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A CRITICAL ANALYSIS OF THE RIGHT TO EDUCATION ACT, 2009: THROUGH THE PHILOSOPHICAL PARADIGMS OF JUSTICE

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Abstract

It is a sad truth that in our society even the basic needs if defined as per Maslow's hierarchy of needs are not satisfied. Education belongs to a higher pedestal though not specifically placed at any level in Maslow's theory but may help in achieving the levels of 'belonging' and 'esteem'. Think of the repercussions when one is denied this right to get education due to multiple factors like gender, caste, class, ethnicity, region, religion, physiological or mental constraints etc. Not only this reflects in form of unemployment or unending poverty cycles but ultimate depletion of human resources for overall development of the economy, social exclusion leading to conflict and crimes and in the interpretation of Aristotle, failure of attainments like goodness (of intellect and character) or happiness which ultimately helps in establishing a just society as individuals develop the power of judging and discriminating between right and wrong. How effectively the Right to Education has been realized in India needs to be evaluated by applying the lens of various theories of justice in the normative sense and pragmatically through the implementation of various public policies and through insightful judicial interpretations.

Keywords - Right to Education, Theories of Justice, Socio-Economic Inequality, Public Policy, Judicial Interpretations

I. INTRODUCTION

“The happy man, the good man, is a virtuous man, but virtuous is acquired precisely through education”- Aristotle

The recent Human Development Index (HDI) shows how India is lagging behind in the crucial parameters of development i.e quality of life, schooling and healthcare despite being the third largest economy of Asia in terms of (Gross Domestic Product) GDP numbers, third largest economy in terms of PPP²⁵⁷ (Purchasing Power Parity) and recently being crowned as the fourth largest economy of the world, leaving behind Japan in terms of GDP numbers.²⁵⁸ India ranked

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²⁵⁷ Kirtika Suneja, *India retains position as third largest economy in PPP, global actual individual consumption, capital formation*, THE ECONOMIC TIMES (June 23, 2020) <https://economictimes.indiatimes.com/news/economy/indicators/india-retains-its-position-as-3rd-largest-economy-on-ppp-basis-for-2017/articleshow/76532262.cms>.

²⁵⁸ *India becomes 4th Largest Economy, Surpasses Japan*, AKASHWANI NEWS (May 25, 2025), <https://www.newsonair.gov.in/india-becomes-worlds-4th-largest-economy-surpasses-japan-niti-aayog/>.

130 out of 193 countries, surprisingly debt-ridden countries like Sri Lanka (89th) fared well than India.²⁵⁹ This is high time, after the pandemic distraught, to focus on an all-inclusive development of the human resource in the Indian society, education being one of the most important factors, needs special attention. One of the landmarks and most significant legislation in the era of educational reforms, ensuring universal elementary education for children aging 6-14 years, is the Right to Children of Free and Compulsory Education Act, 2009 which came into force on April 1, 2010.

Thus, the pertinent and critical questions to be answered through this paper are:

- The historical and philosophical contours- Which theory of Justice, best answers the content and rationale of the right to education in India and how should the policy framers intertwine the concept of equality and justice into policy making? Should it be based on individual's own acquiring of 'merit'? Is it the state, with whom we entered into a social contract²⁶⁰? If so, what should be the approach? Is it the trickle-down theory²⁶¹ that will take care of everything or the Difference Principle of *Rawls*²⁶² or the Capability Approach of *Amartya Sen*.
- The stakeholder's question- Whose responsibility it is to ensure the right to education?²⁶³ If not alone the state, then who are the other stakeholders? To what extent the private players be made responsible for implementing the RTE Act in letter and spirit?
- The judicial examination- How Indian judiciary has interpreted the contours of right to education in India?
- The effect test- What the RTE Act has achieved till now? Can the RTE Act ensure the intergenerational educational mobility in India leading to transcend the walls of socio-economic inequality and injustice? Whether the RTE Act addresses the issue of inclusion and exclusion based on complex identities of an individual?

These are some pertinent questions that shall be analyzed in this paper employing the lens of justice theories with the major objective of correct policy formulations and their implementation in India.

The research is primarily doctrinal and analytical wherein the primary sources from the Indian context like the RTE Act, 2009, the Constitution of India, 1950, Constituent Assembly Debates, Government Reports, Judicial interpretations and the Universal Declaration of Human Rights 1948 (UDHR), International Covenant on Economic Social Cultural Rights 1966 (ICESCR), Convention on the Rights of Child (CRC) 1989, Sustainable Development Goals (SDGs) 2020

²⁵⁹ *A step up: On India and the 2025 Human Development Report*, THE HINDU (May 8, 2025), <https://www.thehindu.com/opinion/editorial/a-step-up-on-india-and-the-2025-human-development-report/article69549433.ece>

²⁶⁰ *Social Contract Theory*, INTERNET ENCYCLOPAEDIA OF PHILOSOPHY <https://iep.utm.edu/soc-cont/#SH2b> (last visited Dec 5, 2025).

²⁶¹ *Trickle-Down Economics: Why it only works in Theory*, ECONOMICS ONLINE (July, 29, 2021) <https://www.economicsonline.co.uk/definitions/trickle-down-economics-why-it-only-works-in-theory.html/> (last visited on Dec 5 2025).

²⁶² *Distributive Justice*, STANFORD ENCYCLOPAEDIA OF PHILOSOPHY (Sep, 22, 1996) <https://plato.stanford.edu/entries/justice-distributive/> (last visited on Dec 6, 2025).

²⁶³ *The Capability Approach*, STANFORD ENCYCLOPAEDIA OF PHILOSOPHY (April, 14, 2011) <https://plato.stanford.edu/entries/capability-approach/> (last visited on Dec 6, 2025).

shall be studied. For the secondary sources, various reputed articles, books, surveys and data-sets by civil society organizations shall be referred and analyzed.

The paper is divided mainly into four parts. The first part deals with the origins of the concept of right to education and the evaluates the forms and accessibility of Indian education in different phases of history. The second part, is purely based on the examination of the pragmatic application of various philosophical theories on the working of the Act. The third part, touches upon the invigorating judicial decisions strengthening the right with the legal connotations. The last part of the paper gives a brief conclusion with certain suggestions that could be considered for the better implementation of the Act.

