CHAPTER 5
RIGHT TO EDUCATION
AND ROLE OF JUDICIARY
The Indian Constitution is a social document and the supreme law of the land. The founding fathers of the Constitution have incorporated a well designed constitutional manifesto under Part-IV of the Constitution to achieve socio-economic Justice. The Directive Principles of State Policy is not a catalogue but principles of good governance. It imposes certain obligations on the State to take affirmative Action to establish a welfare State. These principles give directions to the functionaries of the State, the manner in which the Constitutional vision has to be achieved. One of the important directives is the duty of the State to provide free and compulsory education for all children until they complete the age of 14 years.

Education is the primary vehicle for human, economic and social development, profiting both the individual and society. It is very difficult for individuals to exercise their civil, political, economic and social rights unless they receive the basic education. The Supreme Court in Mohini Jain and Unnikrishnan cases recognized the right to education is an implied fundamental right. According to the court, the education has proximate relationship with life, protection of environment, eradication of untouchability, child prostitution and other related rights. The National Commission on review of the working of the Constitution has also endorsed the similar view. As a result the parliament inserted Article 21A to the Constitution by the 86th Constitutional amendment in 2002. This amendment also introduced new fundamental duty on parents to provide education to their children under Article 51-A to take affirmative Action to full-fill the Constitutional mandate, the Parliament passed the Right to Education Act, 2009 w.e.f. April 1st 2010. The Act deals with various facets like appointment of teachers, standards, curriculum, infrastructure, community participation and responsibility of the State to provide primary education. In June 2005, the Cabe (Central Advisory Board of Education) committee drafted the ‘Right to Education’ Bill and submitted to the Ministry of HRD. MHRD sent it to NAC where Mrs. Sonia Gandhi is the Chairperson. NAC sent the Bill to PM for his observation. On 14th July 2006 the finance committee and planning commission rejected the Bill citing the lack of funds and a Model bill was sent to states for the making necessary arrangements.
Right of Child to free and compulsory education every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education. This Act provides the scope to pursue and complete the elementary education without any kind of fee or charges or expenses.

5.1. Right to Education in Judicial perspective

The role of the India Judiciary and the scope of judicial interpretation have expanded remarkably in recent times, partly because of the tremendous growth of statutory intervention in the present era. The judiciary plays an important role in the protection of fundamental rights of the citizen and non-citizens alike. The twin safeguards of equality before law and equal protection of laws are acknowledge as two of the most important pillars of human rights of the universe of freedom that is where ever freedom to assert human rights is recognized, whether under an unwritten or a written constitution. India is the largest democracy in the world, a sovereign, socialist, secular democratic and republic with a comprehensive charter of rights written into its constitution. The Indian Constitution lays down base on which its foreign policy should be constructed and its international obligations respected. These bases are articulated principally in Article 51, which occurs in Part IV of the Indian Constitution.

The Right to Education Act (RTE), enacted in 2009, has ushered in hope for school education in the country. It is the culmination of efforts made by educationists, members of civil society and judiciary for the last many years. Free and compulsory education for all children had been debated even in pre-Independence years. It made its way into the Constitution as a Directive Principle of State Policy under the former Article 45, whereby states were required to ensure provision of free and compulsory education (FCE) to all children till the age of 14 years within a period of 10 years of the...
formulation of the Constitution. There is enough evidence to suggest that this goal has not been achieved even several decades after India became independent. With the RTE coming into force, there is an expectation that this will finally be translated into provision of quality school education for all children.

It is the primary responsibility of the Government to ensure implementation of the Act. Being part of the concurrent list, the Central and state governments are both responsible for ensuring effective implementation of the Act. There has been significant improvement in terms of the number of primary schools, largely due to additional resources made available through the Sarv Shiksha Abhiyan to bridge existing gaps. The scheme is now being extended to the secondary school level as well. In addition to the Government’s initiative, the private sector has also played a role in attempt to explore the role the private sector can play in implementation of the RTE. Education is critical for economic and social development. It is crucial for building human capabilities and for opening opportunities. The importance of education was fully recognised by classical economist and social scientist such as Adam Smith, John Stuart Mill, Schultz, Becker and Amartya Sen. Alfered Marshall in the Principles of Economics observed as follows: “The wisdom of expending public and private funds on education in not to be measured by its direct fruits alone. It will be profitable as a mere investment, to give the masses of the people much greater opportunities, than they can generally avail themselves of. For by this means many, who would have died unknown, are able to get the start needed for bringing out their latent abilities. The most valuable of all capital is invested in human beings.”

The first case relating to the concept of education is Re Kerala Education bill\(^{252}\) gave a broad power to the government to control private schools. In state of A.P. Vs Narendra Nath\(^{253}\) the court tried to include the said right in to the right of personal liberty. The court replied that the right to education meant the liberty to apply for admission. This liberty according to the court was validly curtailed ‘according to procedure established by law’ by the admission test. Thus the court has adopted a restrictive view to right to education. The question of the fundamental right to education, its scope and limitation came before Supreme Court in Mohini Jain’s

\(^{252}\) AIR 1958 S C 956  
\(^{253}\) AIR 1971 S C 2560
The court framed the general issue for consideration is there a right to education guaranteed to the people of India under the Constitution? Justice Kuldip Singh speaking for the court, examined the ‘education’ mentioned under Article 41 and observed “The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under part III”. The directive principles have to be read into the fundamental rights. Both are supplementary to each other. The state is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under part III could be enjoyed by all. Thus, the learned judge advocated for inclusion of the right to education into fundamental right. This interpretation of the directive principles which is non justifiable, made it enforceable through the court, an organ of the state came forward to ensure this basis principles, when the other two organs of the state, i.e., Legislature and Executive failed to achieve those objectives. Once it is settled that the right to education is concomitant to the fundamental rights enshrined under part III of the constitution because those rights cannot be fully enjoyed unless a citizen is educated and well aware of the rights enshrined in the constitution for that matter not only this right but all the other rights. Justice Bhagwati in a famous case Francis Coralie Vs Union of Territory of Delhi held that the right to life included the rights to live with dignity including the facilities for reading writing and expressing oneself in diverse forms. In another case Bandhua Mukti Morcha Vs Union of India. He further extended the right to live with human dignity, to include educational facilities as well. Accordingly the right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied bye the Right to Education. In Mohini Jain’s case Kuldip Singh. J opined that “the state is under a constitutional mandate to provide educational institutions at all levels for the benefits of the citizens”. The main intention of the learned judge behind the above observation might have been that all citizens of India should get education and also the opportunity to acquire education. This will imply that every citizen of this country can call upon the state to provide him education at all stages. This interpretation which is very broad has been laid down by the Apex court by supplementing Article 21 with the directive principle under Article 41. The above

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254 AIR 1992 S C 1858
255 AIR 1981 SC 746 753
256 AIR 1984 SC 802,811-812
proposition in Mohini Jain's case was rejected by the court in Unni Krishnan's case on the ground that the right to education which is implicit in the right to life and personal liberty guaranteed by Article 21, must be construed in the light of Directive Principles in part IV of the Constitution. In Unni Krishnan's case the court has laid down that Right to Education understood in the context of Article 45 and 41 means every child/citizen of this country has a right to free education until he completes the age of 14 years and after a child/citizen completes 14 years his right to education is circumscribed by the limits of the economic capacity of the state and its development. Thus Unnikrishnan's case triggered a number of controversies and thus resulted in several new litigations. The apex court reconsidered the whole issue involved in T.M.A.Pai foundation VS Karnataka257 the question whether the citizens could claim fundamental right to establish and administer educational institutions was answered by the court in the affirmative. In P.A. Inamdar Vs State of Maharastra258 The supreme court delivered an unanimous judgement by 7 judges declaring that the state can't impost its reservation policy on minority and non minority unaided private colleges, including professional colleges. Though this case relates to Right to establishment, administration and admission to professional colleges the honourable Apex court gave a comprehensive meaning to education. Till constitution Eighty-Sixth Amendment Act259, right to education was not a specially guaranteed fundamental right under the constitution, it was only in Unnikrishnan vs. State of Andhra Pradesh260 When had, widely interpreting Article 21, recognized right to education as one of the aspects of personal liberty. It imposes a duty upon the state to make out the steps for the achievement of the Right to education. Education is the source of many rights and without which many other objectives cannot be achieved.

In Goodricke Group Ltd v Center of West Bengal261 the Court held that it would be for the Centre and State/Union Territories to raise necessary resources to achieve the goal of providing free education. Recently Article 21A has been inserted in the India Act, 2002 which provides that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the

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257 AIR (2002) 8 S C C 481.
259 Inserted by the constitution (86th- Amendment) Act -2002 21-A, stating “The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law, determine”.
261 123 CTR 516.
state may, by law, determine. In Unni Krishnan J.P. v State of Andhra Pradesh Justice Mohan observed “in educational institutions which are seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up statesmen and soldiers, patriots and philosophers, who will determine the progress of the land.” The Supreme Court by a majority of 2:1 upheld the constitutional validity of the Right of Children to Free and Compulsory Education Act, 2009, which provides for free and compulsory education to children between the age of 6 and 14 years and mandates government/aided/non-minority unaided schools to reserve 25 per cent of the seats for these children. A Bench of Chief Justice S.H. Kapadia and Justice Swatanter Kumar while upholding the law, however, held that it would not be applicable to unaided minority schools. Justice K.S. Radhakrishnan, gave a dissenting judgment. The majority judgment said: “We hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to a school established, owned or controlled by the appropriate Government or a local authority; an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; a school belonging to specified category; and an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority.” The CJI who wrote the judgment said: “It will operate from today. In other words, this will apply from the academic year 2012-13. However, admissions given by unaided minority schools prior to the pronouncement of this judgment shall not be reopened. “By judicial decisions, right to education has been read into right to life in Article 21. A child who is denied right to access education is not only deprived of his right to live with dignity, he is also deprived of his right to freedom of speech and expression enshrined in Article 19(1) (a). The 2009 Act seeks to remove all those barriers including financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission.”

