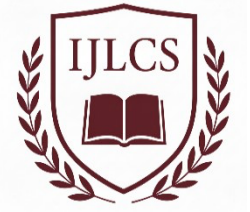


ARTICLE

LINKING PROMISES TO PRACTICES: A COMPARATIVE CRITIQUE OF THE RIGHT TO EDUCATION IN ARTICLE 21A OF THE INDIAN CONSTITUTION



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Abstract

Right to education stands out in the discussions on human rights due to the fact that it can be placed in both civil-political and socio-economic groups of rights and acts as a "multiplier right" by which others can be enjoyed. Right to education experienced drastic change in the constitutional context in the shift from being an unenforceable Directive Principle of State Policy in Article 45 to a Fundamental Right in Article 21A due to the Eighty-Sixth Amendment of the Constitution of India, 2002. The paper offers a doctrinal and comparative approach towards analyzing the right to education in India by examining its place in the framework of international human rights law. The international law framework would include the International Covenant on Economic, Social and Cultural Rights, Universal Declaration of Human Rights, and Convention on the Rights of the Child. The origin of the right in judicial decisions such as *Mohini Jain*, *Unni Krishnan* etc. and the problem of lack of proper implementation of the right, even after two decades of constitutional guarantee in relation to marginalized groups like Scheduled Castes and Tribes, girls, linguistic minorities and rural population would be discussed. The paper draws a comparison with the South African judicial precedent on Section 29 of its Constitution regarding immediate realization of basic education. This paper ends with the making of policy prescriptions that intend to transform the right to education from a mere paper right into a social justice right.

Keywords – Right to Education; Article 21A; Indian Constitution; Human Rights; Social Justice.

I. INTRODUCTION

Education, by itself, is a right, while it is also a very important instrument for the enjoyment of other human rights. It helps develop the personality of human beings, facilitates economic independence, and it is considered as a “multiplier right” in the sense that its enjoyment enhances the ability of people to claim their rights. Thus, the right to education enjoys a unique position in both constitutional and international human rights law, bridging the gap between civil and socio-economic rights.¹

The right to education has come a long way in its journey through the constitution of India. It has evolved from being a non-enforceable Directive Principle of State Policy as mentioned in Article 45 of the Constitution of India, 1950 to a justiciable fundamental right as per Article 21A introduced

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¹ Kalyani Sital, Jocelyn E. Getgen & Steven Arrigg Koh, ‘Enhancing Enforcement of Economic, Social, and Cultural Rights Using Indicators: A Focus on the Right to Education in the ICESCR’ in Manisuli Ssenyonjo (ed), *Economic, Social and Cultural Rights* (Routledge 2017).

via the Constitution (Eighty-sixth Amendment) Act, 2002, which was later operationalized via the RTE Act.² This transition was not an abrupt one, for the right to education came to be accepted as a part of the right to life and personal liberty guaranteed by Article 21, based on the findings of the Supreme Court in *Mohini Jain v State of Karnataka* and *Unni Krishnan, J.P. v State of Andhra Pradesh*.³

Despite all that, more than two decades since the constitutional provision has taken its current form, and more than a decade since the Act itself became active, a wide disparity still persists between the provisions of Article 21A and the lived experience of children whose right to education remains violated despite all that.⁴ This paper aims at examining this disparity. The Indian constitutional provision will be examined within the wider context of the international human rights law, the evolution of the provision will be discussed, its implementation deficit with regard to marginalised groups will be critically evaluated, and a comparison will be drawn with South Africa — a country where the constitutional provisions and case law related to the right to education form an interesting comparison to the Indian approach to this right.

The essay is divided into eight sections. Section 2 discusses the normative basis of the right to education under international human rights law. Section 3 discusses the historical development of the right in India. Section 4 discusses the problems of implementation faced by marginalized groups. Section 5 provides the comparison with South Africa. Section 6 critically analyzes why constitutional provisions have not led to equal opportunities. The recommendations are discussed in Part 7, whereas Part 8 forms the conclusion.