II. EVOLUTION OF THE RIGHT TO EDUCATION AND THE HISTORICAL UNDERPINNINGS OF THE LAW

India is considered a land of spiritual awakening and knowledge. It has a rich repository of literature and texts that inspire and guide us in our day to day life. However, when it comes to the historical analysis of the idea of education for the masses, Indian scholars have disagreements on different aspects specifically its accessibility and impact on the Indian diaspora. Some believe it to be inclusive, irrespective of caste and gender and thus we see works like four Vedas, Smritis and Dharmashastras written over a long period in history namely be Veda Vyasa (a sage and scholar from a lower caste)²⁶⁴ and anecdotes mentioning female scholars like Gargi (who had an intense intellectual debate with sage Yajnyavalkya), Lopamudra, Maitreyi, Apala, Ghosha,²⁶⁵ presence of centres of learning like *vihara* and *mahaviharas* during the Buddhist period and we also have evidence of renowned centres like Taxila, Nalanda and Vikramshila proving that education (both spiritual and worldly) was always given a lot of importance in India.²⁶⁶ But for a very long period of time, education was not the entitlement of everyone, it was only the sole privilege of the few based on the caste hierarchy like the existence of *Gurukuls* in ancient India where entry was not open to all and so, it was not socially inclusive.²⁶⁷ It is a stark reality that only after the coming up of foreigners, with the opening of the sea route and specifically under the British administration, education was available with an egalitarian approach (though the intention behind same was to train the Indian minds with the English ways to make them competent to be a part of the workforce like clerks and other subordinate workers). However, still a comprehensive education was unavailable to the majority of the Indians due to the downward filtration approach²⁶⁸ of the colonizers and a complete neglect of the traditional education hubs (the vernacular schools). With the coming up of industrial revolution during 17th and 18th century,

²⁶⁴ SUDARSHAN RAMABADRAN & GURU PRAKASH PASWAN, MAKERS OF MODERN DALIT HISTORY (Penguin Random House India, 2021)

²⁶⁵ V. Venkata Raman Reddy, *Women in Vedas: Indian Culture*, E ADHYAYAN, https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000829IC/P001497/M015107/ET/14600120574ET.pdf (last visited on Nov 8, 2025).

²⁶⁶ Deepak Kumar, *Education in British India*, OXFORD RESEARCH ENCYCLOPEDIA OF EDUCATION (Oct 19, 2022).

²⁶⁷ Asha Verma, *A Critical Analysis of RTE Act 2009*, 3 JOURNALS OF CONTEMPORARY ISSUES OF LAW 2 (2016).

²⁶⁸ RAJIV AHIR, HISTORY OF MODERN INDIA 657 (Spectrum Books Pvt. Ltd, 2018).

the nature and content of education changed in India with the state emerging as a dominant controller and arbiter of education industry.²⁶⁹

With the scientific developments across the globe, the 20th century envisioned a new form of awakening with the focus on technical and medical education imbued with the idea of nationalism. Even in the freedom struggles, there was a demand for free elementary education, the Constitution of India Bill, 1895 mentioned about the free state education, Baroda was the first state to provide for the same in 1906, Commonwealth of India Bill 1925 ensured the right to free elementary education.²⁷⁰ With the implementation of Constitution of India in 1950, education was classified into a socio-economic goal as a part of Directive Principles of State Policy (Part IV)²⁷¹ to be achieved as per the financial capacity of the state as suggested by B N Rau, the constitutional advisor to the Constituent Assembly's Drafting Committee.²⁷² It was only after the 86th Amendment in 2002²⁷³ that primary elementary education for the children aged 6-14 years was made a Fundamental Right apart from the judicial recognitions earlier.

After this constitutional commitment, there was a need of a legal framework concretizing this right with a concomitant duty of the state. Apart from the national obligations, India has to comply with the international framework and being a signatory to the Convention on the Rights of Child (CRC) in 1992²⁷⁴, and with the passage of Right to Education Act, 2009 (RTE), India has fulfilled its international obligations.

III. THE PHILOSOPHICAL JUSTIFICATIONS FOR RTE

A. An enquiry through the Consequentialist Approach

If Education is considered to be a social good, then what is the nature of such social good in terms of *Hedonist theory*? Is it an '*instrumental good*', that gives an individual the basic stature to be a part of a society wherein she gets an opportunity to participate in the social, economic, political and other realms of life or is it an '*intrinsic good*' itself, which is not dependent on a consequential effect or return goods that individual may acquire.²⁷⁵ If it is an '*intrinsic good*' then getting the social good of education itself gives '*pleasure*' and removes '*pain*'. There is no definite answer as it depends on the perception and life experiences of every individual. For example, a person coming from a poor economic background, one who has faced struggles all her life, getting education would act as a panacea only if it further results in getting a decent job and other amenities in life but for a person who is already better placed in all situations of life, getting education from a good institute alone gives pleasure irrespective of the fact whether she acquires other goods in life or not.

²⁶⁹ *Supra* note 16.

²⁷⁰ GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 39 (Clarendon Press Oxford, 1966).

²⁷¹ INDIA CONST. art. 45.

²⁷² Rehan Abeyratne, "Socio-economic rights in Indian Constitution: Towards a broader conception of legitimacy" 39 *Brooklyn Journal of International Law* 1 (2014).

²⁷³ INDIA CONST. art. 21A.

²⁷⁴ UN CONVENTION ON THE RIGHTS OF CHILD, 1989, art. 28.

²⁷⁵ Rhomas M Tuozzo, *Aristotle's Theory of the Good and its Causal Basis*, 40 PHRONESIS, 293-314 (1995).

The Right to Education Act 2009²⁷⁶ was brought into existence with an intention of bringing social, economic and political cohesion in the country by ensuring this basic fundamental right not only through the instrumentality of the state but private sector as well. The intention was laudable but if the policy has to be scrutinized from the consequentialist approach, more specifically through the prism of 'actual consequences' than the 'foreseeable consequences', it has largely failed. The policy makers might have believed based on crucial evidences that it is better to utilize the existing resources and infrastructure of the private schools rather than to create new and further share the responsibility with the private stakeholders. The foreseeable consequentialist might consider this to be a prudent analysis based on the highest expected utility that this policy might have resulted if it would have been structurally well designed and implemented. The foreseeable consequences were based on egalitarian approach wherein people from the weaker section as well disadvantaged section²⁷⁷ were to be accommodated and given opportunity to embark upon the path of a better life. Analyzing from this perspective, the policy and intent behind the Right to Education Act is not faulty and has no structural flaws as such. However, from the lens of actual utilitarianism, the discrimination is displayed at multiple levels. First, there are iron curtains in terms of knowledge and accessibility of information and resources for getting the benefit under the Act. There is no support mechanism or institution under the Act that will help parents to access the information and though National Commission for Protection of Child Rights²⁷⁸ is constituted under the Act, it only acts as a grievance redressal body at a later stage. Further, to deny admission, the entrance test for such students is specifically designed a notch higher, so that they cannot clear the test.²⁷⁹

Second, even when the entry is ensured, the students from reservation category are segregated from other students in different sections.²⁸⁰ Prima facie, it cannot be said that such action is taken with a bad motive as the school administration has justification based on differential learning capabilities of the students coming from the reservation categories but it is unjust to not review the final results of such students after such segregation. Thus, there is a need of inspection and a review mechanism to ensure justice in the field.