The Bench said: “It is true that, as held in the T.M.A. Pai Foundation as well as the P.A. Inamdar judgments, the right to establish and administer an educational institution is a fundamental right, as long as the Activity remains charitable under

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262 AIR 1993 SC 2178.
263 The Hindu, NEW DELHI, April 12, 2012
Article 19(1) (g). However, in the said two decisions the correlation between Articles 21 and 21A, on the one hand, and Article 19(1) (g), on the other, was not under consideration. Further, the content of Article 21A flows from Article 45 (as it then stood). The 2009 Act has been enacted to give effect to Article 21A. For the above reasons, the Article 19(1) (g) right is not an absolute right as Article 30(1), the 2009 Act cannot be termed as unreasonable.” The Bench said: “To put an obligation on the unaided non-minority school to admit 25 per cent children in class I under Section 12(1) (c) cannot be termed as an unreasonable restriction. Such a law cannot be said to transgress any constitutional limitation. The object of the 2009 Act is to remove the barriers faced by a child who seeks admission to class I and not to restrict the freedom under Article 19(1) (g). “From the scheme of Article 21A and the 2009 Act, it is clear that the primary obligation is of the State to provide for free and compulsory education to children between the age of 6 and 14 years and, particularly, to children who are likely to be prevented from pursuing and completing the elementary education due to inability to afford fees or charges.”

Some private school associations in various states (Rajasthan, UP and Karnataka) have petitioned the Supreme Court, challenging the RTE Act’s provision for reserving 25% seats for underprivileged students. Petitioners’ concern areas, According to the petitioners, the Act violates the rights of private educational institutions. They also cite Supreme Court’s ruling in the TMA Pai case, which rules that maximum autonomy should be given to private educational institutions, Petitioners have expressed their concern about lack of educational provision between the age of three to six years for children under the RTE Act. They also believe that the amount of money paid by a state government (INR 2,800 per student) as school fee and other expenditure per annum is meager, given the amount of money spent on salaries and other facilities, The petitioners have also highlighted the fact that the Government’s expenditure on strengthening the school system is much less than that of other countries. (India’s public spending on education was only 3.1% of its GDP in 2006.)

On the other hand, private schools have been accused of implementing money-spinning ventures and have been told to wake up to their social responsibility of imparting education to all segments of society.264

5.1.1. Judicial perspective Pre the Right to Education Act Period

The Supreme Court in 1993 held free education until a child completes the age of 14 to be a right (Unnikrishnan and others Vs State of Andhra Pradesh and others) by stating that: “The citizens of this country have a fundamental right to education, the said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words, every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.”

The Supreme Court in Mohini Jain v. State of Karnataka265 popularly known as the “captivation fee case” held that the right to education is a fundamental right under Article 21 of the constitution which cannot be denied to a citizen by changing higher fee known as the captivation fee. The right to education flows directly from the right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. In this case the petitioner Mohini Jain challenged the validity of notification issued by the government under the Karnataka educational institutions Act 1984. This was passed to regulate tuition fee to be charged by the Private Medical Colleges in the state. Under the Notification the tuition fee to be charged from students was as follows: Candidates admitted against Government seats Rs.2,000 per annum. The Karnataka students Rs.25,000/- per annum and the students from outside Karnataka Rs.60,000/- per annum. The petitioner was denied admission on the ground that she was unable to pay the exorbitant tuition fee of Rs.60,000/- per annum. The two Judge Division Bench consisting of Justice Kuldip Singh and R.N.Sahai held that the right to education at all level is a fundamental right of Citizen. Under Article 21 of the constitution and charging captivation fee for admission to education institutions is illegal and amounted to denial of citizen’s right to education and also violative of Article 14 being arbitrary, unfair and unjust captivation fee makes the availability of education beyond the reach of poor. The right to education is concomitant to the fundamental rights emphasized under part III of the constitution. The fundamental right to speech and expression can not be fully enjoyed unless a citizen is educated and conscious of his individualistic dignity. The petitioners running Medical and

265 AIR 1992 SC 1858

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Engineering colleges in the state of Andhra Pradesh, Karnataka, Maharashtra and Tamilnadu contended that if Mohini Jain Decision is correct and followed by the respective State they have to close down their colleges. In Unnikrishna's case the three Judge Bench by 3-2 majority partly agreed with the Mohini Jain's decision and held that right to education is a fundamental right under Article 21 of the constitution as it directly flow from right to life. But as regards its contents the court partly over ruled the Mohini Jain's case and held that the right to free education is available only to children until they complete the age of 14 years. The court in Devadasan v. Union of India held that the Government reserved 17% seats to the Scheduled Tribes and Schedule Castes if they were not available then the seats reserved shall be carried forward to the subsequent years like wise it increases year-by-year, this is called "carry forward rule" the petitioner challenged this rule, alleging that it would be unconstitutional the court held that carry-forward rule was unconstitutional and opined that 68% reservation was injustice and it should not exceed 50% in total. Encouraged by the Unnikrishnan judgment is a public demand to enforce the right to education, successive governments from 1993 worked towards bringing a constitutional amendment to make education a fundamental right. That led to the 86th amendment in December 2002 which inserted the following articles in the Constitution: Insertion of new article 21A- After article 21 of the Constitution, the following article shall be inserted, namely, Right to education, "21A states that The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." Substitution of new article for article 45- For article 45 of the Constitution, the following article shall be substituted, Provision for early childhood care and education to children below the age of six years. Art 45 states that "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years." Amendment of article 51A- In article 51A of the Constitution, after clause (J), the following clause shall be added, "(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years." The original Article 45 of the Directive Principles had used the term 'up to 14 years' and the Unnikrishnan judgment said 'till he completes the age of 14 years'. Both these definitions contain the age group

266 AIR 1964 SC 1979
0-6 years. Article 21A restricted the age group from 6 to 14, thereby removing the 0-6 age group from the right; relegating it to the new article 45 of Directive Principles.

The Unnikrishnan judgment had further observed that the right to education existed and would not be contingent upon the economic capacity of the state up to 14 years of age. Article 21A said that it would come into force ‘in such manner as the State may, by law, determine’. So it was made contingent on a law that the state may bring in. This Act is that law, and it took another eight years to come since the 86th amendment was passed. So it took seventeen years for the right to be enforced since the Unnikrishnan judgment, that too for the restricted age group of 6 to 14 years. It may be noted here that it was the Parliamentary Standing Committee on Education that recommended the age group 6 to 14 years for the eventual 86th constitutional amendment, paving the way for the restricted age group. After the 86th amendment in December 2002 the following Actions took place:

- 2004: The Free and Compulsory Education For Children Bill, 2004 (NDA government)
- 2005: The Right to Education Bill, 2005 (June) (CABE Bill) (UPA I government)
- 2005: The Right to Education Bill, 2005 (August) (UPA I government)
- 2006: Central legislation discarded. States advised to make their own Bills based

On The Model Right to Education Bill, 2006 (UPA I government) 2008/9: Central legislation revived. The Right of Children to Free and Compulsory Bill, 2008, introduced/ passed in Rajya Sabha and Lok Sabha and President’s assent in August, 2009. However, the notification of the Act and the 86th amendment, issued on Feb 19, 2010 in the Gazette of India, stating that implementation will begin from April 1, 2010, eight months after the presidential assent. (UPA II government).
Notice that the word ‘Right’ was missing in the first two drafts of the Bill and was used from the 2005 CABE bill onwards. The central legislation was dropped in 2006 in preference to state legislations based on a token model bill draft, for the recurring ‘lack of central resources’ argument, but it was intense public pressure based on independent financial estimates that made it possible to revive and bring back the central legislation in 2008.

This Indian Act is unique from amongst such Acts from many other countries for the following reasons, the definition of ‘free’ that goes beyond tuition fees, the ‘compulsion’ being on the governments rather than on parents, the stress on ending discrimination, and on inclusion, prescribing quality principles for the teaching-learning process, an external constitutional body for monitoring the Act, defining minimum norms and standards for the school, addressing the emotional, stress and anxiety issues of children.

The Act is also momentous since it took over a hundred years to bring it in. If we take 1857 war as the milepost for the fight for India’s independence, it took ninety years, up to 1947, for that to become a reality. But for the Right to Education, it has taken a decade longer, sixty two of those years being after the nation became independent. That gives the Act a very serious historic significance.

5.1.2. Judicial perspective after the Right to Education Act

The Constitution (Eighty-sixth Amendment) Act, 2002 inserted Article 21A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. Article 21A and the RTE Act came into effect on 1 April 2010. The title of the RTE Act incorporates the words ‘free and compulsory’. ‘Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an
obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

The RTE Act provides for the:

- Right of children to free and compulsory education till completion of elementary education in a neighbourhood school.

- It clarifies that ‘compulsory education’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. ‘Free’ means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

- It makes provisions for a non-admitted child to be admitted to an age appropriate class.

- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.

- It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.

- It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial
census, elections to local authority, state legislatures and parliament, and disaster relief.

- It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.

- It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition.

