.

E. Article 21 A - Free and compulsory education

The 86th Constitutional Amendment Act 2002 grants free and compulsory education for children aged 6 to 14 years and makes education as a fundamental right. And this compulsion has become an amendment in Article 51A, Fundamental Duties by adding

¹¹ AIR 1978 SC 597

¹² Mohini Jain v State of Karnataka 1992 AIR 1858.

¹³ M. C. Mehta v State of Tamil Nadu AIR 1997 SUPREME COURT 699

clause (k). It has also ensured to get amended in Article 45 of Directive Principle of State Policy denoting that the State has endeavored to provide early childhood care and education for all children regardless of their status.

This provision has been evolved post *Unnikrishnan case*¹⁴ and various cases affirmed the need of separate provision on safeguarding the right to education as within the ambit of Fundamental Rights. It is the obligation of the state to ensure the children can access education according to the Preamble.¹⁵

The obvious neglect of right to education in the *Unni krishnan case* on the accord of Article 45 emphasized the need for the right of education as a primary consideration, as the right to education was more inclined to Directive Principles of State Policy than the fundamental rights itself.

To know the further of the provision, it is important to dwell on the aftermath of Unni Krishnan case;

1. Post Unni Krishnan case

This case gave a limelight on the need of approaching the court through the writ of Mandamus on the case of deprivation of child on accessing education, to initiate an appropriate action. This has become the inception point where people from NGOs started rallies and pushed legislative and executive on strategising a serious action on primary education. Thus this momentum brought the formation of National Alliance for the Fundamental Rights to Education (NAFRE), consisting of nearly 2400 grassroot NGOs from fifteen states across India, where such a union has similar interest on different subjects. For example, some NGOs focused on child labour abolition, some focused on anti-slavery and while some focussed on child servitude; at the end they met the same goal in disguise, the right to education. Groups such as

- South Asian Coalition on Child Servitude
- Campaign against child labour

realised their pertinence and lent hand to NAFRE for further development. So by

¹⁴ Unni Krishnan J. P. v State of Andhra Pradesh and Ors 1993 AIR 2178.

¹⁵ The Right Of Children to Free and Compulsory Education Act 2009.

1997, 83rd Constitution Amendment Bill has been introduced that focuses on the right to education as a fundamental right. However after some changes, it was reintroduced by the National Democratic Alliance on the virtue of 93rd Constitutional Amendment Bill 2001.¹⁶

2. From the provision of 93rd Constitutional Amendment Bill 2001 to the 86th Constitutional Amendment Act 2002: an evolution to reaction

The Constitutional (93rd Amendment) Bill proposed three separate amendments to the constitution on the regards of rights to education:

- The insertion of Article 21-A.
- The amendment of Article 45.
- Insertion of clause (k) on Article 51 A.

However this proposal faced a numerous criticism from all the spheres such as NGOs, social activists, even government bodies such as National Commission to Review the Working of the Constitution (NCRWC) too snided this proposal as the proposal the core aspect of Article 45 of the constitution.

Four criticism were put upon the table on regard of proposal:

1. Limitation of age mentioned in the bill sparked the core criticism as children at the tender age of 3 to 6 years are excluded from the ambit of the proposal. It is widely recognised the period of age of 3 to 6 years is crucial for cognitive development of the child and there are higher chances of exploiting children below the age of six.
2. The bill failed to allocate adequate funds for the implementation of constitutional right to education. A round estimation by Tapas Majumdar Committee showed rs. 14000 crores and nearly a decade would be required to implement right to education in a full- fledged manner. The critics argued that the amount would be less than half of the proposed amount and they didn't guarantee the actual provision of resources for implementation purposes.¹⁷
3. The bill on the attempt of amending article 51 A and imposed obligation on parents for the children between 6 to 14 years of age, here some critics

¹⁶ Vijayashri Sripati & Arun K. Thiruvengadam, Constitutional Amendment making the right to education a fundamental right, in *Developments*.

¹⁷ Anil Sadgopal, A Convenient Consensus: The Political Economy of the Constitution (93rd Amendment) Bill, *Frontline*, Dec 22, 2001 - Jan 4, 2002.

contended that devolving the obligation to parents who have their reason of survival and carrying their household burden. Meanwhile others felt that it wouldn't be a good option of giving the obligation on parents, apparently this would be the way of escaping from the liability.