However, the utilitarian approach of *greatest happiness of the greatest number of people* has rather limitations in the education sector. As maximum number of people are unaware about the existence of the Act and those who have the knowledge are denied the benefits. Thus, majority whose happiness matters is the rich and affluent class, who are considered as customers by the school authorities and they do everything possible to retain their clients and earn profits. This sets out to be one of the reasons for the failure of a benign provision like section 12(1) (c) which mandates reservation of 25 percent seats for the wards of families belonging to the economically weaker section or disadvantaged group of the society in the private and non-minority unaided

²⁷⁶ Right of Children to Free and Compulsory Education Act, 2009, No. 35, Acts of Parliament 2009 (India).

²⁷⁷ *Id.* Sec 12 (1) (c).

²⁷⁸ *Supra note 7*, s. 31.

²⁷⁹ Nipun Arora & Shivkrit Rai, *India's Right to Education is failing in Reality*, THE LEAFLET (Sep 7, 2020), <https://theleaflet.in/indias-right-to-education-is-a-failing-in-reality/> (last visited on Nov 10, 2025).

²⁸⁰ Pallavi Prasad, *How the Right to Education Act is Ironically Failing the Child*, THE QUINT (June, 4, 2018), <https://www.thequint.com/news/india/how-the-right-to-education-act-is-ironically-failing-the-child-this-admission-season#read-more> (last visited on Nov 10, 2025).

schools in India.²⁸¹ More so, structurally, the entire legislation reflects the major aim of providing tactical education with a set of curricula to the students with a complete disregard to the strategic education which focuses on the individual talents and interests of the students. It focuses on inputs and misses the focus on outputs.

B. Analysis of the Myths of Merit

The Theoretical Foundations

The term ‘meritocracy’ was coined by *Michael Young* in his work *The Rise of Meritocracy*, while condemning the system of Tripartite Education System of Britain which rewards individuals based on certain idea of intelligence and hard work.²⁸² There have been philosophical theories, which have propagated the idea of merit beginning from Aristotle, who believed that those who are most ‘capable’ must be awarded with the positions of power.²⁸³ The idea of merit however not remains a major topic in the celebrated work of *John Rawls* in the *Theory of Justice*, wherein he uses the tool of ‘original position’ which he believes people would prefer to have rather than the argument of ‘merit’ for a just society. Much constructively, *Amartya Sen* identifies the continuum of merit actions into two parts: incentive based and moral worth of the action per se.²⁸⁴ Wherein he says that incentivizing people on the basis of merit in society is important but it should only be considered as instrumental and the focus must be on the intrinsic worth of the action per se rather than an individual or a group of persons.

American philosopher, *Michael Sandel* very rightly debunks the myth of merit. The entire focus on merit indulges a society in continuous conflict between the winners and losers and thus crippled with the feelings of egoism.²⁸⁵ The question as to what is the right approach in ensuring basic need of elementary school education to children cannot surely be answered on basis of ‘merit’ i.e one who has the merit can get admission into a reputed institute through some form of tests will prove to be a disastrous mechanism leaving out those who did not get the opportunity to build themselves to take the tests. The reservation based on certain criteria of caste, gender, religion, region in educational or employment opportunities might be helpful to a certain extent but is not enough to provide a level playing field for those who do not have access to education or other facilities at all. Michael considers that having a particular kind of talent is not necessarily always or the only result of merit rather luck also plays its role in deciding the situational circumstances for every individual. *Thomas Picketty*, also rightly says that as wealth is largely accumulated, so is merit.²⁸⁶ The Right to Education Act fares well to the extent it deconstructs the idea of merit by providing

²⁸¹ The Right of Children to Free and Compulsory Education Act, 2009, s. 12, No. 35, Acts of Parliament, 2009 (India).

²⁸² Ed. Kenneth Arrow, Samuel Bowles & Steven Durlauf, MERITOCRACY AND ECONOMIC INEQUALITY, 5-16 (Princeton University Press, 2000), <http://assets.press.princeton.edu/chapters/s6818.pdf> (last visited on Nov 23, 2025).

²⁸³ *Western Theories of Justice*, INTERNET ENCYCLOPAEDIA OF PHILOSOPHY, <https://iep.utm.edu/justwest/> (last visited on Nov 24, 2025).

²⁸⁴ *Supra* note 32.

²⁸⁵ Michael Sandel, THE TYRANNY OF MERIT: WHAT’S BECOME OF THE COMMON GOOD 17 (Penguin Random House, UK, 2021).

²⁸⁶ Stephanie Flanders, *Thomas Picketty: Capital in the Twenty First Century*, THE GUARDIAN (July, 17, 2014) <https://www.theguardian.com/books/2014/jul/17/capital-twenty-first-century-thomas-piketetty-review>, (last visited on Nov 24, 2025).

education opportunities to children from different walks of life and not solely based on their merit. Further, the controversial no detention policy also highlights the same ideology, that students can't be merely judged on certain numbers.²⁸⁷ However, the recent Amendment in 2019²⁸⁸ has brought back the detention policy in Class 5 and Class 8, reflecting the traditional regressive mindset stuck to the idea of merit.

The Constitutional Perspectives

Apart from the Act, the Constitution of India also encompasses the same ideology and sidelines the argument of merit. Not even once, the term 'merit' is mentioned in the entire text of the Constitution. Article 335 only mentions about "efficiency of the administration" but we must not equate efficiency with merit, as both are not the same.²⁸⁹ The reservation provisions provided in the Constitution of India have deconstructed the idea of merit. Merit is not the end but can only be one of the means for establishing a just society.

The Judicial Scrutiny

Despite these, there have been a number of contestations against the affirmative action of the State on the ground of merit. The early jurisprudence of the Supreme Court, reflects clear inhibitions in considering the idea that reservations are not anti-meritarian.²⁹⁰ To quote, from the case of *Janaki Prasad Parimoo*²⁹¹,

*"it is implicit in the idea of reservation that a less meritorious person be preferred to another who is more meritorious."*²⁹²

Similar opinions can be seen from the judgments of Justice Khanna in *N M Thomas*²⁹³ case, though a minority view. However, this perception was later on molded to consider that candidates from the backward class are no less meritorious and then the idea of merit itself was questioned and considered outdated as based on narrow and pedantic approach.