- It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child’s knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centred learning.

5.2. Twenty Five Percent Reservation in Private Schools.

Section 12 of the Right of Children to Free and Compulsory Education Act 2009 (the Act) has made it compulsory for every private unaided school to admit at least 25% of its entry level class from children belonging to weaker and disadvantaged groups. For this category of students the state government will reimburse schools an amount equal to either the fees charged by the school or the per child expenditure in state schools, whichever is lower. Through this document the Centre for Civil Society seeks to highlight the lacunae in the current framework for 25% reservation for weaker and disadvantaged groups in unaided private schools and seeks to provide inputs on effective implementation of the same. The private aided schools are also stipulated to provide free education to children in proportion to the aid received by them. However, the Act has not specified the categories of students who would be eligible for this been it in aided schools.

5.2.1. Mechanism for implementing 25% reservation in Private Schools

(a) 25% Quota only in Neighborhood Private Schools

The existing rule prescribes that the limits used to define neighbourhood for the purpose of neighbourhood schools under Rule 4(1) shall also be used for defining areas

\[\text{www.righttoeducation.in}\]
and limits for the purpose of the 25% quota. This definition may be too narrow for the purpose of the 25% quota and may result in reducing the choices available to parents. The poor and disadvantaged neighbourhoods such as slums are likely to have relatively poor quality of private schools. Therefore, the neighbourhood restriction may limit the Disadvantaged residents to access only these schools.

(b) Per-child Expenditure is Insufficient

The per-child expenditure for the purpose of reimbursement with respect to the 25% quota has been declined as the total annual recurring expenditure of the government on its own schools divided by the number of students enrolled in such schools. This amount may not be enough to cover the cost that the private schools actually incur. Apart from this, a higher reimbursement amount would probably engender less resistance to the 25% quota from the private unaided schools. In the current scenario, schools may have to raise their fees to cover the increased expenses. This in turn would impose an inequitable burden on the parents of the non-quota students.

(c) Determination of Eligibility for Free Education in Aided Schools

The Act stipulates that all aided schools shall provide free education to such proportion of their students as the aid received by them from the government proportions to their total recurring expenditure. However, the Act is silent about what criteria aided schools shall use to determine the category of students that are eligible for free education under this provision. To take care of this, the Rules should provide that the children given free education under this provision shall belong to weaker sections and disadvantaged groups as defined for the purpose of the 25% quota.

(d) Frequency of Calculation of the Per-child Expenditure

The Rules do not state how often the per-child expenditure shall be calculated. One suggestion by CCS is to re-calculate the amount after regular intervals, say every two years. Another suggestion is to index the amount to Consumer Price Index and thereby compensate only for in lation in the cost of providing education. If there are no clear guidelines on the frequency of re-calculation, there is a risk of the reimbursement amount becoming insufficient with time to cover the school expenditure.
(e) Modalities for the Payment of Per-child Expenditure

The Rules suggest that the reimbursement amount be paid directly into the bank account of private schools but do not specify whether the full amount be paid in one go or the amount be divided over the academic year. Knowing the exact times and the amounts that the government shall transfer to schools will help schools in better financial planning.

5.2.2. Model for Implementation

For effective implementation of the 25% reservation in private schools there is a need to ensure a fair selection process, a leak proof payment mechanism, and a transparent monitoring and evaluation system. At Centre for Civil Society, based on the experience of our pilot projects (Delhi Voucher Project, 2007 and School Voucher for Girls, 2009) we have devised a model for implementation for this provision.

(a) Identifying 25%

As per Section 12 of the Act, 25% seats at the entry level class in unaided private schools shall be reserved for "disadvantaged groups and weaker sections". Children from the disadvantaged groups and weaker sections should apply under this reservation of 25% seats if their annual family income is less than a stipulated 'X' amount. If an unaided school is already under an obligation to provide free education to a specified number of children under any other law, then that number shall be adjusted to 25%.

(b) Disadvantaged Groups

According to the Act, the disadvantaged groups include scheduled castes, scheduled tribes and other backward classes. Scheduled caste/tribe/OBC certificate should be used as a proof to establish whether a person falls in the category of disadvantaged groups or not. Annual income level should be verified to exclude the creamy layers amongst the disadvantaged except where deemed necessary to include all.

(c) Weaker Sections

Families below annual income of X should qualify for reservation. Any government document such as income certificate, ration card, job card issued under NREGA, UID card, etc. should be used for verification. The state/local authority should create a list of 'excluded' families from the scheme as opposed
to specifying who is included in the scheme (for example, exclude all income
tax payers, vehicle owners, businesses with annual turnover of more than X
amount, and so on).

(d) Neighbourhood Schools

The Act defined principle of neighbourhood (1 km for class 1-5 and 3
km for class 6-8) should be used only to establish new schools. This criterion
should not be used for the implementation of the 25% as it is likely to restrict
choice. Since poor and disadvantaged neighbourhoods such as slums are likely
to have relatively poorer quality of private schools, the neighbourhood
restriction may limit the disadvantaged residents to access only these schools.
For the purpose of the implementation of 25% reservation, the school
district/zone or whole town should be defined as the neighbourhood for urban
areas and panchayat or zilla parishad or district should be defined as the
neighbourhood for rural areas.

(e) Awareness of 25% Reservation

Government should post notifications on the rights of disadvantaged
groups and weaker sections to seek admissions in private schools in local
newspapers as well as in the radio. Each school should announce the number of
seats it has reserved under section 12 of the Act. Each school should provide
information on the number of seats to the state/local authority. Local/state
authorities should compile and place outside their offices and where applicable
on their website, the number of seats available for disadvantaged and weaker
section in each school within their jurisdiction. Government should take steps to
encourage social mobilization and social auditing to spread awareness on this
issue and to ensure accountability.

(f) Admission Forms and Selection Process

It discusses two options for ways of selecting students to fill the
reserved seats. The first option is called the common admission process, which
is to be done at an education district/zone/city level, and the second is called
school level admission process, which is to be administered at individual school
level. We feel that the common admission process is better because it ensures
increased transparency and less scope for corruption and for abuse either by
schools or by education officers.
Common Admission Process

There should be a common admission form for all schools at the city/town, ward or block level. The form should also be made available online and for free in every school and in state/local authorities such as the directorates of education, municipalities, zilla parishads, panchayats. The admission form should be in English as well as the local language and should give the option of listing up to 10 schools in the order of preference. Admission forms should be submitted to state/local authorities and the receipt of the form should be acknowledged by assigning a registration number. The state/local authority should maintain a database of all the received application forms. School level lottery: The state/local authority should conduct a lottery on a specified date in a public place in front of parents and media first at the school level (assuming more applicants than seats in the school). Such computerized lotteries should be run for each school to select from students who had listed that school as one of the preferences. Student level lottery: There should be a second round of lottery conducted by state/local authority for those students who did not get admission in any of their preferred schools. Through this lottery each student should be allotted a rank amongst all the schools with vacant seats. In practice, both the lotteries should be conducted on the same day. The list (including waiting list) should be publicized in the state/local authority of ices as well as in individual schools. Applicants should be able to check their status/ranking among remaining schools online as well as get the information from state/local authorities. The Indian School wise list of the 25% reserved seats should be published by the state/local authority.

School Level Admission Process

Where the state/local authorities do not have the resources to manage the common admission process and conduct a centralized lottery, there should be a school wise application process and the selection via lottery should be done at the school level but in the presence of the applicants and the media. Admission forms should be in English as well as the local language and the schools should make them available free of cost. Admission forms should be submitted to the schools and the schools should acknowledge the receipt of the same. The acknowledgment receipt should clearly mention the date of the lottery. The date of lottery should also be put on the notice board outside the school premises.
(g) Reimbursement

Reimbursements should be made on a per student basis and the amount transferred directly to the school’s bank account. Per student expenditure should be calculated based on the total school education budget (recurring and capital cost, plan and non-plan outlays) under all concerned ministries/departments at the state level. In order to ensure accountability from schools, the reimbursement should be done in two parts: X % to be paid on admission and the remaining 100-X% at the end of the year after the state/local authority has received the attendance and assessment reports. State education departments should maintain the list of students studying in each school and update it from time to time to ascertain whether the child is still studying there and if the reimbursement has been made. This list should be made public.

(h) School Transfers

During the academic year, a student should be able to seek transfer to those schools that have not filled their 25% reserved seats. If no such schools exist that are convenient to the student, then the Student should be able to seek transfer to a government school. Each year the schools should review if any student from the 25% quota has left. That vacancy should be publicised and applications invited first from weaker sections and disadvantaged groups who wish to seek transfer to the school.

For the success of any scheme, the devil lies in the details. In the case of the reservation of 25% seats in private unaided schools, there is a lack of clarity in design and implementation strategy. Moreover, the method for calculation of per-child reimbursement expenditure (which is to exclude capital cost) may yield an inadequate resource low to private schools which may in turn give rise to resentment amongst private schools. Private schools, which have to implement this scheme, are already struggling to accommodate it within their existing admission processes. Clear policy guidelines and support structures from the government in ways such as the one proposed by the Centre for Civil Society can go a long way towards ensuring effective implementation of this scheme. In a recent Supreme Court of India’s verdict dated, 13 April 2012, a bench comprising Chief Justice SH Kapadia and justices KS Radhakrishnan and Swantanter Kumar, upheld the validity of the Section 12. The bench said that 25 percent reservation for students from weaker sections of society
would apply uniformly to all government and unaided private schools except unaided private minority schools and boarding schools. The court used its own five-judge bench ruling in the T.M.A. Pai case (T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481), which said that “if an educational institution goes beyond ‘charity’ into commercialization, it would not be entitled to protection of” the freedom to practise any trade or business under Article 19 (1)(g).

