

Towards a Capability-Based Constitutional Right to Education in India: Evaluating Existing Legal Framework Through the Lens of Eight Minimum Educational Capability Guarantees

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ABSTRACT:

Nearly two decades after the constitutionalisation of the right to education under Article 21-A and more than a decade after the enactment of the Right of Children to Free and Compulsory Education Act 2009, India's education system delivers schools to children without delivering education to them. This paper argues that the failure is not primarily one of implementation but of conception: the existing framework reduces a transformative constitutional guarantee to a bureaucratic exercise in infrastructure compliance, equating enrolment with empowerment and schooling with education. Drawing on Amartya Sen's capability approach, Martha Nussbaum's ten central capabilities and the 4-A framework of General Comment 13 on Article 13 of the ICESCR, the paper proposes eight Minimum Educational Capability Guarantees as the constitutionally adequate content of Article 21-A. It then subjects the RTE Act to a capability audit and to proportionality review under Justice K.S. Puttaswamy v. Union of India (2017), demonstrating that the Act is formally constitutional but substantively deficient. The paper concludes with a structured two-step judicial test for Article 21-A adjudication and argues for the progressive extension of the right to education to the age of 18.

Keywords: Article 21-A; Right to Education; RTE Act, 2009; Capability Approach; Educational Capabilities; Proportionality; Constitutional Adjudication; Educational Justice.

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Introduction

In 2022, the Annual Status of Education Report found that barely half of all children enrolled in Class 5[ASER Centre, Annual Status of Education Report 2022 (New Delhi 2023)] in government schools across India could read a text designed for Class 2. The finding is not anomalous. It is the statistical expression of a structural failure that ASER has documented

consistently for nearly two decades[ASER Centre, Annual Status of Education Report 2018 (New Delhi 2019)], a failure invisible to the Right of Children to Free and Compulsory Education Act 2009 because the Act was not designed to see it. The RTE Act measures schools[Right of Children to Free and Compulsory Education Act 2009, ss 2, 19 and Schedule]; it does not measure education. It

counts teachers; it does not count learning. It mandates classrooms; it does not mandate capability.

This paper argues that this failure is constitutional in its origins. The Indian framework governing education reveals a deep structural inadequacy in its understanding of what the right to education demands. Despite the constitutionalisation of this right under Article 21-A[The Constitution of India, art 21-A (inserted by the Constitution (Eighty-Sixth Amendment) Act 2002)] and its statutory embodiment in the RTE Act, the existing regime remains anchored in an access-centric model that reduces a transformative constitutional guarantee to a procedural exercise in infrastructure compliance[Geeta Gandhi Kingdon, 'The Private Schooling Phenomenon in India: A Review' (2020)

54 Journal of Development Studies 30]. This formalistic orientation stands in direct tension with the broader constitutional vision of dignity, autonomy and equality under Articles 14 and 21[The Constitution of India, arts 14 and 21], as well as with the proportionality doctrine articulated by the Supreme Court in Justice K.S. Puttaswamy v. Union of India (2017)[Justice K S Puttaswamy v Union of India (2017) 10 SCC 1 [144]], which demands that State action be not merely procedurally valid but substantively justified in advancing constitutional freedoms.

This inadequacy is compounded by a foundational incoherence in constitutional design. Indian law recognises eighteen years as the threshold of full

legal personhood, conferring upon citizens at that age the full range of constitutional and democratic rights. Yet the guarantee of free and compulsory education terminates at fourteen, four years before the citizen is expected to exercise the rights that education is meant to make possible. The State withdraws its educational obligation precisely at the developmental stage when the capabilities necessary for autonomous citizenship become most critical. This paper terms this condition “Premature Constitutional

Adulthood”: individuals are formally vested with rights but substantively unprepared to exercise them, hollowing out the democratic and egalitarian promise of the Constitution from within.

This paper argues that Article 21A, properly understood through the synthesised capability framework of Sen, Nussbaum and the ratified International Principles, is not merely a right to a school seat. It is a compound constitutional guarantee of eight minimum educational capabilities: safe educational access, health and well-being, foundational learning, cognitive development, equal inclusion, meaningful participation, Right to Educational Continuity and Dignified Livelihood- each constituting an independently justiciable dimension of the right, defined at a minimum constitutional threshold below which no resource justification is available to the State and each calibrated to the specific conversion barriers of caste, gender, disability, language and poverty that determine whether formal schooling translates into real educational freedom in the Indian context[UNICEF, A Human Rights-Based Approach to Education for All (UNICEF 2007) ch 2]. To substantiate this argument, the paper first develops the theoretical framework by examining Sen's capability approach and Nussbaum's central capabilities and the methodological basis for their synthesis into the Eight-capability model. It then maps the constitutional and judicial architecture of education rights in India, tracing the doctrinal evolution from Article 45 to Article 21A and identifying the structural limitations of the current access-based framework, evaluating the Act through each of the eight minimum educational capability guarantees to identify where it advances and where it systematically fails the thresholds

that human flourishing demands. Against this backdrop, the paper subjects the RTE Act to proportionality review under Puttaswamy, demonstrating its formal constitutional validity alongside its substantive inadequacy. The paper concludes by proposing a minimum-capability guarantee framework and a structured two-step judicial test for Article 21A adjudication, with implications for Indian constitutional law, legislative reform, and educational governance.