In case of *M Nagaraj*²⁹⁴, in para 45 the apex court observed,

"Equity, justice and merit are independent variables which can only be identified and measured by the state. These factors are context specific....Merit is not a fixed absolute concept. Merit is a dependent idea and its meaning depends upon how a society defines a desirable act. An act of merit in one society may not be the same in another."

Recently, the Supreme Court while dealing with issue of 10 percent reservation in the PG-NEET examination²⁹⁵, gave a comprehensive view and referred to the history of debates related to merit. While Constituent Assembly members like Shri Loknath Misra and Shri Damodar Swarup Seth relied on the idea of merit for appointments in public services, members like Shri K.M Munshi,

²⁸⁷ The Right of Children to Free and Compulsory Education Act, 2009, s. 16, No. 35, Acts of Parliament, 2009 (India).

²⁸⁸ The Right of Children to Free and Compulsory Education (Amendment) Act, 2019, s. 16, No.1, Acts of Parliament, 2019 (India).

²⁸⁹ M P Singh, *Ashoka Thakur v. Union of India: A divided verdict on an undivided social justice measure* 1 NUJSLR (2008) 193, <http://www.commonlii.org/in/journals/NUJSLawRw/2008/13.pdf> (last visited on Nov 27, 2025).

²⁹⁰ M R Balaji v. State of Madras, AIR 1963 SC 649.

²⁹¹ *Janaki Prasad Parimoo v. State of Jammu & Kashmir* (1973) 3 SCR 236.

²⁹² *Id.* at para 27.

²⁹³ *State of Kerala v. N M Thomas* (1976) 2 SCC 310 (Para 208).

²⁹⁴ *M. Nagaraj & Ors. V. UOI* (2006) 8 SCC 212.

²⁹⁵ *Neil Aurelio Nunes & Ors v. Union of India & Ors* (2022) 4 SCC 1.

Dr. P.S Deshmukh and Shri Phool Singh focused on the idea of substantive equality.²⁹⁶ Shri Phool Singh made an emphatic observation regarding the utility of merit specifically in the competitive exams, he said,

*“Much has been made of merit in this case; but equal merit pre-supposes equal opportunity, and I think it goes without saying that the toiling masses are denied all those opportunities which a few literate people living in big cities enjoy. To ask the people from the villages to compete with those city people is asking a man on bicycle to compete with another on a motorcycle, which in itself is absurd. Then again, merit should also have some reference to the task to be discharged.”*²⁹⁷

These debates were related to appointment in public posts as reservations in educational institutions were introduced later through the constitutional amendment, however the force of ideas can be easily extended in matters of education as well.

Not only the constitutional makers but also the interpreters have reflected their conflicting beliefs on the idea of merit. Even in the judgments that advocated for reservation in educational institutions believed that equality and merit are two contrasting pillars and stands in exception to one another.²⁹⁸ This view was only objected in the dissenting opinion of Justice K Subba Rao in the constitutional bench decision in *T Devadasan case*²⁹⁹ wherein he stated that Article 16 (4) is not an exception rather a facet of Article 16 (1). In his words in para 26,

“Article 14 lays down the general rule of equality. Article 16 is an instance of the application of the general rule with special reference to opportunity of appointments under the state. If stood alone all the backward communities would go to the wall in society of uneven basic social structure, the said rule of equality would remain only a utopian conception unless a practical content was given to it. Its strict enforcement brings about the very situation it seeks to avoid....It has not really carved out an exception but has preserved a power untrammelled by the other provisions of the article”

The view gained strength in the case of *N M Thomas*³⁰⁰, wherein majority of judges believed that content of equality under Article 14 cannot be different from Article 16. Further, Article 16 (1) and 16(4) are not an exception to each other rather they complement each other in achieving the goal of substantive equality.

In the words of Justice Mathew, *“If equality of opportunity guaranteed under article 16 (1) means effective material equality, then article 16 (4) is not an exception to article 16 (1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried.”*

He further advanced that idea of ‘proportional equality’ wherein the different conditions and circumstances of the classes of citizens should be considered for advancing their access to basic material goods and services in the society.³⁰¹ This standard of equality would help them develop

²⁹⁶ D Y Chandrachud, *Why the Supreme Court said reservation is not at odds with Merit*, THE WIRE (Jan, 21, 2022) <https://thewire.in/law/why-the-supreme-court-said-reservation-is-not-at-odds-with-merit> (last visited on Nov 28, 2025).

²⁹⁷ *Constituent Assembly of India Debates (Proceedings): Volume IX*, CONSTITUENT ASSEMBLY DEBATES, (August, 23, 1949), <http://164.100.47.194/Loksabha/Debates/cadebatefiles/C23081949.html> (last visited on Nov 28, 2025).

²⁹⁸ *M R Balaji v. State of Mysore* AIR 1963 SC 649. (Article 15 (4) is an exception to Article 15 (1)).

²⁹⁹ *T Devadasan v. UOI*, AIR 1964 SC 179.

³⁰⁰ *State of Kerala v. N M Thomas* (1976) 2 SCC 310.

³⁰¹ *State of Kerala v. N M Thomas* (1976) 2 SCC 310 (Para 73).

their various capacities to realize the moral intrinsic worth of an individual, which also a human right.³⁰²

The question whether reservations are anti-meritarian was considered in the landmark case of *Indra Sawhney*³⁰³, wherein the co-authored opinions of Justices Kania, Venkatchaliah, Ahmadi and Jeevan Reddy reflect the double standards and inchoate understanding of the idea of merit. In their words, a ‘cost has to be paid’ to fulfil the objective of social justice as enshrined in the Indian Constitution but at the same time, treading cautiously they state that backward classes are also equally endowed with merit like the forward classes.³⁰⁴ Thus, they carve out a category of posts which can’t be reserved while concluding that reservations are not anti-meritarian.³⁰⁵ On the other hand, the concurrent opinion of Justice Sawant, we find the mention of famous historical figures like Kalidas, Valmiki and Vyas highlighting that merit is not confined to a particular section of the society.³⁰⁶ In a separate opinion, Justice Pandian, referring to the opinion of Justice O Chinappa Reddy in the case of *Vasanth Kumar*³⁰⁷, completely refutes the idea of merit. In the case cited, the judge creates an illusory with an oasis with limited fruits ad which when gets inhabited by people who have come out of the desert of the poverty and backwardness would not allow others to come there, such a system can’t survive for long. Taking the idea forward, Justice Pandian, categorically states that the concepts of merit, intelligence, competency or efficiency can’t be simply based on skin pigmentation or the surname of a person.³⁰⁸

Thus, the binary of merit and reservation has been debunked in successive decisions of the Supreme Court.