Supreme Court: Even Private Schools have to admit Poor

Being poor should not deny a child access to elementary education, the Supreme Court told unaided private schools today, cautioning them that their Activity to administer educational institutions would stop being a fundamental right if they ventured beyond “charity” into commercialisation. Describing the Act of imparting education as charity, Chief Justice of India S H Kapadia and Justice Swatanter Kumar upheld the Right to Education Act 2009, saying it was meant to expel “unaffordability” of elementary education for children from economically weaker and disadvantaged sections of society.

It upheld the mandate of the Act to give free and compulsory education to children between the ages of 6 and 14. The court, however, exempted minority-run unaided private institutions from under the purview of the Act. The verdict will apply from the academic year 2012-13 to government or local authorities-run schools, aided minority schools receiving grants from government or local authorities, and unaided non-minority schools. However, admissions given by unaided minority schools prior to the pronouncement of today’s judgment shall not be reopened, the court held. The judgment, authored by Chief Justice Kapadia, dismissed complaints from unaided private schools that it was unconstitutional to compel them to reserve at least 25 per cent seats for poor children from their neighbourhood, and provide them with free and compulsory elementary education. The schools had termed this an “unreasonable restriction” on their constitutional right to administer and run educational institutions under Article 19(1)(g). To this, the court responded that the Act was not intended to be “institution-specific” but “child-specific”. It reminded the schools that their right to “establish and administer an educational institution is a fundamental right, as long as

268 http://www.indianexpress.com/news/sc-even-pvt-schools-have-to-admit-poor/926180/3
the Activity remains charitable. If an educational institution goes beyond ‘charity’ into commercialisation, it would not be entitled to protection of Article 19(1)(g)

Elaborating, the court observed that a child gets his “absolute” right of access to education under the newly coined Article 21A from his fundamental right to live with dignity. “Right to live covers access to education. But unaffordability defeats that access. It defeats the State’s endeavour to provide free and compulsory education for all children of the specified age,” Chief Justice Kapadia observed. “The 2009 Act seeks to remove all those barriers including financial and psychological barriers which a child belonging to the weaker section and disadvantaged group has to face while seeking admission... It has been enacted keeping in mind the crucial role of Universal Elementary Education for strengthening the social fabric of democracy through provision of equal opportunities to all,” the Chief Justice said. The court defined the terms ‘free’ and ‘compulsory’ in the Act. “The word ‘Free’... stands for removal by the State of any financial barrier that prevents a child from completing eight years of schooling. The word ‘Compulsory’... stands for compulsion on the State and the parental duty to send children to school,” the judgment said. The two judges differed with a dissenting judgment given by Justice K S Radhakrishnan, who said that the Act should not apply to private unaided institutions, whether minority or majority run.

Instead, the CJI said imposing 25 per cent reservations may encroach into the fundamental right of the minorities under Article 30 (1) to safeguard their separate identity by exclusive administration of their unaided schools. “Reservations of 25 per cent in... unaided minority schools will result in changing the character of the schools if right to establish and administer such schools flows from the right to conserve the language, script or culture, which right is conferred on such unaided minority schools,” the court held. The court asked the government to “weed out” non-performing schools so that there may be more funds to feed the objective of the 2009 Act. Noting that the Act only covers day scholars, the court also wanted the government to clarify whether the 25 per cent reservation would apply to boarders.
5.3 Case Laws related to Right to Education.

1. All Saints High Vs. Government of A.P. 260

In this case the State of Andhra Pradesh passed an Act “The Andhra Pradesh Recognized Private Educational Institutions control Act, Section 3 of the Act provides that no employee (teaching or non teaching) of private educational institutional shall be dismissed removed or reduced in rank without the prior approval of the competent authority. Section 4 provides that any teacher any teacher dismissed removed or reduced in rank without prior approval of the competent authority. Section 4 provides that any teacher dismissed, removed or reduced in rank may prefer an appeal to much authority prescribed in the Act. Section 6 provided to take the permission from authority prescribed. Section 7 provides provision for payment of pay and allowances of such teacher by such authority prescribed. The Management of All Saints High School challenged the validity of Act. The Supreme Court held that the Section 3, 6 and 7 are valid, but section 4 and 5 were invalid and these Sections would not applicable to minority institutions.

2. Ahmadabad St. Xavier's College Vs. State of Gujarat 270

It is a leading case on Article 30, The Petitioner was the Jesus Society of Ahmedabad running the St Xavier’s college of Arts and commerce in Ahmedabad. The object of the society was to impart higher education to Christian students, who were minority in the State. The executive’s body was elected among the Christian Community. They had selected the teachers, and the college was successful in achieving their aims i.e. to give higher education to the students of their community. At this moment, the State Government passed an Act “The Gujarat University Act, 1949”. This gave several right to the University authorities to manage every minority school under their supervision Section 34-aof that Act empowered the Government that every college shall be under the management of the Government body which shall include amongst its member, a representative of the University, nominated of Government body which shall include amongst its members, a representative of the University, nominated by the Vice-Chancellor and representatives of teachers, non-teaching staff and students of the College. The Petitioners challenged the Act contending the Act of 1949 was unconstitutional and was against Article 29 &30, and that the Act of 1949

260 AIR 1980 SC 1042
270 AIR 1974 SC 1380
made managements of the minority intuitions as “show dolls in show-case”. The Supreme court struck down Section 33-a, 40, 41, 51-A & 52-A of the Gujarat University Act, 1949 opining that they clearly violated Article 30 and spirit of the constitution. Their Lordships felt that the provision of the Act would take over the autonomy of the administration of the minority intuitions, therefore, it was void.

3. A.P Christian Medical Educational Society Vs Govt. Of A.P

The above said case says that a Society under the above name got registered, established medical college and advertised in the newspaper for the admission of M.B.B.S. course, without obtaining proper permissions, recognition, affiliation from the University and state Government. It did not fulfill the conditions under the A.P. Education Act and Osmania University Act. The Supreme Court held the protection of Article 30 would not be available to much institution, and opined that the institution must first obtain the permission, affiliation and recognition from the State and the University then only it would be entitled to admit the students.

4. Bandhu Mukti Morcha Vs. Union of India

This is the case of Child Labour the petitioner is an organization dedicated to the cause of release of bonded laborers in the country. It made a survey of some of the stone quarries in Faridabad District near the city of the Delhi and found that there was large number of laborers’ from different States who were working in these stone Quarries under ‘human and intolerable conditions and many of whom were bonded laborers. The petitioner wrote a letter to the Supreme Court pointing out all the problems and situations about those laborers working in the mining quarries. The Supreme Court allowed the petition under Article 32 and treated it as PIL. It gave the necessary directions to the Central and state Governments and other concerned authorities, for implementation of the provisions of the various social welfare legislations for rehabilitation of the bonded laborers. The child Rights Convention of 1989 emphasizes the right to education as basic requirement to protect the childhood and prevent the economic exploitation of the children either by their own parents or by any other employer. The child Rights Convention of 1989 emphasizes the right to education as basic requirement to protect the childhood and prevent the economic exploitation of the children either by their own parents or by any other employer. The

271 AIR 1980 SC 1042
272 AIR 1997 SC 2218
child Rights Convention of 1989 emphasizes the right to education as basic requirement to protect the childhood and prevent the economic exploitation of the children either by their own parents or by any other employer.

5. Balaji Vs. State of Mysore

In this case Mysore Government reserved the seats in the Medical and Engineering colleges in the State to Backward Classes 28%, more backward classes 20%, Scheduled Castes and Tribes 18%, Total 68%. Therefore 32% seats were available to the students of their communities, on their merit pool. Balaji challenged the validity of the reservation formulated by Mysore Government contending that the classification of the Mysore Government that about 90% of the population of the state backward, and that 68% reservation was injustice to the merit student and he also contended that the classification of "backward classes" and "More Backward Classes" was injustice. The Supreme Court agreeing with the petitioner struck down the reservation policy of the Mysore government. The Supreme Court held that the special provision should be provided to the socially and backward class people but that should not exceed 50%. The Supreme Court considered the question of reservation of seats in the light of Article 15(4). The court declared the communal G.O. unconstitutional as classification was based on the caste as forbidden by Article 15(1). However, the Supreme Court laid down test tune with Article 15(4) based on social and educational backwardness of weaker sections of the society. Thereafter, the reservation policy on the matters of admissions into educational institutions have received judicial assent.

6. Bijoe Emmanuel vs. State of Kerala

This is National Anthem case, in this case the facts says that, The Director of Instructions, Kerala issued a circular, according to which the students of all schools should sing National Anthem at their respective school. Three children belonging to Jehovah religion stood in the line while the National Anthem was sung at their school but they did not sing. The Head Mistress of the school asked them to give in writing that they will respect the National Anthem, and instructed them until such assurance was not received; she would not allow them to the classes. The children refused to do so. As a result, the school management expelled those three children contending that they did not sing National Anthem. A Writ was filed by Bijoe Emmanuel, on behalf

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273 1963 SC 439
274 1986 3 SCC 615 National Anthem Case
of the three children, before the Kerala High Court Questioning the validity of school management’s expulsion Order and also the Circular of the Director of Public Instructions. The petitioner contended that three children stood in the line when the national anthem was sung as respect, and they did not sing it because their religious belief which did not permit them to join in any victuals expect if be in their prayer to Jehovah, their God. The Kerala High Court dismissed the writ petition, and upheld the expulsion. It held that it is every citizen’s fundamental duty to respect the national integrity and to sing the national anthem. The appellant appealed to the Supreme Court.