4. The proposed bill failed to address the terms like “free” and “compulsory” and crucial issues on quality of education were not addressed.¹⁸

Despite the criticism mentioned above, they have brought the bill of 93rd amendment to consideration by Lok Sabha unanimously on 28th November 2001, then Rajya Sabha already noted this on 14th May 2002 and assented by the President in December 2002, when it formally became the Constitution 86th Amendment 2002.¹⁹

F. Directive Principles State Policy and rights to education

Directive Principles provide non-justifiable guidelines to state on creating policies that aim for social, economic and political welfare, and promoting welfare in which education is one among them. DPSP aims for equal distribution and encouraging progressive legislation, but violation of DPSP is not legally punishable.

Article 41 directs the state within their economic capacity and development on securing right to work, education and public assistance in the cases of

- Unemployment
- Old age
- Sickness and disability.

Article 45 played a prominent role in education before the advent of 86th Amendment Act 2002, providing the access of education to the children from the age of 6 to 14 years. After amendment, this provision has been amended to focus on early childcare for children below the age of 6 and ensures to have good childhood on the aspect of their cognitive development.

Article 46 emphasized on promotion of educational and economic interest of weaker sections and protecting them against social injustice.

¹⁸ Ibid 15 page no 155 and 156.

¹⁹ Ibid 15 page no 156.

These provisions helped in framing the state's educational obligations and social welfare that shaped educational rights in India.

THE RIGHT TO EDUCATION ACT, 2009

A. History of Right To Education Act:

Education has been a core element since a long time, from the time of gurukuls. India is the land of intellects and scholars where education was very rich, interesting and organised. Almost 5000 years have passed, still education plays a pivotal role in not only developing the cognitive skill of an individual but the development of public interest.

Post independence, the Directive Principles of State Policy, Article 45 directs the state to provide free and compulsory education to the children below the age of 14 years. However this Article remained dormant over a decade.

During the emergency in 1975, education was included in the concurrent list as a joint responsibility of state and central government and was inserted in 42nd Amendment Act. It was treated as directive policy rather than the fundamental rights.²⁰

Right to education became a fundamental right through 86th Amendment Act 2002 by making education compulsory for a specific age group of 6 to 14 years. The CABE committee ie: Central Authority Board of Education, played a prominent role in formulating Right of children to free and compulsory education Act, 2009 (RTE Act). This committee was involved in drafting the bill and proceeded with recommendations on the regard to provision and implementation of the Act.²¹ After 6 years of investigation and drafting, this act came into effect in the whole of India, which also included Jammu and Kashmir by 31 October 2019.

In the case of *Vishwas Kumar and Another v State of Uttarakhand and Others*²², the pertinence of Right To Education Act was been showcased in the following words by

²⁰ Suresh Chandra Pandey, Right to Education Act 2009: Universaling Elementary Education, Uttarakhand Judicial and Legal Review.

²¹ Ibid 19 page no 128

²² In the High Court of Uttarakhand at Nainthal, Writ Petition No, 1246(Ss) of 2011, decided on 20.09.2011.

J. Sudhanshu Dhulia, J:

“This is so because now under Article 21A of the constitution and the right to Education Act, it is not just a fundamental right of children to get elementary education but this right has now become a meaningful right for various reasons and more particularly because children will be imparted elementary education by qualified and trained teachers.”

B. Committees that associated with the implementation of RTE

1. Radhakrishnan Commission (December 1948- August 1949)²³

The first educational commission of India, where reform and reconstruction of education took place. This will be also called as University Education Commission and it was presided over by Dr. S. Radhakrishnan. The commission was appointed by the Government of India to assess university education and suggest reforms to suit contemporary and future requirements. The commission urges stronger links between schools, colleges and universities, and improved administration, finance and curriculum standards.

1.1. Major recommendations for schools on the committee

- Ensuring proper education of 12 years in schools was required for higher education and students must be 18 years of age to attend the colleges and universities.
- Introducing comprehensive courses in general education; so students can have subtle balance between specialization and the general course they inculcated.
- Mandates secondary education and universities to begin preparing syllabus and reading materials for general education and undertake studies to develop effective curricula for the courses.
- Encouragement and establishment of intermediate colleges to serve as better bridges between schools and universities, staffed by teachers with extensive school experience and focused on students' development beyond academics.
- Institutionalising objective assessment methods (such as achievement, and intelligence tests) for school-leaving exams and university entrance to ensure only adequately prepared students gain admission.