II. RIGHT TO EDUCATION IN INTERNATIONAL HUMAN RIGHTS LAW

Right to education has been one of the first rights adopted at the international level. Specifically, the Universal Declaration of Human Rights 1948 in Article 26 defines the right to education as a universal right.⁵

Normative Basis: the UDHR, ICESCR and CRC

The combination of Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights 1966 ("ICESCR") is considered to be the most detailed articulation of the right to education in international law, requiring States Parties to make primary education compulsory and free to all.⁶ The Convention on the Rights of the Child 1989 ("CRC") further guarantees the right of the child to education on an equal opportunity basis, being a progressively attainable right but with

² INDIA CONST. art. 21A; The Right of Children to Free and Compulsory Education Act, No. 35 of 2009, India Code (2009).

³ *Mohini Jain v State of Karnataka*, MANU/SC/0357/1992; *Unni Krishnan, J.P. v State of Andhra Pradesh*, MANU/SC/0333/1993.

⁴ The Role of the Right to Education Act, 2009 in Empowering Marginalized Communities in Rural India: A Regional Analysis, 4(2) ShodhKosh: Journal of Visual and Performing Arts (2023), <https://doi.org/10.29121/shodhkosh.v4.i2.2023.3816>.

⁵ Sıla Özler, 'The Universal Declaration of Human Rights at Seventy: Progress and Challenges' (2018) 32(4) Ethics & International Affairs; Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (10 December 1948) art 26.

⁶ Human Rights Quarterly, 'Kalantry, Getgen & Koh, Enhancing Enforcement of Economic, Social and Cultural Rights Using Indicators', https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Kalantry_Getgen_Koh_Enhancing_Enforcement_of_Economic_Social_and_Cultural_Rights_Using_Indicators_2010_En.pdf.

immediate duty of non-discrimination.⁷ The Indian state recognized the ICESCR and CRC in 1979 and 1992 respectively, and as such committed itself to international obligations which came before the recognition of the right in Article 21A of the Indian constitution.

Regional human rights regimes have created their own body of jurisprudence in this regard. For instance, the African Charter on Human and Peoples' Rights and other treaties like the Maputo Protocol have been interpreted to impose duties towards ensuring that girls enjoy the right to education⁸, while the right to education is recognized by the First Protocol of the European Convention of Human Rights.

The 4-A Framework: Availability, Accessibility, Acceptability and Adaptability

Former United Nations Special Rapporteur on the Right to Education, Katarina Tomaševski, formulated the extensively quoted “4-A” framework, wherein States are required to provide for an education that is available (adequate institutions and facilities), accessible (non-discriminatory and affordable), acceptable (relevant, culturally acceptable and high quality), and adaptable (responsive to the changing requirements of society and communities, including children with disabilities and children out-of-school).⁹ Such a framework can help analyse whether an entrenched domestic constitutional provision, though well drafted in its language, does provide for substantive enjoyment of the right in reality, and not just mere formal acknowledgment thereof.

III. CONSTITUTIONAL DEVELOPMENT OF RIGHT TO EDUCATION IN INDIA

From Directive Principle to Justiciable Right

The obligation of providing free and compulsory education for children under fourteen years was a part of non-justiciable Directive Principles of State Policy enshrined in Article 45 of the Constitution of India at the time of its adoption. This directive enjoined the State to strive for fulfilling that obligation within a period of ten years from the commencement of the Constitution.¹⁰ This period of ten years could not be achieved by the State, and thus, for more than four decades, this right was more aspirational than justiciable.

However, the crucial development came through judicial interpretation of Article 21. The Supreme Court, while delivering its judgement in the case of *Mohini Jain v. State of Karnataka*, observed that the right to education is implicit in the right to life, on the basis that the dignity of the individual guaranteed under Article 21 would not be ensured without the right to education.¹¹ However, in the case of *Unni Krishnan, J.P. v State of Andhra Pradesh*, one year later, the Constitution Bench modified this view by holding that the right to free and compulsory education was a fundamental

⁷ Ryan Good, ‘The Human Right to Education: Definition, Research and Annotated Bibliography’, Emory International Law Review, <https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1231&context=eilr>.

⁸ Educational Values in Human Rights Treaties: UN, European, and African International Law, PMC, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7371825/>.

⁹ The Obligation to Provide Free Basic Education in South Africa: An International Law Perspective [2011] PER 34, <https://www.saflii.org/za/journals/PER/2011/34.html>.