The Supreme Court reversed the judgment of the Kerala High Court. It gave judgment in favor of the appellant. It held that children did not commit any offence under the National Honor Act, 1971, because they stood up respectively when the National Anthem was being sung. There was no law under which the fundamental right of the three children under Article 19(1)(a) can only be regulated by law and on the grounds mentioned in the constitution, but not the mere executive instructions.

7. Unnikrishnan J.P. Vs Andhra Pradesh

In this case the professional education in aided and unaided minority and private educational institutions has affected the right to education in India in general also. “free seats” and “payment seats” and the schemes of the admissions into professional colleges on the grounds that “the cast incurred on educating a student in an aided professional colleges was more than total fee, which is realized on the basis of the formula fixed in the schemes” and that it is resulted in revenue short falls’ leading to insufficiency of funds for the development of those educational institutions. The effect of nationalizing education by removing distinction between the Government and private unaided colleges, and is not reasonable and fair. The Supreme Court observed that right to education is a fundamental right, which directly flows to right to life under Article 21. The court also looks through the point of private institution fixed the 50% as ‘free seat’ and 50% as ‘payment seats’ and also guaranteed free and compulsory education for the children below 14 years. They clearly specify the fees structure for professional colleges. The Supreme Court held that commercialization of education was not permissible and was opposed to public policy and Indian tradition and therefore charging of capitation fee was illegal.

275 (1993) 1 SCC 645
8. D.A.V. College, Bhatinda Vs. State of Punjab

In this case it says that Arya Samajis who religious and also linguistic minority, cannot be compelled to learn ‘Punjabi in Guruki Script’. And struck down the rule and opined that the Punjab University can prescribe Punjabi as a medium of instruction, but cannot prescribe it as the exclusive medium nor compel affiliated colleges administered by minorities to teach in Punjabi or take examinations in the language with Gurumukhi Script is violator to Article 14 & 30. The Court held that the University cannot prescribe Punjabi as the exclusive medium of instruction or compel affiliated colleges established and administered by religious or linguistic minorities or section of citizens who wish to conserve their own script and culture to teach in Punjabi or take examination in Gurumukhi script. The Supreme Court further held that the rights guaranteed under Article 30 are given to a minority and not to individual member of the minority. There must be real relation between the minorities and the institutions established for the real welfare of the minorities.

9. Devdasan Vs. Union of India

In the above case Government reserved 17% seats to the Scheduled Tribes and Scheduled Castes. If in that year the Scheduled Castes/Scheduled Tribes are not available, the seats reserved shall be carried forward to the subsequent years. For examples, if no candidates was not available in 1960, then in 1961, This is percentage of the Scheduled Tribe would be 34% in 1963 like - wise it is in increase year-by-year. This is” carry forward rule” The petitioner challenged this Rule, alleging that it would be unconstitutional. Judgment: The Supreme Court held that carry-forward rule was unconstitutional and struck down that Rule and also opined that 68% reservation was injustice, and it should not exceed 50% in total. The Supreme Court held that this reservation for backward classes each year should not be excess as to create a monopoly or to interfere unduly with the legitimate claims of other communities.

10. Dhan Raj Mills Ltd Vs. B. Kocher

In this case “a clear distinction must be borne immune between the law and the administration of the law. If the law itself permits classification, even though the law may appear to be fair and undiscriminatory, the Court may interfere and say ‘we are

276 AIR 1971 SC 1731 at P. 1737
277 AIR 1964 SC 1979
278 1952 BOMBAY 335
more concerned with how the law actually works rather than how it appears in black and white.... In the exercising, the discretion vested in officers under statute, the State may, as a policy of administration requires its officers to exercise the discretion unfairly and even in such case the Court may interfere and may say the administrative orders suggest orders suggest behind them a policy of the State of discrimination”

11. Dr. P. Krishna Mala Konda Reddy Vs. NTR University of Health Sciences, Vijayawada & Others. 279

In this case dealing with Regulations on the Post Graduate Medical Education-Admission to DM (Cardiology course) held as per the Regulations only made for Medicine and Pediatrics is the prescribed qualification for admission but not DNB qualification - Admission given to the third respondent contrary to the regulation. Basing on a clarification issued by Post - Graduate Committee is illegal. Case of the petitioner who is next in rank to third respondent directed to be considered for admission to DM (Cardiology) course. The Honorable High Court of AP upheld the Regulation 7(1) of Regulations on Graduate Medical education.

12. Frankly Authority Public School Employees’ Association vs. Union of India 280

In the facts above said case are that the Frank Anthony Public School was established by Christians. It is a Christian Minority educational Institution and is one of the reputed schools in Delhi. It is recognized. The Delhi School Education was enacted by the State Government. Sections 8 to 12 of that Act lay down the Provisions about the terms and conditions of the services of the teaching and non-teaching staff. Section 10 enunciates that the salaries of the teaching and non-teaching staff of the recognized schools must not less than Government schools. Section 12 excludes this condition in cases o recognized minority institutions. Basing upon section the management of Frank Anthony Public School was paying lesser wages to its staff. The staff formed into association and filed a writ petition contending that section 12 was arbitrary and violator of Article 14. The Supreme Court held that teaching and non-teaching staff or frank Anthony Public School are entitled to get the pay scales equal to the Government schools and recognized private schools and also quashed Section 12 of the Delhi School Act opinioning that it was violator to Article 14.

279 2000(6) ALD 170
280 1986 (4) SCC 707
13. Gajendrgadkar in University of Delhi Vs. Ramnath

In this case said that the education is enlightenment. It is one that lends dignity to a man “Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development”.

14. Gopal Krishna Chatrath Vs. Bar Council of India

In this case the employees of the states of Punjab and Haryana may pursue legal education through evening Session but the employees of other States could not so. It amounts to discrimination and violative of Article 14 of the employees of other States who wants to pursue legal education through Evening Sessions. An employee may pursue legal education with view to enrich his knowledge. The Latin maxim Ignorant juries non excusal which means ‘ignorance of law is no excuse’ is one of the fundamental legal principles of any legal system which proposes that all citizens may have an opportunity to study law.

15. Hyderabad Karnataka Education Society Gulbarga Vs. State of Karnataka

In this case the court gave decision in the favour of weaker section of the society who were exploited by the wealthier section. The court says that if the government really wants to makes available the technical education only to the merited then it is for the universities to change its minimum standard to high percentage marks, in the concerned subject for eligibility and not to comply against wealth of one and make an issue of poverty to the other. Therefore, the assumption made both committee and the government that capitation fee system is an evil, which does not appear to be well founded in the context of inability of the state to provide.

16. Indira Sawhney Vs. Union of India

In this case Constitutional enigma of identifying ‘Backward Classes’ for ‘protection’ or ‘compensatory benefits’ under constitutionally permissive discrimination visualized by Article 16(4) of the constitutional except for scheduled Castes and Scheduled tribes, is as elusive today as it was when issue was debated in the constituent Assembly, or in Parliament in 1951. One commission known as Kaka Kalelkar Commission was appointed in 1953. Latter the Mandal commission was

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281 1964 2 SCR 703 at P.710
282 AIR 2001 P&H 41
283 AIR 1983 Karnataka 251
284 AIR 1993 SC 477 (Mandal commission - Reservation Case)
appointed in 1979. On the basis of suggestions of the Mandal commission, the Union Government issued O.M. dated 13-8-1990. It was further amended in September 1991. The petitioner challenged it. She contended that the Mandal commission Report and the Union Government’s Actions would be helpful only to creamy layer, but not to really needed people. The Supreme Court quashed O.M. Dated 25-9-1991 opining that it was against the Constitutional provisions and therefore it was invalid and inoperative. In this case through the “creamy layer” theory has been expressly adopted by the Supreme Court the above said case credited for the first articulation of the theory must, perhaps, go to Justice P.A. Choudary of the High Court of Andhra Pradesh. “Creamy Layer” theory: Even in the Constituent Assembly apprehensions have been expressed that over a period of time benefits of reservation might be monopolized by some fortune few among the backward classes of to the detriment and deprivation of many at the lower rungs. At present the doctrine of creamy layer propounded by the Supreme Court under Article16(4) is not made applicable to admission into education Institutions. It is suggested that State Governments may take steps to extend the scope of Doctrine of Creamy Layer to admission into Educational Institutions Article 15(4).

17. Indian Council of Legal Aid and Advice vs. Bar Council of India

In the above said case the legal validity of the said BCI rule was questioned before the Supreme Court as being inconsistent with Article 14, 19 (1) (g) and 21 of the Constitution and Section 24 of the Advocates Act. The petitioners contended that BCI’s functions as enumerated in Section 7 of the Act do not envisage laying down a Stipulation disqualifying persons otherwise qualified from entering the legal profession merely because they have completed 45 years of age. It was also contended that the disqualification had been provided separately by the Act itself and in the guise of making a rule, the SCI was virtually introduced an additional disqualification by prescribing upper age limit of 45 years for enrolment. Defending the validity and desirability of the impugned rule, the BCI argued that the legal profession being a pious and honorable one, it was the pious duty of the BCI) to protect the image of legal profession by restricting the flow of large number of retired government semi-government and other retired personnel who sought to enter the legal profession solely for additional gains after superannuating from service. The BCI also defined the impugned rule by stating that such persons are not inspired by lofty ideals of the profession but their motive was money making which had a very negative influence on

285 AIR 1995, SC. 691
young minds who join the profession soon after graduation. The Supreme Court speaking through, justice A.M. Ahmadi, who headed the three judges bench, held the impugned rule ultra virus the Advocates Act and violative of Article 14 of the Constitution as the impugned rule created a class of persons of 45 years of age who were disqualified for enrolment as advocate which amounts to creating a class within a class.