²³ University Education Commission, Report of the University Education Commission, December 1948- August 1949, Vol I, Ministry of Education, Government of India, 1962.

2. Mudaliar Commission (1952-1953)²⁴

The Secondary Education commission also called as Mudaliar commission appointed by the Government of India in the terms of resolution of bringing changes and amelioration of current education. This committee has been presided by Dr. A. Lakshmanswami Mudialar, the Vice Chancellor of Madras. He insisted on the importance of secondary education in every student's life. It is not merely a preparatory stage but moving to the next part of their lives with useful vocation and this commission focused on the age group of 11 - 17 years.

2.1. Major recommendations

- Secondary education should be treated as a complete standalone unit of education lasting seven years and prepares students for life responsibilities and vocations.
- The main aim of secondary education should focus on national integration, developing vocational skills, leadership skills and fostering human virtues.
- The curriculum should be diversified with a core common curriculum and options for specialization in streams such as humanities, science, agriculture, fine arts, industrial, commercial and home science subjects.
- Language instruction should include the mother tongue or state language, the national language, and a foreign language.
- Textbook selection should be based on merit by a high powered committee, ensuring stability and quality.
- Character formation and health education should be integral, with medical checkups twice a year.
- The school year should run for a minimum 200 days with reasonable holidays and a peaceful, well- equipped learning environment. The class size should be limited to 40 students and must have good infrastructure and facilities that are required to be accessible to students.

3. The Kothari Commission (1964- 1966)

The commission was set up by the Government of India on 14th July 1964 under the chairmanship of Daulat Singh Kothari, chairman of University Grants Commission. This commission aimed at examining all aspects of educational

²⁴ Report of the Secondary Education Commission [Mudaliar Commission], Ministry of Education, Government of India 1952- 53.

sectors across the country. The general pattern of education has been notified with the evolution of primary education. The recommendation of the commission covers almost all stages and aspects of education.²⁵

The commission submitted the comprehensive report on June 29, 1966. The report became the foundation for India's first National Policy on Education in 1968. The report covered topics that included increasing productivity through education, promoting social and national integration, modernisation, fostering social, moral and spiritual values through education. It also recommended free and compulsory education of children aged 6 - 14 years, gave importance to science and mathematics education, and focused on improving teacher conditions and educational equality.

3.1. Major Recommendations²⁶

- Free and compulsory education for all children up to the age of 14 years, expansion of school infrastructure, and removal of disparities based on gender, location and social background.
- Enhanced teacher competence through training and development program that promotes critical thinking and creativity, encourages research and development, and adopting modern teaching methods.
- Education has been reorganised into a 10+2+3 pattern (10 years of schooling, 2 years intermediate and 3 years of degree), a common core curriculum initially followed by specialization, and promoting flexibility and interdisciplinary education.
- Integrating vocational education in secondary and higher education, establishment of vocational schools, and recognising various skills along with academic education.
- Encouraging multilingualism, preserving the roots of Indian regional language while ensuring proficiency in Hindi and English, and integrating technology into curricula.
- Inclusion of local communities and stakeholders in educational planning and administration.²⁷

²⁵ Dr. Goutam Patra, Kothari Commission Report on Indian Education: A critical review.

²⁶ Kothari Commission Report on Indian Education, Government of India, Ministry of Education (1966)

²⁷ Prof. D. Parimala, Indian Educational Policy from Kothari Commission 1964-66 to New Education Policy 2020 in the light of Higher Education, 10 Journal Emerging Technologies and Innovative Research. 366 (September 2023)

4. Acharya Ramamurti commission (1986-1990)

This commission emphasized on the implementation and impact of National Policy of Education (NPE), 1986 and it was headed by Acharya Ramamurti. The focal point of the report was on deprivation of education in India despite developmental efforts. It was noted that India was having the larger share of illiterate persons. This report highlighted the critical failures of existing systems and centralisation that stifles local initiative. The educational system was beneficial to upper and middle classes, often producing graduates alienated from their communities and lacking productive skills.