¹⁰ Right to Education under Article 21A of Indian Constitution, Drishti Judiciary, <https://www.drishtijudiciary.com/to-the-point/tp-constitution-of-india/right-to-education-under-article-21a>.

¹¹ *Mohini Jain v State of Karnataka*, MANU/SC/0357/1992.

right only to those children who are below fourteen years of age and thereafter the right to education would depend on the economic capability of the State.¹²

Judicial consolidation: Article 21A and aftermath

The Constitution (Eighty-Sixth Amendment) Act, 2002 introduced the Article 21A, which stipulates that the state shall ensure free and compulsory education to all children between the age group of 6 to 14 years through such methods as the state may by law prescribe.¹³ Along with this, the constitution amended Article 45 to make it a directive of providing early childhood care and education for the children below the age of 6 years, and introduced Article 51A(k), imposing the same as the fundamental duty of the parents and guardian of providing opportunities for education to the children between 6 to 14 years.

Later decisions of the judiciary have contributed to the development of the scope of the right in question. As stated by the Supreme Court in *Ashok Kumar Thakur v Union of India*, in relation to the reservations in the higher educational institutions, the quality of elementary education was an essential component of the right enshrined in Article 21A of the Constitution of India.¹⁴ Also, in the case of *Avinash Mehrotra v Union of India*, the Supreme Court found that a right to a safe learning environment, including fire safety standards in school premises, falls within the scope of the right to education.¹⁵

The Right of Children to Free and Compulsory Education Act, 2009

The Parliament of India has implemented the mandate provided under Article 21-A through the enactment of Right of Children to Free and Compulsory Education Act, 2009. The Act became applicable from 1st April 2010. The Act ensures provision for neighbourhood education; prohibition of the screening process and capitation fees; setting norms for student teacher ratio, physical infrastructure, and curriculum. Most importantly, it makes it mandatory on private unaided schools to provide 25 percent of admission seats to weaker sections of society.¹⁶

This twenty-five percent reservation has been questioned in the case of *Society for Un-Aided Private Schools of Rajasthan v Union of India*, wherein the Court ruled that the application of the Right to Education Act to private unaided non-minority schools, but not to unaided minority educational institutions, is valid due to the protection available to minority institutions under Article 30(1) of the Constitution.¹⁷ This has created an enduring dilemma regarding the universalism of Article 21A versus the special protection to minority institutions provided by Article 30(1), which has been discussed at length in Indian jurisprudence.¹⁸

¹² *Unni Krishnan, J.P. v State of Andhra Pradesh*, MANU/SC/0333/1993.

¹³ INDIA CONST. art. 21A.

¹⁴ *Ashok Kumar Thakur v Union of India*, MANU/SC/1397/2008.

¹⁵ *Avinash Mehrotra v Union of India*, MANU/SC/0555/2009.

¹⁶ Article 21A: The Right to Education in India, CLAT Buddy, <https://clatbuddy.com/article-21a-the-right-to-education-in-india/>; Right to Education: Article 21A, RTE Rules, and the Free and Compulsory Education Act, De Facto Law, <https://www.defactolaw.in/post/right-to-education-article-21a-rte-rules-and-the-free-and-compulsory-education-act>.

¹⁷ *Society for Un-Aided Private Schools of Rajasthan v Union of India*, MANU/SC/0311/2012.

¹⁸ Vishal Sharma, 'Article 21A versus Article 30(1): Right to Education versus Minority Rights', *ILI Law Review* (2016); Education for All: Reading Article 21A and Article 30 of the Constitution of India, ResearchGate (2024), <https://www.researchgate.net/publication/388388667>.