18. In RE Kerala Education Bill 286

This the case of Kerala Government analyzed the system of grant-in aid by the government in then need of preserving freedom of religious and linguistic minorities to establish and administer educational institutions of their choice. Educational institutions established by minorities can be classified into, Those which did not seek aid or recognition from the State, those which wanted such aid and may be sub-divided into, those eligible for receiving grants under the Constitution, and those not entitled but nevertheless seeking to get aid. The word ‘aid’ would include grant referred to in Article 337. The court said, that there was no Constitutional provision for grant-aid to educational institutions establishes by minorities at any time. It was known that for modern educational institutions to be properly and effectively run, considerable expense was necessary which would not met fully by funds collected from the schools, and therefore educational institutions could not be maintained in a state of efficiency without substantial aid from the state funds was postulated in Article 28(3), 29(2) and 30(2). There, the court rejected the contention that any condition could be imposed for the grant since the schools could for the grant and exercises their fundamental rights. The court said that the government could however impose reasonable regulation to secure proper administration of the institutions as a condition for grant in aid recognition. However, this provision, no doubt, requires the state to provide free and compulsory education to all children but there nothing to prevent the state from discharging that solemn does not require that obligation to be discharged at the expense of minorities’ communities. Further it was held that State refusal to Affiliation is violative of Article 30(1). And lay down that State must not discriminate in granting aid or recognition to the institution merely on the ground that the institution belongs to minority community. Education Institution not to charge fees, without making good of its loss as a result of non-realization of fees held in the above case.

286 Supra Note at p. 979 to 980
In this case the court said that Education is a process which engages many different Actors the one who provides education (the teacher, the owner of an educational institution, the parents), the one who receives education (the child, the pupil) and the one who is legally responsible for the one who receives education (the parents, the legal guardians, society and the State). These Actors influence the right to education. The 2009 Act makes the Right of Children to Free and Compulsory education justiciable. The 2009 Act envisages that each child must have access to a neighbourhood school. The 2009 Act has been enacted keeping in mind the crucial role of Universal Elementary Education for strengthening the social fabric of democracy through provision of equal opportunities to all. The Directive Principles of State Policy enumerated in our Constitution lay down that the State shall provide free and compulsory education to all children upto the age of 14 years. The said Act provides for right (entitlement) of children to free and compulsory admission, attendance and completion of elementary education in a neighbourhood school. The word “Free” in the long title to the 2009 Act stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling. The word “Compulsory” in that title stands for compulsion on the State and the parental duty to send children to school. To protect and give effect to this right of the child to education as enshrined in Article 21 and Article 21A of the Constitution, the Parliament has enacted the 2009 Act.

Conclusion (according to majority): Accordingly, we hold that the Right of Children to Free and Compulsory Education Act, 2009 is constitutionally valid and shall apply to the following, a school established, owned or controlled by the appropriate Government or a local authority; an aided school including aided minority school(s) receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority; a school belonging to specified category; and an unaided non-minority school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority. However, the said 2009 Act and in particular Sections 12(1) (c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority schools under Article 30(1) and, consequently, applying the R.M.D.

207 (writ petition (c) no. 95 of 2010)
Chamarbaugwalla v. Union of India [1957 SCR 930] principle of severability, the said 2009 Act shall not apply to such schools. This judgment will operate from today. In other words, this will apply from the academic year 2012-13. However, admissions given by unaided minority schools prior to the pronouncement of this judgment shall not be reopened.

20. Maneka Gandhi Vs. Union of India

The above said case Smt. Maneka Gandhi was the wife of late Sanjay Gandhi, S/a. Indira Gandhi. After the death of Sanjay Gandhi, rivalry arose between Maneka Gandhi and her mother-in-law Indira Gandhi. The passport was issued to Maneka Gandhi on 1-7-1976 under the Passport Act, 1967. The Regional Passport Officer, Delhi wrote a letter dated 2-7-1976 under the Passports Act, 1967. The Regional Passport Officer, Delhi wrote a letter dated 2-7-1977 to Menaka Gandhi intimating her that the Government of India decided to impound her Passport under Sec. 10(3) (c) of the Passport Act, 1977 in the public interest” and also asked her to surrender her Passport in their office. The letter was received by her on 4-7-1977. She wrote a letter to the said officer asking him to furnish a copy of the statement of reasons for making the order as provided in Sec. 10(5). The said officer gave a reply that copy of the statement of reasons could not be given “in the interest of the general public. Aggrieved by it, she filed a writ petition challenging the Act of the Passport authorities, and also challenging the validity of Sec. 10(3)(c) that it was against the Articles 14, 19(1)(a), 19(1)(g) and 21. Justice Bhagwati observed and pronounced judgment in favor of Menaka Gandhi.

21. M.C. Mehta Vs. State of Tamil Nadu

In the above said case Sivakasi was one taken as the worst offender in the matter of violating prohibiting of employing child labor. As the situation there had became intolerable, the public spirited layer, shire M.C. Mehta, thought it is necessary to invoke the Supreme Court power under Article 32 as after a;; the fundamental rights of the children guaranteed by Article 24 was being grossly violated. He, therefore, filed this Writ Petition. The Supreme Court gave judgment in favor of the Petitioner i.e. In favor of the children, and directed the Central Government and also the State Government to discontinue the children and admit them in the educational institute, and

288 AIR 1974 SC 1389
289 AIR 1997 SC 699
also prosecute the employers of the match industry in Sivakasi, Tamil Nadu, the Diamond Polishing industry in Surat Gujarat, the Precious stone polishing industry in Jaipur, Rajasthan, the glass industry in Firozabad (U.P), the hand-made carpet industry in Mirzapur, Bhadchit (U.P), the lock-making industry in Aligarh (U.P), the slate industry in Markapur (A.P) and Mandsaur (M.P). Conclusion: After the Judgment and direction by the Supreme Court the labor department in every district have been raiding quarries, rice-mills, factories, crackeries, hotels etc. Under the supervision and guidelines of the District Collector of the concerned district. Now the employers are fearing to appoint the child labor. Still the labor system is going on. Even though six decades have been passed, we could not achieve the objectives of the spirit and goals of the Articles 21A, 24, 41, and 45. 100% of the child literacy has not been achieved. Still more than 50% drop outs from the primary schools is continued.

22. M.C.L, New Delhi Vs. Mamatha Educational Society, Khammam & others

In this case the facts that grant the permission to start a medical college by the Government of India are not a mere formality on the mere ground that the Medical council of India already recommended the case. Permission of Government is a sine-quo-nis-e of the legal existence of a medical college and no medical qualification granted to a student by the college which operated without the permission of the Government of India are entitled to recognition.

23. Mohini Jairi Vs State of Karnataka

In this case the petitioner Mohini Jairi failed to deposit the so-called deposit of Rs. 60,000/- and as consequences she was denied admission to the private medical college, she challenged the notification issued under the said Act enabling the private medical colleges to collect the capitation fee, under Article 14. A capitation fee was imposed on those who wished to enter medical colleges which placed it beyond the reach of the poor. After hearing the counsel for both the parties, the Hon'ble Supreme Court identified the following points for its consideration, whether there is fundamental right to education guaranteed under the Indian Constitution. If so, the concept of ‘capitation fee’ interacts the same, whether the charging of capitation fee in consideration of admission is arbitrary, unfair and unjust, and as such violates Article 14 of the constitution guaranteeing the Right to equality, whether the impugned the

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290 2000 (2) AID 593 (DB)
291 1992 3 SCC 666
charging permitted collection of capitation fee in the guise of regulation of fee, under the Act; and whether such notification violated the provisions of the Act. The Supreme Court went on to hold and declare that charging of capitation fee by the private educational institutions as a consideration for admission is wholly illegal and cannot be permitted. This Judgment appears to be quite farfetched in the matter of implementation was welcomed by all the quarters in India except of course. The private colleges charging donations under one guise or the other. However it reinforced the principle that Education is not a commodity for sale. The court given a wider interpretation the right of education. The division bench observes that the fundamental right to Speech and expression cannot be fully enjoyed unless a citizen educated and conscious of his individualistic dignity. The education in India has never been a commodity for sale. Charging more "Capitation fee "to different student differently is violation Article 14. Where the court held that charging of higher fee (Capitation fees) by educational institutions amounts to denial of right to education.

24. Nargis Mirza vs. Air India29

This is case of The Indian Air India International are two corporation. They were created by the central government by virtue of Section 3 of the 1953 Act. There were two in the crew for running the flight, consisting of Pilots, ffs and in -flight Pursers on the one hand and the Air Hostesses, Check AH, Deputy Chief AH and Chief AH on the other hand. Through both of these groups worked in one crew, there were difference in the mode of appoint, service conditions, the mode of recruitment, the emolument etc. In this case mere education without employment prospects does not serve the purpose of right to live with human dignity (Article 21). In one way it is a great injustice done to the students of Creamy layer. (It is just like regulation 47 of Air India and Indian Air Lines, which was challenged by Nargis Mirza where in the regulation, provided the Right to Marry but does not allow to carry, which regulation was struck down by the Apex Court). The Supreme court gave the judgment in favour of the Air Hostesses opining that too much gender discrination was shown by the corporation (i.e., by the Government ) The Supreme court held that the clause regarding retirement and pregnancy were unconstitutional and the fore struck down them.