Recently, in the case of *B K Pavitra*³⁰⁹, Justice D Y Chandrachud has delinked the idea of efficiency of administration and reservation. Rightly pointing that efficiency can only be analyzed at a later stage when the officer would take the action to administer, once she is appointed, it can’t be conventionally linked only to the method of standardized examination for the appointments which would be stereotypical. Therefore, the idea that only non-reserved category candidates are meritorious is erroneous. He further, examines the concept of ‘merit’ giving it a wider meaning as beyond securing marks above the cut-off but also fulfilling the constitutional goal of diverse representation.³¹⁰ He further refers to the work of Marc Galanter³¹¹ on the idea of competing merits and the need of three different kinds of resources in the competitive examination- one, ‘economic resources’ that would include the access to all the training material, exemption from other works etc, second, ‘social and cultural resources’ that includes access to information, networking etc and the third, the ‘intrinsic ability and hard work’. Clearly, the first two resources are not in the control of the person rather entirely based on probabilities and luck of the person.³¹²

³⁰² *Id.* at para 89.

³⁰³ *Indra Sawhney v. Union of India* (1992) 3 SCC 217.

³⁰⁴ *Id.* at para 836.

³⁰⁵ *Id.* at para 859.

³⁰⁶ *Id.* at para 403.

³⁰⁷ *K C Vasanth Kumar v. State of Karnataka* AIR 1985 SC 1495.

³⁰⁸ *Indra Sawhney v. Union of India* (1992) 3 SCC 217 (para 159).

³⁰⁹ *B K Pavitra v. State of Karnataka* (2019) 16 SCC 129.

³¹⁰ *Id.* at para 133.

³¹¹ MARC GALANTER, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA* (Oxford University Press, New Delhi, 1984).

³¹² *B K Pavitra v. State of Karnataka* (2019) 16 SCC 129. (Paras 134 & 135).

The judge, further refers to the work of Amartya Sen³¹³ in emphasizing that relying on a narrow idea of meritocracy which is enforced by a few fortunate members of the society can further lead to perpetuating inequality.³¹⁴ The judgment thus stands apart, is fascinating and coherently intertwines the concepts of substantive equality, efficiency and merit and sets precedent for the innovative reasoning in defining the idea of merit.

In the case of *Neil Aurelio Nunes*³¹⁵, Justice D Y Chandrachud adds grounds like “social networks” and “cultural capital” which are inherited by the members of the forward class, for supporting the idea of reservation.

Views of Justice Chandrachud are very much in consonance with that of Michael Sandel when he says, “*The rhetoric surrounding merit obscures the way in which family, schooling, fortune and a gift of talents that the society currently values aids in one’s advancement. Thus, the exclusionary standard of merit serves to denigrate the dignity of those who face barriers in their advancement which are not of their own making.*”³¹⁶

The court also accepted the fact that it may happen many a times that some individual members of a backward group may not be backward in literal sense of the term or some members of the forward group may share characteristics similar to those of the backward group leading some incongruity but that does not efface the rationale behind the policy of reservation.

Similarly, in matters of education, the policy of reservation for the economically weaker section children does not in any way fades away the concepts of efficiency or compromises with the demand of so called ‘merit’, which are themselves disputed ideas but rather fulfils the constitutional goal of substantive equality.

Section 13³¹⁷ of the RTE Act also accepts the principle and provides for no screening procedure for the purpose of the admission, even imposes sanction for violation of the provision. The government has also issued guidelines under Section 35³¹⁸ of the Act in consultation with the principals of the private schools explaining the objective of the same to have a fair, transparent and non-discriminatory admission procedure in schools.³¹⁹ The clarification provided by the government also accepts that such screening procedures are the tool for profiling and eliminating children on the so called parameters of intelligence and thus instead of having homogeneous classrooms it encourages to have diverse and heterogenous composite classrooms.³²⁰ Thus, the spirit of the law imbibes the evolving constitutional transformative idea of ‘beyond the merit’ and

³¹³ Amartya Sen, “Merit and Justice” in K J ARROW, MERITOCRACY AND ECONOMIC INEQUALITY (Princeton University Press, 2000).

³¹⁴ B K Pavitra v. State of Karnataka (2019) 16 SCC 129 (para 132).

³¹⁵ Neil Aurelio Nunes & Ors v. Union of India & Ors (2022) 4 SCC 1.

³¹⁶ *Supra* note 65.

³¹⁷ The Right of Children to Free and Compulsory Education Act, 2009, s. 13, No. 35, Acts of Parliament, 2009 (India).

³¹⁸ The Right of Children to Free and Compulsory Education Act, 2009, s. 35, No. 35, Acts of Parliament, 2009 (India).

³¹⁹ MINISTRY OF HUMAN RESOURCE DEVELOPMENT (MHRD), GOVT. OF IND, CLARIFICATIONS OF PROVISIONS, 17

https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/RTE_Section_wise_rationale_rev_0.pdf (last visited on Nov 30, 2025).

³²⁰ *Ibid.*

has been successful in implementation to the extent it has now and again given cautions to education officers to crackdown on the schools that are violating the code.³²¹

Social Contract Obligations and Education

Who has the responsibility to ensure the basic right of education to the children? As analysed, individuals alone cannot be the sole guardians for themselves based on the arguments of merit. Is it the state who has to shoulder the responsibility because we have entered into a social contract with the state to ensure the basic rights of life, liberty and property? We have understood so far that life is not mere animal existence and it encompasses within itself a wide spectrum of rights including right to education. Education gives wings to enjoy liberty and is a valuable asset like property. Thus, it can be said, that as citizens, asking for the provision of education from the state is legitimate and justified. Even Naturalist philosopher, *Aristotle* was in the favor of public provision of education which shall be equally available to everyone, to ensure cultivation of intellectual and moral virtues as a primary tool for statesmanship in a political community in order to bring out happiness.³²² He firmly believed that it is the responsibility of the governments to help develop young children into good and flourishing adults.

India provides for a mixed education system wherein we see the existence of both the private and public schools. The state discharges its responsibility through a number of schemes meant for school education like Samagra Shiksha Abhiyan³²³, Mid-day Meals³²⁴ etc. with the establishment of government, government aided and government recognised private schools. However, the provision of reimbursement as provided under the RTE Act³²⁵ is not implemented well, as many private unaided schools complain that they do not receive the full amount or sometimes no amount at all or the payment gets delayed. Viewed from the constitutional as lens³²⁶ as well the mandate of the statute³²⁷, it is a shared responsibility of the centre and the state to jointly provide for the education of the poor children, however such a sacred responsibility also gets trapped in the quagmire of centre-state conflicts. Recently, the apex court had issued notice to the centre after the Tamil Nadu government complaint of not receiving the reimbursement amounting to 3,000 crores under the RTE Act, 2009 as alleged in the petition possibly due to Tamil Nadu government's reluctance on not implementing the National Education Policy, 2020 in their state.³²⁸

³²¹ *Education Officers told to crackdown against tests, screening by private schools for classes 1 to 8*, HINDUSTAN TIMES (Aug 13, 2020), https://www.hindustantimes.com/gurugram/education-officers-told-to-crackdown-against-tests-screening-by-private-schools-for-classes-1-to-8/story-WK1mA8d2RnzPBzpSlpxrZP.html#google_vignette (last visited on Dec 2, 2025).