4.1. Major Recommendation

- Advocating decentralisation of educational planning and greater involvement of local communities and Panchayat Raj institutions.
- Promoting a common school system to reduce division between elite and underprivileged schools.
- Focusing on education as a tool for equity, social justice, and empowerment of marginalised groups included women, scheduled caste, tribes and handicapped sections.
- Stressing the importance of education and reforms in the examination system to make education relevant to life and work.
- Calling for quality education that improves teachers and students and resource mobilisation. They encourage participatory education involving students, teachers and community members.²⁸

C. Salient Features of the Act 2009

- Envisages quality and compulsory education to every child in the age group of 6-14 years in neighbourhood schools till the completion of elementary education.
- The Act ensures the non admitted children to get admitted in the class at par of their age bar. (section 4)
- No child is liable to pay any kind of fee or charge or expenses which may prevent the child from pursuing and completing elementary education. (section 3(2))

²⁸ Report of the Committee for Review of National Policy on Education 1986, (the Ramamurti Committee Report, final report dated 26th December 1990)

- Actions on the part of the government and local authorities to establish a school within the limits of the neighbourhood, within the period of three years from the date of the commencement of this Act. (section 6)
- With a view to prepare children above the age of three years of elementary education and provide early childhood education and care for all children until they complete the age of 6 years.
- Calls for a fixed pupil teacher ratio per class. (section 25)
- The age of the student must be proved by the birth certificate issued according to the provisions of Births, Death and Marriage Registration Act 1886 or any other document that has been prescribed. (section 14) No child shall be denied admission due to lack of documentation on age basis.
- No children will be denied to get admitted at the commencement of the academic year or at any time or at any grounds.
- Financial burden will be shared between the states and the centre. (section 7)
- A child who completes elementary education shall be awarded a certificate
- Provides for 25 percent reservation for economically disadvantaged communities in admission to class one in all private schools. (section 12)
- School teachers will need an adequately professional degree within five years or else will lose their job.²⁹

D. Validity of 25 percentage reservation for Economically Weaker Section (EWS)

Section 12 of RTE, one of the key provisions, that mandates 25 percent reservation in unaided schools for children from economically disadvantaged and weaker sections. The schooling acts as a means of social cohesiveness and inclusiveness. Inequalities and disparate schooling reinforces the existing social and economic hierarchies.³⁰

For children of socio-economically weaker background to feel private schools as their home and required a mass proportion in the class they join. This reservation is only applicable to the students of first grade, and such reserved students must not have a segregated classes or afternoon classes to ensure equality among children. The main focus of this idea was to blend with the children who pay fees. The fact that 25 percent felt reasonable through the reference of the Tendulkar Committee that measured

²⁹ Ibid 19 page no. 129.

³⁰ Ibid 19 page no. 130.

poverty showed that Below Poverty Line was 37 percent, therefore it showed the deprivation of their basic needs and their suffering to attain education. The need of this reservation would enhance the communities to achieve greater heights in their lives. However there are also negative effects of this reservation purpose, lower count of students would create alienation and this may hamper the core purpose of this Act. It is also needed to be noted that section 12(1)(a) of RTE Act is not unconstitutional that prevents the right of private schools on the ambit of Article 19(1)(g), and will be violative on the cases of private minority schools.³¹

E. Current status of implementation of RTE Act 2009³²

- On the access of education and enrolment, almost universal access to primary schools in rural areas. There are still gaps in tribal areas and remote habitation of students who are living 5km or above.
- A small proportion of schools comply with RTE norms related to Pupil- Teacher ratios, infrastructure, trained teachers, and classroom resources. State level compliances vary significantly and many schools are still under- resourced.
- Inadequate funding, delayed reimbursements to private schools, and administrative bottlenecks hinder smooth RTE implementation. Teacher shortages have been witnessed, especially in remote and rural areas, leading to multi-grade teachers which impacts quality.
- The RTE Act does not cover children below six years of age that impacts heavily on early education. Minority and unaided private schools are exempted from its key provisions, raising concerns about universal coverage and the rights of children in these institutions.
- Recent focus of Supreme Court on reconsidering its previous position based on Pramati Educational and Cultural trust case (2014) and showing the evolving jurisprudence which addresses the gaps in universities.

F. Legal Challenges

- Reservation of 25 percent of seats for children with underprivileged backgrounds became a psychological insecurity to the students as the differences in behavioral

³¹ Society for Unaided private school of Rajasthan V Union of India (2012)

³² Council for Social Development, Implementation of the Right of Children to Free and compulsory Education Act, 2009: Where Do We Stand? Status Report 2024 15 (2024)

traits gives problems with students from privileged backgrounds that will impact the environment of the students. And this mandated reservation of 25 percent must be more effective to other people, as people from marginalized communities are not well aware of this facts being implemented in private and unaided schools.