29 AIR 1981 SC 1829
25. Nisha A Shenal Vs. NTR University of Health Sciences

In this case the Medical Council of India Regulations of Graduate Medical Education 1997 framed by the Medical Council under Sec.33 of the Act are statutory in nature. They are mandatory and binding on the University Medical Colleges as well as students. Therefore the High Court of Andhra Pradesh held that the said regulations come into force with effect from the date of their publication in the Gazette, it is not open to the University or the college to postpone their implementation to the next academic year.

26. Rajendran Vs. State Madras

The occupations followed by establish classes may been may contribute to social backwardness, and so many the habitation of people, as the problem of backwardness is the problem of rural areas. The impugned order made a classification only on caste, without regard to other factors and such a classification was not permissible under Article 15(4).

27. Ramakrishna Dalmia Vs. Justice S.R.Tendolkar

In this case it held that the inequalities of a social system are a fact which should not be perpetuated by an application of the notion of quality, because injustice arises when unequal’s are treated equally The notion of equality came to be conceived as an ideal form of Justice, without realizing that a just social order must also seek to bridge the gap between the equals and the unequal’s in various fields of life, so as to promote equality of opportunity in the real sense. In an order that laws may perform its legitimate function properly, the doctrine of classification has been evolved. That doctrine as adopted by the Supreme Court of India in Dalmia Case established

28. S.R.Das C.J. In Basheshar Nath Vs C.I.T. Delhi and Rajasthan

In this case the provision thus confers a right by enacting a prohibition, which appears to be absolute. It may “be observed that so far as this Article is concerned there is no relaxation of the restrictions imposed by it such as there are in some of the other

293 AIR 1999 (AP) 233
294 AIR 1968 SC 1812
295 1958 SC 538
296 1959 SCR 528
Articles e.g. Article 19 cls (2) to (6). However, this prohibition is only apparent, as the doctrine of classification has been incorporated therein by judicial decisions.

29. State of Madras Vs. Shrimati Champakam Doraiswamy 297

The Supreme Court held that the Government orders violated 29(2). This judgment would frustrate the policy of proactive discrimination, which was sine qua non for promoting the right to equality, by providing unequal treatment to reduce inequality. Therefore in order to vindicate the policy of protective discrimination, Article 15 (4) was added by the Constitution (First Amendment) Act, 1951. Article 15 (4) empowers the state to make any special provision for the advancement of socially and educationally backward classes of citizens or for Sacs Sets. It was added by the Constitution(1st Amendment) Act, 1951 as the result in the above case this provision has enabled the state to reserve few seats for SC's and ST's in educational institutions including technical, engineering and medical colleges.

30 ST. Stephens College Vs. University of Delhi. 298

In these cases, St. Stephen's college at Delhi and Allahabad Agricultural Institute at Naini are two premier and renowned institution. The former has been affiliated to Delhi University and the latter to the U.P University. Both are aided minority educational institutions. Both of them have been giving priority to the Christian students. For the academic year 1980-81, both of the minority educational institutions invited application from the students reserving 50% of the seats to the Christian students. The Vice Chancellor of Delhi University intervened and issued a circular that the admissions shall be made on merit basis depending upon the marks obtained by the students in the entrance Test. The management of St. Stephen's College and Allahabad Agricultural Institute filed Writ Petitions under Article 32 before the Supreme Court contending that they are minority institutions and they have liberty to give admissions to Christian students basing upon the merit among the Christians.

The Supreme Court admitted the Writ Petitions, and gave judgment in favor of institutions and directing the Vice-Chancellor not to interfere. This judgment though confined to the professional educational in aided and unaided minority and private educational institutions has affected the right to education in India in general also.

297 1951 SC 525
298 AIR 1992 SC 1630
31. State of Bombay Vs. Bombay Education Society

In case the State or University has no power to prescribe a particular language as the exclusive medium of instruction. The State of Bombay issued an order titled “Admissions to schools teaching through the medium of ENGLISH. The circular stated that the admissions to English medium should be limited only to citizens belonging to Anglo Indians and citizens of Non-Asiatic origin. This is a minority institution. The State directed the school to admit only those students whose mother tongue was English but not others. A candidate, whose mother tongue was English, challenged the constitutionality of the order as it violates Articles 29(20) that is discrimination on the ground of language.

32. State of Kerala Vs. N.M. Thomas

The above said case belong to the State Government of Kerala issued a Government Order announcing that there would be department tests for promotion from Lower Division Clerks to the post of Upper Division Clerks in the Registration Department. However, in the same G.O., 2 years time has been granted to the candidates for Scheduled Castes and Scheduled Tribes, while giving them promotion. Thomas Challenged this government Order alleging that the promotion to the Scheduled Castes and Scheduled Tribes without passing the Departmental Examination was unconstitutional. The Supreme Court with a 5:2 majority held that the order of the State Government was Constitutional. The Order exempted the Scheduled Caste and Scheduled Tribes candidates only for a limited period of 2 years from passing the departmental examinations, but not completely. G.O. was up held. Reservation under clause 4 of the Article 16 are not a violation of the principle of equality stated under clause 1 of that Article by promoting the advancing the interest s of backward classes.

33. T.M. Pai Vs State of Karnataka

In this case education is per se regarded as an Activity that is charitable in nature. Education has so far not been regarded as a trade or business where profit is the motive. The establishment is running of an educational institution, where a large number of persons are employed as teachers or administrative staff, and an Activity is carried on that results in imparting of knowledge to the student, must necessarily be

299 AIR 1954 SC 561
300 AIR 1976 SC 490
301 AIR 2003 SC 355
regarded as an occupation, even if there is no element of profit generation. It is difficult to comprehend that education, per se, will not fall under any of the four expressions in Article 19(1) (g) i.e. Profession, occupation, trade and business. Various Writ Petition were filed before the Supreme Court raising several constitutional questions on the establishment of the educational institutions, including religious and minorities. The Supreme Court discussed each elaborately and delivered judgment contained 152 pages, right to establish the educational institutions is a Fundamental Right, the right under Article 26(a) is a group right and available to every religious denomination or any section thereof, is it of majority or any section, thereof. It is evident from the opening words of Article 26 that the right is subject to public order, morality and health, the Government controls over the unaided private educational institution include recruiting students and staff and guarantee of fee chargeable and ensure that merit is not disregarded, the capitation fee is not charged and institution not run with profit motive, Supreme Court held that establishment of education institution is 'occupation ' the fundamental right to establish an education institution is different from right to ask for recognition or affiliation. Private Education Institution' includes secular and religious denomination but also the world ‘private’ is used in contradistinction to the government institutions. In this case it as depicted new dimensions of the court role in laying down norms for educational policy makers and administers.

34. Chitraleka Vs. State of Mysore

In the said case “Secularism is the basic feature of the Indian constitution. It envisages a cohesive, unified and castles; social caste poses a serious threat to secularism and as a consequence to the integrity of the country. Ram Sahal J. Held that under a secular constitution, caste, like religion and race, cannot furnish the basis of reservation of posts in service according to him uplifting the backward class citizens, promoting them to socially, educationally, taking care of weaker section of the society by special program me and policies in the primary concern of the State’s Saahi J.J were forthright. Nothing in this Article or clause (2) of the Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or the Scheduled Caste and Scheduled Tribe”. The Supreme Court considered the question for reservation of seats in the light of Article 15(4).

302 1954 SCR 1823
35 Valsamma Paul Vs. Cochin University

It is the case of two posts Lectures in Law Departments of Cochin University notified for recruitment one of which was reserved for Latin Catholics (Backward -fishermen). The Appellant -Mrs. Valsamma Paul was a Synan Catholic (a forward), and married a Latin Catholic. She had supplied for selection as a reserved candidate, and was appointed. One Rani George challenged her appointment contending that the appellant was born in forward, though she married a backward class person, status in India shall be decided on the basis of birth, but not on marriage. The Full Bench of the Supreme Court gave Judgment in favor of Rani George.

Principles in the Case were, Candidate born in forward class, transplanted in backward class/SC/ST. by the marriage adoption or any other voluntary Act, is not entitled to benefit reservation for BC/SC/ST, Inter - Caste marriages and adoption are two social institutions through which secularism would find fruitful and solid base for an egalitarian social order under Constitution, Therefore due recognition should be accorded for social mobility and integration and accordingly its recognition must be upheld as valid law. Secularism is a bridge between religions, but it cannot be applied for the reservation, “Knowledge is power” has greatly influenced to framers of the constitution in providing special provisions, relating to education. Hence they sought that “Right to education is an essential medium of social justice, Right to education need not necessarily be understood in the sense of the college or university education, rather its true meaning is to enlightenment and overall development of the individual well as groups of people of India, through the preamble we the people of India made a solemn pledge to secure to all its citizens: justice, liberty and equality by establishing democratic governance.

36. Vasantha Kumar Vs. State of Karnataka

In a very thought provoking and illuminating judgment, Justice O. Chinua Reddy pointed out in the above said case is that the conflict was not between meritarian and compensatory principles but between classes. What was merit? If a T, V. Or have any paternal guidance could score 40% or 50% was he not meritorious when compared to a person who had all the advantages and scored 80 % or 90 %? Referring to criteria

303 AIR 1996 SC 1011
304 AIR 1985 SC 1495
to determine backwardness, in this Justice 0. Chinnapa Reddy pointed out that the conflict was not between meritarin and compensatory principles but not the classes.