³²² J J Chambliss, *Aristotle B.C (384-322): Education for a Common End*, <https://education.stateuniversity.com/pages/1763/Aristotle-384-322-B-C-E.html> (last visited on Dec 3, 2025).

³²³ ALL INDIA COUNCIL FOR TECHNICAL EDUCATION (AICTE), *Sarva Shiksha Abhiyan*, <https://www.aicte.gov.in/reports/overview/Sarva-Shiksha-Abhiyan> (last visited on Nov 30, 2025).

³²⁴ *Mid-Day Meal Scheme*, <https://dmsouthwest.delhi.gov.in/scheme/mid-day-meal-mdm-scheme/> (last visited on Dec 5, 2025).

³²⁵ *Supra note 7*, Sec 12 (2).

³²⁶ INDIA CONST, Entry 25, List III, Seventh Schedule.

³²⁷ The Right of Children to Free and Compulsory Education Act, 2009, s. 13, No. 35, Acts of Parliament, 2009 (India).

³²⁸ Krishnadas Rajgopala, *Supreme Court issues notice to centre after T.N says Samagra Shiksha funds delinked from RTE reimbursements*, THE HINDU (Dec 1, 2025), <https://www.thehindu.com/news/national/supreme-court-issues-notice-to-centre-after-tn-says-samagra-shiksha-funds-delinked-from-rte-reimbursements/article70000492.ece> (last visited on Nov 29, 2025). Also, Government of Tamil Nadu v. V Eswarani 44034/2025.

This is one of the major reasons that private unaided schools hesitate in providing 25 percent reservation for the EWS and disadvantaged category students. As per their argument, it is the rest 75 percent of the students who have to bear the cost of education for these 25 percent students. Here comes a deep analysis of the issue,

- whether state could shift its own burden on the private players when it was required to discharge the obligation itself, in the light of achieving a just society or it has merely shared its burden with the other stakeholders who also derive and exploit resources from the society?
- Can education be privatised like other goods?

The analysis can be done through *Rawls Theory of Justice*³²⁹ as we are aware that inequalities are there to persist in a society, we can't imagine a society with complete absence of inequalities of any kind, a complete egalitarian. *Rawls difference principle* comes to rescue for addressing the inequalities existing in the society through the agency of just institutions which are derived from the norms of *distributive justice* based on the experimenting medium of *veil of ignorance* and *original position*. Thus, applying these norms, the Right to Education Act is perfectly designed and fulfils the goal of justice as distributive norms are complied in matters of disbursing the primary good of education. Application of Rawls theory in matters of education can help erase all 'accidents of birth' and provide each child with the equal opportunity irrespective of its family influence.

Even applying the *Luck Egalitarian* principles advances by philosophers like Ronald Dworkin, G.A Cohen and Richard J Arneson³³⁰, the Act is designed to eliminate the factor of 'brute luck'³³¹ and thus distribute the social good achieving substantive equality countering any effects of 'brute luck' on person's ability to achieve well being in life. The provision of providing reservations for primary education at least up to 25 percent to the weaker³³² and disadvantaged group³³³ based on economic inequality (poverty) or disability (due to social, cultural, economic, gender, caste, geography)³³⁴ rules out the luck dominated factor for one's progress in life. It further provides a well coveted aspect of 'choice' to the parents, to either opt for government or private school for their child's education.

*Robert Nozick*³³⁵ on the contrary believes that there can't be any superimposition of equality from the state rather everyone has right to product of their own labour until they voluntarily decide to transfer them. Thus, a compulsory reservation provision in the unaided private schools is nothing but a violation of the liberty principle.

³²⁹ John Rawls, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (March 25, 2008) <https://plato.stanford.edu/entries/rawls/> (last visited on Dec 11, 2025).

³³⁰ Kok- Chor Tan, *A Defense of Luck Egalitarianism*, 105 A JOURNAL OF PHILOSOPHY 665 (2008).

³³¹ Ronald Dworkin, *What is Equality? Part 2: Equality of Resources*, 10 POLICY AND PUBLIC AFFAIRS 293 (1981). (Dworkin differentiates between Brute Luck and Option Luck, wherein former is something beyond the control of the individual and the latter within some reasonable control of the individual).

³³² The Right of Children to Free and Compulsory Education Act, 2009, s.2 (e), No. 35, Acts of Parliament, 2009 (India).

³³³ The Right of Children to Free and Compulsory Education Act, 2009, s.2 (d), No. 35, Acts of Parliament, 2009 (India).

³³⁴ The Right of Children to Free and Compulsory Education Act, 2009, s. 12 (1) (c), No. 35, Acts of Parliament, 2009 (India).

³³⁵ *Robert Nozick's Political Philosophy*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <https://plato.stanford.edu/entries/nozick-political/> (last visited on Dec 11, 2025).

On the face of it, this might appear as a conflict between equality and liberty principles³³⁶ but essentially the reservation provision is not only the way to guarantee the equal opportunity but also to effectively exercise the liberty to get education either from a private school or a public school which in the absence of such a provision can't be imagined by a poor parent.

Thus, a model of mix schools is justified in a country like India which has inequalities at different levels, private schools can to a certain extent address this concern until we come with an ideal public school which caters to the need of each and every child based on their intellect, talent and capabilities. *The sharing of responsibility with the private stakeholders is a step in the right direction.*

Amartya Sen's Capability Approach in Education

If we delve deeper and analyse the impact of the egalitarian legislation through the pragmatic prism of *Amartya Sen's capability approach*, the results are different. As Sen, rightly believes that mere distribution of primary goods is neither sufficient nor an adequate metric of justice because it will be majorly dependant on the capabilities of every individual to convert the primary good for her own advantage. Education should be evaluated according to people's past and present capabilities

Thus, it is crucial for policymakers to remember that similar educational inputs or resources cannot produce similar learning outcomes. Therefore, a mere focus on resource-based equality has not bore the fruits till now. There is no concrete data to show that students from the private school fare well or have better learning outcomes compared to the public schools. Rather the reports reflect otherwise that in private schools as well there is a learning deficit, more so in rural areas.³³⁷

IV. INDIAN JUDICIARY AND THE IDEA OF JUSTICE

Right to free and compulsory elementary education has a chequered history in India, since the time of the framing of the Constitution of India. The members of the Constituent Assembly had divergent opinion as to whether education should be made a justiciable or non-justiciable right.³³⁸ Interestingly, the right was first placed by the Rights Sub- Committee under the head of justiciable rights, it was only later to be placed under policy directives in part IV as the Directive Principles of State Policy.³³⁹

But even before elementary education became a fundamental right, the judicial interpretations have placed it under this category.