Scope and Limitations of Article 21A

One such important constraint in the context of Article 21A is that the language of Article 21A itself provides for free and compulsory education only up to elementary level for children aged from six to fourteen.¹⁹ The age-based framework of Article 21A, although understandable in historical context as the Unni Krishnan framework, is increasingly coming under criticism for creating a “cliff edge” situation where constitutional provisions suddenly end just as the child attains secondary education, where the incidence of dropouts – especially among poor and rural children – sharply increases.²⁰

IV. IMPLEMENTATION PROBLEMS AND DISADVANTAGED GROUPS

Enrollment, Retention, and Quality

The national statistics recorded following the implementation of the RTE Act reveal an increase in gross enrollment ratios in the elementary sector; however, while there have been improvements at the national level, there continue to be differences at the state and district levels, as well as gaps between enrollment and learning levels.²¹ A study conducted in order to understand the impact of the RTE Act on marginalized groups in rural India revealed an increase in enrollment of girls and disadvantaged children, but problems of retention due to infrastructural shortcomings and cultural issues.²²

Based on the availability and acceptability elements of the 4-A approach explained in Part 2, it can be seen that there has been a significant achievement of the Indian State towards availability, i.e., presence of neighborhood schools, but a very poor performance in terms of acceptability which means quality and relevance of education provided in those schools.

Cast, Gender and Urban-Rural Differentiations

The empirical research shows that children belonging to SC/ST community are still experiencing greater barriers of education including discrimination by their peers and teachers, language problem when language of instructions does not match the mother tongue of the child, and lack of learning materials including books and computer technology.²³ A study conducted in rural Rajasthan has shown that barriers to education of the SC/ST children continued despite the legal provisions under the RTE Act.²⁴

¹⁹ Education for All: Reading Article 21A and Article 30 of the Constitution of India, ResearchGate (2024), <https://www.researchgate.net/publication/388388667>.

²⁰ Barriers to Accessing Secondary Education in India, <https://ignited.in/index.php/jasrae/article/download/15171/30004/74556>.

²¹ Education for All: Reading Article 21A and Article 30 of the Constitution of India, ResearchGate (2024), <https://www.researchgate.net/publication/388388667>; Article 21A and the Right to Education: Evaluating Implementation and Gaps, Indian Journal of Law and Legal Research (2025), <https://www.ijllr.com/post/article-21a-and-the-right-to-education-evaluating-implementation-and-gaps>.

²² The Role of the Right to Education Act, 2009 in Empowering Marginalized Communities in Rural India: A Regional Analysis, 4(2) ShodhKosh (2023), <https://doi.org/10.29121/shodhkosh.v4.i2.2023.3816>.

²³ Analyzing the Right to Education for Marginalized and Vulnerable Communities, International Journal for Multidisciplinary Research (2024), <https://www.ijfmr.com/papers/2024/2/18074.pdf>.

²⁴ N. Patel, ‘Barriers to Educational Access for SC/ST Students under the RTE Act: A Case Study from Rural Rajasthan’, 14(1) International Journal of Social Science Research 84 (2019).

Gender is another axis of exclusion. The study of implementation of RTE Act in rural India revealed that even if there is an improvement in enrolment of girls because of the Act, the socio-cultural norms based on gender continue to prevent retention, especially during the transition to secondary education. Caste based discrimination further affects girls belonging to the Scheduled Castes or Scheduled Tribes families.²⁵

Inequalities between urban and rural regions further exacerbate this problem as rural schools suffer from the lack of proper infrastructure, including the lack of working toilet facilities (which becomes very important after the onset of puberty), poor classroom conditions, and the lack of teachers creating a clear difference between the quality of education provided to rural and urban children and poor versus rich.²⁶

Institutional Accountability: School Management Committees

As envisioned in the RTE Act, School Management Committees, consisting of parents, local elected representatives and school staff members, should be the main institution to monitor school management and school development planning.²⁷ Yet, in practice, scholarly work shows that such committees often lack the skills and resources needed to monitor schools properly and make education authorities accountable. The absence of proper monitoring leads to the absence of enforcement mechanisms allowing the violation of the norms set forth by the RTE Act, such as inappropriate student/teacher ratio, lack of adequate infrastructure and screening of students, to go without any control.²⁸

The Private School Problem

As the Court ruled in *Society for Un-Aided Private Schools of Rajasthan*, the twenty-five per cent reservation for disadvantaged and economically weaker section children in private unaided schools is a redistribution mechanism, integrating marginalised children into better-equipped schools.²⁹ However, implementation studies reveal the delay in State reimbursement of school fees, problems with identification and verification of beneficiaries and social stigmatization of children admitted due to this provision – all limiting the potential of redistribution and illustrating the main idea of the paper.