- Despite the RTE Act focussed on the free and compulsory education on the age of 6 to 14 years of age, several schools receives capitation fees and interviewing parents to know their capability of all aspects such as educational qualification, income, pan card details and others with regard to the capacity to pay and educate their ward. This hampers the core principle of the Act.³³
- A large number of private schools came into the arena and provided a better outcome on the educational aspect. Parents want their students to study in private schools and send them to low fee private schools. However many schools were being closed as those schools did not follow the protocols pertaining teacher's salary and infrastructure from 1st April 2013. The approach is based on transparency and disclosure of audited performance metrics as opposed to inputs.³⁴
- The formal system of education denies space to children and teachers to engage in subjective experiences and life as it plays out for the students. Standardisation dominates the schooling system and leads to the fragmentation of learner's lives as there are gaps in the books and children's lives. The school textbooks are out of sync with the reality a child lives in. The clash between these two worlds produces dissonance and lack the education on understanding and application, rather they mug up and get marks to survive.
- The child labour was became the focus, so it became one of the reasons for the implementation of this Act. However this act failed to focus on the children at the age of 6 and below the age. The social reality is that these vulnerable sets are being targeted to get into jobs. Hence the act becomes insufficient and ambiguous on the age and avoids the children in actual need.
- No or less focus on education from the Ministry of Human Resources, though they ask for a better quality of education, but the effort was otherwise. Educational systems remain varied across the country based both on qualitative and quantitative terms. The difference in educational system not only hampers the quality of education among children but also the socio-economic development.

³³ Ibid 29 page no. 44

³⁴ Ibid 20 page 139 and 140.

- “The No fail policy” in elementary education became mandatory among schools across the country. Despite the goal being different, it benefits the underprivileged students and couldn't evaluate students till 8th grade. So this may make students not focus on education much, so this so called lethargy may deviate students from the core purpose. For instance, students will be motivated to study through proper evaluation but they get passed in all papers without required efforts, children may set this as a wrong epitome and focus on their errands rather than studying. Hence, this policy may fail to provide quality education.
- The implementation of this Act is polar apart from the results they required, the drop-out became high alarmingly as due to various factors such as non-awareness of this programme, lagged Pupil- Teacher ratio, failed infrastructure. And it is required to address the living conditions of children who lost their sole bread winner as it concerned about the survival.
- The need for efficient teachers to take classes for students as it is witnessed that teachers are not well qualified to take classes and there is a lack of resourceful teachers to lead students in the right way. Nearly 12 lakh teachers will be needed to get recruited and trained on matching their Pupil- teacher ratio, and more resourceful faculties helps to develop not only their cognitive skills but also socio-economic development.
- At present, to maintain the quantitative terms to show their achievement, but the qualitative part of education has failed to notice much. The educational outcome and schooling process has been inadequately noticed.

JUDICIAL CONTRIBUTION TO EDUCATIONAL RIGHTS

A. Landmark judgments

In the case of *Mohini Jain v. State of Karnataka*³⁵ became the cornerstone of bringing education under the ambit of Fundamental Rights. The college demanded an exorbitant amount as capitation to the petitioner and refused to admit her due to the incapacity to pay off the fee they demanded. The Supreme Court held that the right to education is an integral part of Article 21 of the constitution. It declared that charging hefty amount to an individual is a violation of Article 21. And they emphasized that the private institutions act as an agents of state in providing education and must not discriminate

³⁵ 1992 AIR 1858.

based on financial status and capacity to pay fees. This judgement also paved the way for 86th Amendment Act 2002, which explicitly inserted free and compulsory education for children through Article 21A.

In the case of *Unni Krishnan J.P. v State of Andhra Pradesh*³⁶, further clarified the scope of the constitution, where it challenged state laws regulating capitation fees and admission norms. This case addressed the relationship between fundamental rights and Directive Principles of State Policy, and questioned the need of education being a fundamental right under Article 21 beyond basic education, mainly for professional courses. The Supreme Court held that the right to education is an implicit right of fundamental right when read with Directive Principles. However the right to education for a professional education is not a fundamental right enforceable under Article 21. Economic resources and development plans are required to be added, as the state will take them on the consideration of DPSP. The court emphasized on realizing the right to education with available resources and has reasonable restrictions of private institutions on avoiding exploitation that included capping fees and admission. This case recognised the requirement of balance between fundamental rights on elementary education but limited the scope for higher education. This case gave salience state regulation over private institutions on ensuring fair and just on admission procedure and fee structure.