In case of *Mohini Jain*³⁴⁰, while discussing about the capitation fees, the court showed displeasure towards "*teaching shops, which is against the constitutional scheme and completely abhorrent to Indian culture and heritage*"³⁴¹. The court also highlighted that it is the mandate of

³³⁶ James S. Coleman, *Rawls, Nozick and Educational Equality* 43 THE PUBLIC INTEREST, SPRING121, 128. (1976).

³³⁷ *Performance of Public Schools better than Private: ASER*, THE ECONOMIC TIMES (Jan 18, 2017) <https://economictimes.indiatimes.com/industry/services/education/performance-of-government-schools-better-than-private-aser/articleshow/56647369.cms?from=mdr> (last visited on Dec 10, 2025).

³³⁸ GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: THE CORNERSTONE OF A NATION* 67 (Clarendon Oxford Press, 1966).

³³⁹ INDIA CONST art.45.

³⁴⁰ *Mohini Jain (Miss) v. State of Karnataka* (1992) SC 3 SCC 666.

³⁴¹ *Id.* at para 14.

the state as imposed by the Directive Principles and the Preamble to eradicate poverty to ensure right to life and liberty guaranteed under Article 21 for all.

On the aspect of establishing an educational institute whether a fundamental right under article 19 (1) (g) of the constitution, the court in the case of *Unni Krishnan*³⁴², had an altruistic vision. As per the opinions of Justices Pandian and B P Jeevan Reddy, setting up of educational institutes is not a part of fundamental right to carry on trade, business or commerce but it is merely a religious duty and charitable activity.³⁴³ In the opinion of Justice Mohan, however the same can be considered as an occupation but with no additional right of affiliation from the state on that basis can be claimed.³⁴⁴ However, the final verdict held that there is no such fundamental right to establish a university and through logical inference no such right to establish an educational institute.

Justice Pandian and Justice Reddy while expressing their opinion, said -

*“Education has never been commerce in this country. Making it is one is opposed to ethos, traditions and sensibilities of this nation. Imparting of education has never been considered trade or business in this country since time immemorial. It has been treated as a religious duty. Commercialisation of education cannot should not be permitted. Both in the light of our tradition and from the standpoint of interest of general public, commercialisation is positively harmful, it is opposed to public policy.”*³⁴⁵

On the question of obligation of the state, the court differed from *Mohini Jain* to the extent that right to free education only up to 14 years can only be considered as a fundamental right under Article 21 and not the higher education, as that depends upon the economic capacity of the state. Further, the judges believed that although the burden is casted on the state under articles 41, 45 and 46 of the Constitution, the private players have a significant role to play including the unaided private institutes³⁴⁶ and minority educational institutes.³⁴⁷ This stands as a significant observation during 1990s in the era of privatisation and in the evolution of jurisprudence on state, private players and minority institutes responsibility in matters of education. In fact, taking the idea further on extending the responsibility on the private stakeholders, the court also introduced the concept of a ‘scheme’ wherein the private institutes can get affiliation from the state in lieu of reserving some seats for students from weaker section of the society.³⁴⁸

Illuminating the right in the context of Article 21, the court held that life with dignity can’t be thought without education and education leads to enlightenment. Connecting the idea of democratic polity to the need of enlightened people to sustain it, the court categorised the right into a social and political necessity.

In the case of *TMA Pai*³⁴⁹, the majority opinion authored by Justice Kirpal, held that establishing an educational institute is definitely an occupation within the scope of article 19 (1) (g) as it involves employing a large number of persons as teachers and administrative staff even though

³⁴² *Unni Krishnan J P v. State of Andhra Pradesh* (1993) 1 SCC 645.

³⁴³ *Id.* at para 196.

³⁴⁴ *Id.* at para 63.

³⁴⁵ *Unni Krishnan J P v. State of Andhra Pradesh* (1993) 1 SCC 645 (Para 226).

³⁴⁶ *Id.* at para 176.

³⁴⁷ *Id.* at Para 193 &194.

³⁴⁸ *Id.* at Para 210, Justice Pandian and Justice Reddy.

³⁴⁹ *TMA Pai Foundation & Ors. v. State of Karnataka & Ors.* (2002) 8 SCC 481.

without a profit motive. Not only Article 19 but the court sourced it to Article 26 (a) which mentions about establishing of institutes for charitable and religious purposes by a religious denomination or section thereof.

The Supreme Court in the case of *Society for Unaided Private Schools of Rajasthan v. Union of India*³⁵⁰, held that RTE Act, 2009 is a child-centric and not institution centric legislation. It is not unreasonable to put an obligation upon the unaided private schools for 25 percent reservation for the poor and disadvantaged section of the society in class I. Delineating on the purpose of the Act, the court observed,

“the intrinsic provisions of the RTE Act, 2009 are intended to set up an intrinsic regime of providing the right to education to all children by providing the required infrastructure and compliance with norms and standards.”

The court further compared the content and responsibility of the state under article 21A and article 19 (1) (g), wherein the right to establish the educational institutions should substantiate the primary responsibility of providing free and compulsory elementary education to the children. The state under article 19 (6) has the complete freedom to pass a valid law to achieve this goal by imposing reasonable restrictions on the private unaided educational institutes.

Even during the COVID- times, the right of a child belonging to EWS category to get education even *via* online mode was emphasized by the Apex Court in the case *Action Committee Unaided Recognized Private Schools v. Justice for All*.³⁵¹

In the present case the court ordered the private unaided schools and the government schools who opted for the online classes during COVID pandemic to provide the adequate gadgets and equipment along with the internet pack to the EWS and disadvantaged category students which can later be reimbursed by the State as per section 12 (2) of the RTE Act, 2009. The court observed how the digital divide had further perpetuated inequality. Very specifically the court said that the goals of Article 21-A cannot be realized unless the underprivileged students are not given equal access in the matters of education at all point of time. Lack of resources at central or state government can't be the justification for denial of the right to education.

Thus, judiciary through its creative and humane approach have tried to ensure the fundamental right to elementary education to all the children irrespective of their socio-economic status in the society.