V. COMPARATIVE PERSPECTIVE: SOUTH AFRICA'S BASIC EDUCATION JURISPRUDENCE

Section 29 and the Doctrine of Immediate Realisation

South Africa offers an instructive comparator to India's experience. Section 29(1)(a) of the Constitution of the Republic of South Africa, 1996 enshrines in the Bill of Rights the right to a basic

²⁵ R. Kumar & A. Singh, 'Gender and Education: The Role of RTE in Promoting Equality in Rural India', 19(2) *Indian Journal of Educational Policy* 99 (2017); M. Anand, 'The Impact of the Right to Education Act on Marginalized Communities in Rural India', 22(3) *Journal of Rural Education and Development* 45 (2015).

²⁶ *Socio-Economic Barriers to Education Under RTE*, IJCRT (2025), <https://www.ijert.org/papers/IJCRT25A5674.pdf>.

²⁷ *The Role of the Right to Education Act, 2009 in Empowering Marginalized Communities in Rural India: A Regional Analysis*, ResearchGate (2025), <https://www.researchgate.net/publication/388166646>.

²⁸ *Socio-Economic Barriers to Education Under RTE*, IJCRT (2025), <https://www.ijert.org/papers/IJCRT25A5674.pdf>.

²⁹ *Society for Un-Aided Private Schools of Rajasthan v Union of India*, MANU/SC/0311/2012.

education for all persons, including adult basic education, without the internal qualifiers of progressive realisation and availability of resources which apply to the other socio-economic rights guaranteed under the Constitution of South Africa, like housing and healthcare.³⁰ It follows that the South African courts and jurists have understood the right to basic education to be an immediately realisable one, and not a right which is to be progressively realised. This is in stark contrast to the resource dependent wording of Article 13 of the ICESCR.³¹

ICESCR Ratification and Progressive Realisation Doctrine

It may be pertinent to note here that the ICESCR was ratified by South Africa only in 2015, nearly two decades after it had signed the covenant, and entered a declaration to the effect that the right to education under Articles 13 and 14 of the Covenant would be progressively realised within the context of national education policies and the availability of resources.³² Critics have described this as an internally inconsistent treaty declaration in light of the domestic constitutional position that the right to basic education is immediately realisable under Section 29 of the Constitution of South Africa.³³

Lessons for India

The comparison offered by South Africa holds lessons for India on two fronts. Firstly, it serves to highlight the significance of textual exclusion of any resource-based qualification in the recognition of a right to basic education, as against Article 21A of the Constitution of India which leaves the manner of fulfilment of the right to be “determined by law” (and therefore by means of the RTE Act).³⁴ Secondly, it serves to illustrate that even an immediately realisable constitutional right is not necessarily self-executing in nature. Implementation inadequacies, resource limitations and rural-urban and racial disparities in access to the right to basic education, inherited from the apartheid era, continue to exist in South Africa, as much as caste, gender and rural-urban disparities continue to impact access to the right in India.³⁵

VI. CRITICAL ANALYSIS: REASONING AS TO WHY THE CONSTITUTIONAL GUARANTEE HASN'T LED TO SUBSTANTIVE EQUALITY

Three intertwined reasons may be gleaned from the above analysis. Firstly, the constitutionality guarantee, which is tied to a particular age and particular form of education, that is to say elementary

³⁰ The Obligation to Provide Free Basic Education in South Africa: An International Law Perspective [2011] PER 34, <https://www.saflii.org/za/journals/PER/2011/34.html>.

³¹ Four years following South Africa's declaration upon the ratification of the ICESCR and jurisprudence on the right to basic education: A step in the right direction?, SciELO (2019), https://scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072019000100009.

³² South Africa Ratifies the International Covenant on Economic, Social and Cultural Rights, Right to Education Initiative, <https://www.right-to-education.org/news/south-africa-ratifies-international-covenant-economic-social-and-cultural-rights>.

³³ Four years following South Africa's declaration upon the ratification of the ICESCR, SciELO (2019), https://scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072019000100009.

³⁴ INDIA CONST. art. 21A.