In the case of *Bapuji Educational Association v. State*³⁷ addresses the validity of capitation fees in educational institutions and their scope in the constitution. In this case, the petitioner challenged the constitutional validity of Karnataka Educational Institution (Prohibition of Capitation Fee) Act 1984 that regulates and restricts the collection of capitation fees by private unaided colleges. The court held that it is the right of the private institutions to establish and manage educational institutions under Article 19(1)(g). It is said reasonable restriction can be imposed on the educational institution in the regards of arbitrary and biased. The court upheld the capitation should not undermine equality among other students. Though this precedent will not cover the ambit of RTE Act, yet cases like *Mohini Jain* and *J.P.Unnikrishnan* played a pivotal role in deciding the factors of restricting capitation fees on educational institutions. The

³⁶ 1993 AIR 2178.

³⁷ AIR 1996 Karnataka 119.

principles of RTE Act are aligned with this case. As a conclusion, this case supports the regulation of the RTE Act but not the Act per se.

In *Pramati Educational and Cultural Trust v Union of India*³⁸, addresses the constitutionality of Article 15(5) and Article 21A as it focused on the upliftment of Socially and Economically Backward caste through reservation in private unaided schools. The petitioners challenged them on the grounds of violation of Article 19(1)(g) of constitution and also the provision of RTE being applicable to unaided educational institutions and minority institutions. The Supreme Court held that both Article 15(5) and 21A are constitutionally valid on the grounds of reservation as the main motto of these provisions to reserve and uplift the backward communities and provide privileges to underprivileged students. They did not violate Article 19(1)(g) as they have the obligation to be an agent for developing the underprivileged communities and private unaided and minority institutions will be exempted from this Act when they are on the ambit of Article 30.

In *Master Jai Kumar v. Aadharshila Vidya Peeth*³⁹ The petitioner belonging to the EWS category was selected for admission to class I through draw of lots in the private school of respondent. The petitioner was denied admission despite having done all necessary procedures, so the petitioner seeks remedy through Mandamus on the account of Article 14 and 21A of constitution, on complaining about the violation of Fundamental Rights. The court held that the petitioner was eligible to get admitted on the basis of merit and category that is confirmed by the Directorate of Education. The denial after fulfilling all the procedures is a gross violation of fundamental rights under Article 14, 15(6) and 21A of the constitution. Miscommunication between DoE and school cannot let the child deny his admission. And the child will be eligible for 25% reservation under section 12 of RTE Act. The student cannot be retracted once he has been allotted through draw of lots.

In the case of *Anjuman Ishaat-e-Taleem Trust v. State of Maharashtra*⁴⁰, questions the requirement of TET examination for minority institutions, but Madras High Court

³⁸ (2014) 8 SCC 1.

³⁹ W.P.C 11229/2024, CM Appl. 46481/2024, High Court of Delhi.

⁴⁰ Civil Appeal No. 1385 of 2025; 2025 INSC 1063.

emphasized exemptions of minority institutions under Article 30 of the constitution. However the Bombay High Court held the examination is required for teachers' promotion. The court highlighted the tension between fundamental rights on right to education and Minority rights questioning whether the full exception is plausible or not. Now the court expressed the doubts on going with *Pramati Educational and Cultural Trust case* and now suggesting reconsideration of this judgment. Hence the court directs all schools to follow the provisions of RTE Act other than the minority institutions.

B. Challenges of judicial remedies.

- There is a huge gap between the interpretation part and implementation of those judgments in real life as the ground level implementation is weak and further reasons such as; quality standard, fee regulation and enforcement of admission are inconsistent.
- Judicial processes are slow and delays can be witnessed on the admission or other things related to exams. Thus such pendency reduces the belief towards the court system by parents on the expectation of receiving justice.
- Still the minority institutions and private unaided institutions are not well-structured due to the complications on minority rights. Balancing them became a complex structure which has been witnessed in the aforementioned case laws.
- Broader barriers such as poverty, social discrimination, and awareness gaps cannot be addressed that easily, despite the judiciary playing an important role in providing just and fair.