V. CONCLUSION AND SUGGESTIONS

Education of children is such a critical and significant issue for myriad reasons. One, children do not exercise the autonomy to decide the nature and place of education, it is dependent upon the ideology and circumstances of the parents as well the policy of the state. As per the Kantian ideology, wherein each individual should not merely be considered as a means to an end but an end themselves, the objective can be realized only when the person is well informed and educated because only then the individual can make an informed choice, give a valid consent, under no one's coercion but based on reason.³⁵² Second, they are the future of any nation. Third, the level

³⁵⁰ (2012) 6 SCC 1.

³⁵¹ 2021 SCC Online SC 3301.

³⁵² Kavana Ramaswamy, *The Right to Education: An Analysis through the Lens of Deontological Method of Immanuel Kant*, 16 NORTHWESTERN JOURNAL OF HUMAN RIGHTS 49 (2018).

and quality of education significantly impacts the quality of life, their self-worth, character and dignity.

On the normative front, the idea that rights are ‘trumps’³⁵³ against any sort of trade off by the government if not applicable in entirety to all set of rights in the context of the prevalence of theory of proportionality but it can definitely be stated that any denial of the right to primary education (free and compulsory) in form of non-implementation including callous attitude of the state functionaries, any corrupt practice percolating the seemingly beneficial legislation shall not only be legally incorrect but also be grossly morally wrong as it will have direct impact on the self-worth and dignity of an individual along with destabilizing the rock-solid future of a democratic nation.

The right to education should not be merely seen as a rule entitlement but a fundamental human right, which to an extent has found the bedrock in form of Article 21A as a fundamental right in the Indian Constitution. Also, unlike the US Supreme Court, as in the case of *San Antonio Independent School District v. Rodriguez*³⁵⁴ wherein the court denied any violation of Fourteenth Amendment- the Equal Protection Clause due to disparities arising out of property tax-based education system in Texas. The 9 Judge bench with 5:4 majority held that there is no violation of the right to education, even the court did not consider it to be a fundamental right guaranteed by the US Constitution. The Indian judiciary stands on a higher pedestal by demystifying the idea of merit in access to education and obligating the state through directive principles to fulfil the social contract obligations through the medium of distributive justice.

In this era, where everything including government and universities are commercialized³⁵⁵ and we are infused with market-oriented thinking, *the provision guaranteeing education to the children of a certain age group in collaboration with the private entities without any market objectives stand out to be a perfect example where state can play wonders in ensuring the rights of people.* What all the stakeholders and especially the state, needs to take care is that the evil of market coercion should not seep into the system. People should not be coerced out of their dire necessity to pay the private schools an amount other than the tuition fees under some unscrupulous head. Education is a social good, which should not be a victim of the market forces to be sold and bought, it has some moral and ethical dimensions attached to it which should not be forgotten. As of now, 25 percent of all the schools are private schools and we should *focus on maintaining a balance without compromising with the growth potential of the private school* with the caveat that private schools can’t be a substitute for the public schools in India.

Further, being a democratic country with three tiers of government, *the burden of elementary education should be shared with the local governments with proper disbursal of funds to them.* Despite being on the entry list of the Eleventh Schedule, at number 17³⁵⁶ (“Education, including primary and secondary schools.”), the state has not believed in the capacity of the local government to do a remarkable work in matters of elementary education. The 15th Finance

³⁵³ Kai Moller, *Dworkin Theory of Rights in the Age of Proportionality*, LSE RESEARCH ONLINE (2018), <https://eprints.lse.ac.uk/85642/1/Dworkin%27s%20Theory%20of%20Rights%20-%20LEHR%20-%20final.pdf> (last visited on Dec 11, 2025).

³⁵⁴ 411 US 1 (1973).

³⁵⁵ MICHAEL J SANDEL, *WHAT MONEY CAN’T BUY: MORAL LIMITS OF MARKETS* (Penguin UK, 2013).

³⁵⁶ INDIA CONST, Eleventh Schedule, Entry 17.

Commission has recommended grants of Rs 4, 36, 361 crores to be provided from the Centre to the local government which is an exponential increase of 52 percent from the predecessor years of 2015-20.³⁵⁷ This is a step in the right direction as local governments work at the grassroots level and is closest to the people. However, the roadblock is the discretionary powers of the state government as mentioned in the Constitution of India. For example, Article 243G states that “Legislature of the State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self- government...” *There is a need of rectifying this mistake of making the provision discretionary, the provision needs to be amended and should impose a mandate on the state government to compulsorily disburse the funds to the local government.* Thus, there is an urgent need to abide by the recommendations of the Finance Commission at this crucial hour.

More importantly, section 12(2) of the RTE Act provides for reimbursements by the State government to all the private unaided schools providing for 25 percent reservation to the EWS and disadvantaged category of the students to the extent of per child expenditure by the state or the actual amount charged from the student but there has been dismal compliance of the same.³⁵⁸ The state governments should focus on means of generating effective revenue with a focus on creating capital assets rather than just revenue expenditure. In an analysis of the state revenues, it was found that of all the expenditure on the education by the state governments, 70-80 percent goes to the salaries of the teachers.³⁵⁹ *There is need of strict audit and regulation in the matters of compliance to the statutory provisions of the Act and a comprehensive overview and restructuring of the expenses of the state government in matters of education.*

Finally, we should reconsider and give serious thoughts on *the Shantiniketan School Model of Rabindranath Tagore*³⁶⁰ and *the Wardha Model of Mahatama Gandhi*³⁶¹ for a comprehensive and inclusive education, focusing on the ideas of humanism, brotherhood, mutual respect and also sustainable environment.

³⁵⁷ Ashok Kumar Lahiri, *Building from Below: 15th Finance Commission could catalyse accountability, effective governance at grassroots*, THE INDIAN EXPRESS (Feb 19, 2021), <https://indianexpress.com/article/opinion/columns/mechanisms-for-devolution-of-funds-to-panchayats-municipal-bodies-from-the-fifteenth-finance-commission-could-catalyse-accountability-and-effective-governance-at-the-grassroots-7194739/> (last visited on Dec 11, 2025).

³⁵⁸ *Supra* note 12.

³⁵⁹ Samarth Bansal, *Where do the States spend their Money*, THE HINDU (Nov 27, 2021), <https://www.thehindu.com/data/Where-do-the-States-spend-their-money/article16804288.ece1>, last visited on Dec 14, 2025.

³⁶⁰ Santiniketan, *UNESCO World Heritage Convention*, <https://whc.unesco.org/en/tentativelists/5495/> (last visited on Dec 11, 2025).

³⁶¹ D M Diwakar, *Lessons and Imperatives from Experiments of Basic Education in India*, MKGANDHI, <https://www.mkgandhi.org/articles/Lessons-and-Imperatives-from-Experiments-of-Basic-Education-in-India.html> (last visited on Dec 11, 2025).