³⁵ Realising the Right to Primary Education for Refugee and Asylum-Seeking Children in Cameroon: Appraising the Legal Framework, Compliance and Challenges, Comparative and International Law Journal of Southern Africa (2024), <https://doi.org/10.25159/2522-3062/13994>.

education, leaves a structural gap in the provision of constitutional guarantee when the transition period of dropping out from secondary education is most prevalent.³⁶

Secondly, the decentralisation, community-based accountability measures provided for in the Right to Education Act, mainly the School Management Committees, have not been complemented by the requisite training, capacity building and political power required to make these institutions accountable for their actions.³⁷

Finally, and most importantly, the legal equality of access provided by formal law has not addressed the substantive social barriers – the discrimination based on caste, gender norms, linguistic barriers and poverty – that determine whether a child eligible for enrolment in a school in his neighbourhood really does get admitted and learn.³⁸ This is in line with the larger theoretical critique common to social justice literature that rights formulated in terms of formal and group-neutral equality tend to mask and even deepen substantive inequalities arising from social conditions of disadvantage. The right to education in India has thus been substantially guaranteed by the law but unevenly guaranteed in reality – a gap this paper has tried to explore in Parts 2.

VII. RECOMMENDATIONS

Firstly, the parliament must think of either amending the constitution by adding secondary education within the scope of Article 21A or pass a secondary education act, which will be similar in content to that of the RTE Act.

Secondly, the School Management Committees must be made more effective by providing them training and capacity building programs, setting aside a certain amount of budget and giving them statutory grievance redressal powers.

Thirdly, the twenty-five per cent reservation in private schools should go hand-in-hand with clear and time-bound mechanisms for reimbursement and independent monitoring of the social integration and treatment of the children availing of the benefit in the private schools so as to avoid any risk of the redistributive effect of the provision being neutralised by stigma.

Fourthly, intersectional interventions are needed to transform the formal access into actual retention and learning outcomes, especially with regard to girls from Scheduled Caste and Scheduled Tribe families in rural settings.

Fifthly, the periodic reporting obligations of India under the ICESCR and the CRC can be used as an opportunity for systematic indicator-based self-assessment of the right to education using the methodologies of indicator development that have been elaborated in the human rights literature, thereby allowing for greater precision in identifying deficiencies in the implementation of the right at the state and district levels.³⁹

³⁶ Barriers to Accessing Secondary Education in India, <https://ignited.in/index.php/jasrae/article/download/15171/30004/74556>.

³⁷ The Role of the Right to Education Act, 2009 in Empowering Marginalized Communities in Rural India: A Regional Analysis, ResearchGate (2025), <https://www.researchgate.net/publication/388166646>.

³⁸ Analyzing the Right to Education for Marginalized and Vulnerable Communities, International Journal for Multidisciplinary Research (2024), <https://www.ijfmr.com/papers/2024/2/18074.pdf>; Challenges for Children from the Marginalized Indian Communities, VIDYA — A Journal of Gujarat University (2022), <https://vidyajournal.org/index.php/vidya/article/view/109>.

³⁹ A Focus on the Right to Education in the ICESCR, Cornell Law School Scholarship, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1065&context=clsops_papers.

VIII. CONCLUSION

The transformation of the unenforceable directive principle of the right to education into the enforceable fundamental right enshrined in Article 21A of the Indian Constitution amounts to an undeniable constitutional success, one which fits neatly into India's binding international human rights obligations, such as those contained in the ICESCR and the CRC. Judicial creativity in the cases of *Mohini Jain*, *Unni Krishnan* and others, and subsequent legislative implementation in the RTE Act, 2009, represent an important chapter in India's social justice jurisprudence.

However, as shown in this paper, the existence of caste-based, gender-based and urban-rural inequalities in terms of enrolment, retention and learning outcomes shows that the constitutional guarantee is a necessary but not sufficient element for realisation of the right to education. The example of South Africa illustrates that even a stronger constitutional guarantee does not by itself mean the end of inherited structural inequality. Closing the gap between the constitutional guarantee in Article 21A and the reality of India's education system requires ongoing institutional efforts, an intersectional approach to marginalised groups, as well as further extension of the constitutional protection beyond the current limit to elementary education – an agenda which still remains open, a quarter century after the judgment in *Mohini Jain*.