EDUCATIONAL GOVERNANCE AND INSTITUTIONAL CHALLENGES

Central government's role

The central government drives the formulation of national education policy frameworks. It provides funding, sets regulatory norms and standards and coordinates with International development agendas. Policy frameworks from the centre are implemented through schemes and facilitate decentralisation, pushing responsibilities down to state and local levels. Central policies like the RTE Act legally recognise a child's right to free and compulsory education.

A. Five Year Plan

- 1. Fifth Five year plan** came to be aware that not all states are eligible to look into the goals of Universal Primary Education, as only fourteen percent of the population was literate and only one child out of three had been enrolled in primary education.
- 2. Sixth five year plan** proposed a special attention to educationally backward states and socially disadvantaged groups. It suggested changes in school hours which were more suitable to local conditions and proposed a non-formal system of learning. The specific objectives of retaining as children in school and they introduced schemes such as midday meals, supply of uniform and learning materials, and compensation to the families of Scheduled Caste and Scheduled Tribe girls. The plan also made provision regarding educationally backward to increase their enrolment and retention of girl children in school. Balwadi creches are been implemented to preserve the girl child to balance her education and sibling care duties. The requirement of strengthening education on science stream to girl children. The review of the sixth five year plan showcased the need for improvement of quality of education, relevance and effectiveness of elementary education.
- 3. Seventh five year plan** robust the existing schemes and facilities and programs such as “operation black board” and other programs with regard to teachers education were launched to improve the school facilities and revised non-formal education. In 1986, this planning commission revised National Policy on Education and several proposals were taken into consideration. This plan gave the highest priority on solving the problem of children drop-out and would adopt grassroot levels all over the country to ensure children’s retention. It was proposed that children who attained the age of eleven by 1990 would have equivalent learning of a nonformal stream of education. Then independent India, the government had prepared a “ Programme for Action” in 1986 that covered all 24 subjects for the implementation of NPE, even open school and universities and given the main focus on women’s education. This resulted in the Mahila Samakhya Project, and this programme gave importance to the process rather than the outcome.
- 4. Eighth five year plan** decentralised approach in educational planning and management at all levels of Panchayat Raj institutions to a larger - scale participation of voluntary agencies. It encouraged the development of complementary programmes such as Open Learning Systems that catered that

emphasised the need of girl education, women from SC/ST. The plan proposed to set up district boards of education treating as planning and management of education at the district level, the planning and management through village education committees and involvement of NGO students and university teachers in a significant manner. The main motto of this planning commission is to bring schools within one kilometre from his or her home. Voluntary agencies, factories and societies are encouraged to set up primary schools for students who are migrants, nomadic tribes, inhabitants of hill areas, desert areas and poor from the urban areas.

5. **Ninth Five year plan** focused on the elimination of gender discrimination in admission and gender bias and stereotypes in syllabi and text books. Apart from strengthening other facilities and incentives, it also promoted gender sensitisation of teachers. Women's education has been taken into prime consideration and the problem of gender discrimination has been examined by a number of committees since India's independence.
6. At the end, all the five year planning commission gave a special attention to women on education, health and welfare.⁴¹

B. Schemes implemented by Central Government

1. Integrated Child Development Services (ICDS)

A flagship welfare scheme launched in 1975, ICDS provides early childhood care, preschool education, health check-ups and nutrition for children under six and their mothers, aiming for holistic child development and better education readiness. ICDS stated that mothers and children are the passive beneficiaries of a range of services.

2. District Primary Education Programme (DPEP)

It started in 1994, in which they promoted decentralized planning to improve primary education, encouraged community and parental involvement through local committees, and targeted disadvantaged children to increase their primary education and their retention. This has been run through the Ministry of Human Resources and Development and it was a national level umbrella that channelised all international agencies of education. This established a School Monitoring

⁴¹ C. Rajkumar, International Human Rights Perspectives on the Fundamental Right to Education- Integration of Human Rights and Human Development in the Indian Constitution, 12, Tulane Journal of Int'l & Comp. Law.

Committee to participate in school planning by parents, teachers and community body to monitor. They offer supervisory roles such as midday meal scheme, enrolment and attendance of children.⁴²

3. Sarva Shiksha Abhiyan (SSA)

It was launched in 2001, it focuses on universalising elementary education. It also focuses on micro-planning, local participation, improving enrolment and retention and enhancing the quality of elementary schools.