37. V. Sudheer Vs. Bar Council of India

The above case it says that during the two decades, the Bar Council of India has been making such rules the improvement of advocacy Profession and the standard in Law courses and Lawyers. Some of them hailed. However some of them have been causing obstacles to the law students and advocates. The power of legislation to the Bar Council is delegated from the Advocate Act, 1961. The bar Council made a rule restraining the person not enrolls their names whose age exceeds 45 years. There Bar Council made another rule making all the law graduates to do compulsory apprenticeship for one year with a senior advocate having 15 years experience. It framed several collateral rules pertaining to apprenticeship on Supreme Court quashed the rule of compulsory apprenticeship stating that it was done under the colourable legislation thought original Act, i.e. The Advocate Act 1961 does not make it necessary. The Supreme Court quashed this Rule opining that was violating Article 14 and 19(1), and opined that the Bar Council exceeded their limits in delegated legislation. In this petitioner challenged the said rules on the ground that there was no power with the BCI to frame the impugned rules. The petitioners contended that Section 7 of the Advocates Act did not entitle the BCI to frame such rules prescribing a pre-condition before enrolment of an applicant as an advocate under the Act by requiring him to undergo pre-enrolment training as an advocate and apprenticeship as laid down under the impugned rule. The Supreme Court held the impugned rules ultra virus the Advocates Act, 1961 and observed that the promotion of legal education is one the statutory functions of the BCI under section 7 of the Act, but the same should be carried on in consultation with the respective Universities in India imparting legal education and the State Bar Councils as it was provided under Section 7(1) (h) of the Act.

38. State of Tamil Nadu & Ors vs.K. Shyam Sunder & Ors

In this case State of Tamil Nadu, there had been different Boards imparting basic education to students upto 10th standard, namely, State Board, Matriculation

305 AIR 1999 Sc 1167
306 Civil Appeal NO.6015-6027/2011
Board, Oriental Board and Anglo-Indian Board. Each Board had its own syllabus and prescribed different types of textbooks. In order to remove disparity in standard of education under different Boards, the State Government appointed a Committee for suggesting a uniform system of school education. The said Committee submitted its report on 4.7.2007. Then another Committee was appointed to implement suggestions/recommendations made by the said Committee. During the intervening period, The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter called the Act 2009), enacted by the Parliament, came into force with effect from 1.4.2010 providing for free and compulsory education to every child of the age of 6 to 14 years in a neighbourhood school till completion of elementary education i.e. upto 8th standard. The Act 2009 provided that curriculum and the evaluation procedure would be laid down by an Academic Authority to be specified by the appropriate State Government, by issuing a notification. The said Academic Authority would lay down curriculum and the evaluation procedure taking into consideration various factors mentioned under Section 29 of the Act 2009. Section 34 of the Act 2009 also provided for the constitution of a State Advisory Council consisting of maximum 15 members. The members would be appointed from amongst persons having knowledge and practical experience in the field of elementary education and child development. The State Advisory Council would advise the State Government on implementation of the provisions of the Act 2009 in an effective manner.

The Cabinet of the State of Tamil Nadu took a decision on 29.8.2009 that it will implement the uniform system of school education in all schools in the State, form a Common Board by integrating the existing four Boards, and will introduce textbooks providing for the uniform syllabus in Standards I and VI in the academic year 2010-11 and in Standards II to V and VII to X in the academic year 2011-12. In order to give effect to the said Cabinet decision, steps were taken on administrative level and thus, the Tamil Nadu Uniform System of School Education Ordinance, 2009 was issued on 27.11.2009 which was published in the official Gazette on 30.11.2009. The Ordinance was subsequently converted into the Act 2010 on 1.2.2010. The Act 2010 provided for the State Common Board of School Education. The Act 2010 was enacted to enforce the uniform education system in the State of Tamil Nadu in order to impart quality education to all children, without any discrimination on the ground of their economic,
social or cultural background. The appellants are directed to enforce the High Court judgment impugned herein within a period of 10 days.

39. Society for Unaided Private Schools of Rajasthan v. Union of India\textsuperscript{307}.

Goal of Universal Primary or Elementary Education under - Right of every child of the age of 6 to 14 years to free and compulsory education in a neighbourhood school till completion of elementary education (i.e. Classes I to VIII) - Attainment of - Removal of all barriers (most prominent being financial) especially through reservation under Ss. 12(1)(c) & (b) and withdrawal of recognition under S. 18(3) upon non-compliance with specified norms and requirements, including non-compliance with Ss. 12(1)(c) & (b) - Extent of enforceability on non-State Actors i.e. whether enforceable against: (a) unaided minority and non-minority schools, and (b) parents - Relevance of words shall provide free and compulsory education in Art. 21A as against provide for free and compulsory education in Art. 45 (before its substitution) - Ss. 12 and 18(3), held (per majority), are mandatorily enforceable against all types of schools under S.2(n) except unaided minority schools - Thus reservation under S. 12(1)(c) and other provisions of RTE Act, 2009 are mandatorily enforceable against unaided non-minority institutions - Thus, by virtue of S. 12(1)(c) r/w Ss. 2(n)(iii) & (iv) of RTE Act, 2009, the State while granting recognition to private unaided non-minority schools may specify permissible percentage of seats to be earmarked for children who may not be in a position to pay their fees or charges - Principles of autonomy, voluntariness, cooperation/co-optation and anti-nationalisation of seats laid down in T.M.A. Pai Foundation, (2002) 8 SCC 481 and P.A. Inamdar, (2005) 6 SCC 537 do not apply in cases where a child seeks admission to Class I, when object of S. 12(1)(c) is to remove financial obstacles to universal access to primary or elementary education - However, the RTE Act, 2009, and in particular Ss. 12(1)(c) and 18(3), infringes fundamental freedom guaranteed to unaided minority schools under Art. 30(1) and, consequently, applying principle of severability, the said RTE Act, 2009 shall not apply to such schools - Further held, this judgment would operate prospectively from academic year 2012-2013 - Hence, admissions given by unaided minority schools prior to pronouncement of this judgment shall not be reopened - Further held (per majority), RTE Act, 2009 is applicable only to day scholars, if any, in boarding schools and

\textsuperscript{307}(2012) 6 SCC 1
orphanages and not to the boarders - Government directed to issue S. 35 guidelines clarifying the issue regarding boarding schools and orphanages - Per Radhakrishnan, J. (partly dissenting), RTE Act, 2009 can be enforced against all types of schools under S. 2(n) except unaided schools (whether non-minority or minority) - As far as said unaided schools (whether minority or non-minority) are concerned, S. 12(1)(c) and rest of RTE Act, 2009 are directory and not mandatory, implying thereby that S. 12(1)(c) directions can be adopted by unaided schools only on principles of voluntariness, autonomy and consensus and not on compulsion or threat of non-recognition or non-affiliation – Making available neighbourhood schools as provided in S. 6 r/w Ss. 8 and 9 is primary responsibility of Government – Duty imposed on parents under S. 10 is also directory in nature - Ss. 4, 10, 14, 15 and 16 are directory in their content and application - As far as S. 21 is concerned, besides unaided schools (minority or non-minority) it is also not applicable to aided minority schools - Lastly, RTE Act, 2009 is not applicable to institutions which predominantly provide religious instruction like Vedic pathshalas and madrasas (as clarified by Central Government in exercise of powers under S. 35) - RTE Act, 2009 does not interfere with protection granted under Arts. 25 and 26, Preamble, Pts. III and IV - Classes of rights - Socio-economic rights (second generation rights) - (a) Nature of and (b) manner in which can be achieved, stated - Socio-economic rights like those under Pt. IV of Constitution or under Art. 21-A, per Radhakrishnan, J., can be enforced only if there is constitutional and statutory sanction - Even in countries where socio-economic rights have been given constitutional status, they are available only against State and not against non-State Actors (like private schools and private hospitals) - Further, State's responsibility is limited to taking reasonable legislative measures within its limited available resources to achieve progressive realisation of these rights – Beneficiaries of socio-economic rights should not make an inroad into the rights granted to other citizens like under Art. 19(1)(g) or Art. 30(1) - No doubt it is clear from Arts. 21A, 45, 51-A(k) and S. 12, RTE Act, 2009 and various international conventions that an obligation is cast on non-State Actors for realisation of children's rights - There is also no doubt that due to liberalisation and privatisation of State functions there is a shift in State functions to non-State Actors in the field of health care, education, social services, etc. - Non-State Actors are thus expected to protect rights of children granted under Art. 21A and RTE Act, 2009 - But they cannot be expected to surrender their rights constitutionally
guaranteed - Further, State cannot free itself from its obligation under Art. 21A by offloading or outsourcing its obligation to non-State Actors.

40. Adarsh Shiksha Mahavidyalaya and Subhash Rangstage and others.308

The importance of teachers and their training has been highlighted time and again by eminent educationists and leaders of society. The Courts have also laid considerable emphasis on the dire need of having qualified teachers in schools and colleges. Education should be a great cohesive force in developing integrity of the nation. Education develops the ethos of the nation. Regulations are, therefore, necessary to see that there are no divisive or disintegrating forces in administration."

The researcher thus analysed about 40 cases the Land mark cases decided by Supreme Court and High Courts of various State in India. In all these cases the Judicially had Interpreted right to education and said that the above right is a fundamental right of the people of India.

308 Civil Appeal NO. 104 OF 2012 (arising out of SLP (C) No.14020 of 2009)