4. Janani Suraksha Yojana (JSY)

It was initiated in 2005 as a health scheme, JSY incentivizes institutional birth to reduce maternal and infant mortality. By improving maternal health, indirectly supports better educational and developmental outcomes for children.

State Government on Education

- Governs the actual delivery of education service including running schools, appointing teachers, managing school administration, and ensures enrolment.
- They mobilize local resources and encourage participation of village level institutions.
- They balance between fulfilling national mandates and addressing localised socio-economic and cultural challenges that shape access to education.
- The decentralization initiative gives state and local self governments significant authority, but also leads to variability in governance quality and outcomes across regions.
- They must manage complex tensions with limited resources and bureaucratic constraints.
- Parents and families are framed in state policies as moral agents and partners in education governance.

Institutional Challenges

- While policies promote parental involvement through local bodies like SMC, parents especially from marginalised communities often have limited decision-making power and lack the resources or information to meaningfully influence school governance.
- Decentralization and marketization have led to uneven access to quality education. This is evidenced by disparities in infrastructure, teacher availability and educational

⁴² R. Maithereyi & Arathi Sriprakash, *The Governance of families in India: education, rights and responsibility*, Comparative Education, 2018

outcomes across regions and socio-economic groups, with private and low-fee private schools partly filling gaps but often deepening inequality.

- The division of roles between central and state governments leads to variability in policy implementation and governance quality. States adapt policies based on local context but face resource constraints and bureaucratic hurdles, causing inconsistent enforcement of education standards.
- Families and local communities are legally and morally tasked with responsibilities in education government, but they frequently lack corresponding authority or support. This mismatch challenges effective participation and accountability, increasing burdens on families without empowering them to drive change.

CONCLUSION AND SUGGESTION

A. Conclusion

The constitutional entrenchment of the Right to Education under Article 21A, catalyzed by the 86th Constitutional Amendment, represents a transformative paradigm shift towards the realization of education as a fundamental human right integral to India's democratic ethos. This right is intrinsically linked to the broader constitutional guarantees of equality (Article 14), non-discrimination (Article 15), and the right to life with dignity (Article 21), thereby positioning education as an indispensable prerequisite for substantive equality and social emancipation. Judicial pronouncements in seminal cases such as *Mohini Jain* and *Unni Krishnan* have been seminal in articulating the contours of this right and compelling state accountability. Legislative enactments, most notably the Right to Education Act, 2009, institutionalize these constitutional imperatives while seeking to operationalize free and compulsory education for all children in the critical age group of 6 to 14 years. Nonetheless, notwithstanding the robust constitutionality and statutory scaffolding, the practical realization of this right grapples with systemic challenges—ranging from inadequate infrastructural provisioning and pedagogical quality to regulatory lacunae vis-à-vis unaided private and minority institutions. Moreover, the persistent exclusion of early childhood education and social stratifications underline the need for a more inclusive and nuanced policy discourse.

B. Suggestions

- A substantive augmentation of fiscal and infrastructural investments is imperative to underpin the holistic realization of the Right to Education, ensuring a learning environment conducive to human development.
- The legislative and policy framework should recognize and integrate early childhood education within the ambit of fundamental educational rights, thus addressing foundational developmental needs.
- Reforming teacher recruitment, professional development, and retention mechanisms is essential for qualitative enhancement, anchored on rigorous standards and continuous capacity building paradigms.
- Strengthening institutional mechanisms for oversight, transparency, and accountability is critical to mitigate procedural irregularities such as capitation fee malpractices and to ensure equitable admission processes.
- Concerted awareness-raising initiatives are needed to empower marginalized communities, facilitating their active participation and advocacy in educational governance.
- Decentralized governance models should be fortified to harmonize local autonomy with uniformity in implementation, thereby addressing regional disparities while respecting contextual specificities.
- A re-examination of the constitutional interplay relating to minority rights and unaided private institutions is necessary to broaden the scope of educational access without compromising constitutional mandates.
- Policy recalibrations surrounding academic progression norms, such as the ‘no detention’ policy, should be empirically informed to optimize educational outcomes without undermining inclusivity.
- Curriculum reforms must be pursued to align educational content with socio-cultural realities and future-oriented competencies, thereby fostering meaningful, contextually relevant learning experiences.