II. THEORETICAL FRAMEWORK: THE CAPABILITY APPROACH TO EDUCATIONAL JUSTICE

A. The Capability Approach and Conversion Factors

The capability approach, developed by Amartya Sen, proceeds from a foundational distinction between the resources a person possesses and the real freedoms those resources actually make available. Capabilities are the real freedoms people have to achieve their potential doings and beings, not merely the formal right to do something, but the substantial opportunity to actually achieve it [Amartya Sen, *The Idea of Justice* (Harvard UP 2009) chs 11–12]. The constitutional question is not whether a school has been provided but whether the child is genuinely free to learn, reason and develop as an autonomous person as a result of attending it.

The mechanism through which identical resources produce unequal real freedoms is captured by Sen's concept of conversion factors: the personal, social and environmental conditions [Amartya Sen, *Inequality Reexamined* (Harvard UP 1992) ch 3] that determine how effectively a person can transform a resource into a functioning good. Applied to education, this becomes constitutionally decisive. Consider a government school in rural Jharkhand that formally satisfies every requirement of the RTE Act. For an upper-caste boy from a literate household, the personal conversion factors are favourable, the social conversion factors reinforce educational engagement and the environmental conversion factors present no structural obstacle, the school converts into education. For a Scheduled Tribe girl in the same classroom, her personal conversion factors include nutritional deficits

associated with chronic poverty; her social conversion factors include caste-based humiliation, domestic labour expectations, community norms devaluing female education, and instruction in a language not her mother tongue; her environmental conversion factors include the absence of a separate toilet, an unsafe walk to school and a home environment without literate adults [Geetha B Nambissan, 'Exclusion and Discrimination in Schools: Experiences of Dalit Children' in Sukhadeo Thorat and Narendra Kumar (eds), *Blocked by Caste: Economic Discrimination in Modern India* (OUP 2011)]. The school is identical, but the conversion ratio is not. This gap, between formal schooling and real educational freedom, produced not by individual deficit but by structural conversion barriers, exposes the constitutional inadequacy of the RTE Act's access-based model [Ingrid Robeyns, 'The Capability Approach: A Theoretical Survey' (2005) 6(1) *Journal of Human Development* 93].

B. Nussbaum's Central Capabilities and the Translation Methodology

Martha Nussbaum's capability approach proceeds from the premise that justice is not secured by distributing resources or conferring formal rights alone, but by ensuring that every individual possesses the substantive capability to live a life worthy of human dignity. Nussbaum identifies ten central human capabilities as the minimum threshold every just political order must guarantee: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment [Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard UP 2011) chs 2–3].

Within this framework, education occupies a uniquely foundational position [Harry Brighouse, *On Education* (Routledge 2006) chs 1–2] because it is instrumental to virtually every other capability. Senses, imagination and thought — encompassing literacy, reasoning and intellectual independence is the most directly educational. Practical reason depends on education cultivating autonomous judgment. Affiliation requires inclusive, non-discriminatory educational

arrangements. Control over one's environment requires competencies for civic and vocational

the developmental foundation upon which most other capabilities rest.

Nussbaum's ten capabilities were formulated as a universal theory of justice, not as education-specific standards. Their translation into constitutional educational standards is governed by three principles: fidelity (each educational guarantee must be traceable to one or more central capabilities); consolidation (where capabilities share overlapping educational manifestations, they may be combined without diminishing normative

life. Education is not merely a right among rights; it is

scope); and justiciability (each guarantee must be assessable through evidence and structured legal reasoning without requiring evaluation of individual academic outcomes)[Ingrid Robeyns, 'Selecting Capabilities for Quality of Life Measurement' (2003) 74(1–2) *Social Indicators Research* 191]. Applying these principles yields eight Minimum Educational Capability Guarantees, with three consolidations from the original ten[Melanie Walker and Elaine Unterhalter (eds), *Amartya Sen's Capability Approach and Social Justice in Education* (Palgrave Macmillan 2007)].

Nussbaum's Capability	Educational Relevance	Educational Capability Guarantee	Guarantee
Life	Safe learning environment, protection from physical harm	Safe Educational Access	(a)
Bodily Health	Nutrition, sanitation, physical and mental well-being	Health and Well-Being	(b)
Bodily Integrity	Freedom from abuse, coercion, identity-based exclusion	Consolidated into (a) + (e)	–
Senses, Imagination and Thought	Literacy, numeracy, reasoning, intellectual development	Foundational Learning	(c)
Emotions	Belonging, emotional security, socio-emotional development	Meaningful Participation	(f)
Practical Reason	Critical thinking, autonomy, independent judgment	Cognitive Development	(d)
Affiliation	Inclusion, equal respect, non-discrimination	Equal Inclusion	(e)
Other Species	Environmental and ethical reasoning — absorbed into (c)+(d)	Consolidated into (c) + (d)	–
Play	Creative expression, collaborative engagement	Consolidated into (f)	–
Control over One's Environment	Agency, economic participation, civic life, post-educational capability	Right to Educational Continuity + Dignified Livelihood	(g) + (h)

III.

Constitutional & judicial Architecture of the Right to Education

The constitutional journey of the right to education in India traces from a Directive Principle to a fundamental right. Article 45[The

Constitution of India, art 45 (original text, prior to the Constitution (Eighty-Sixth Amendment) Act 2002)] of the original Constitution directed the State to endeavour to provide free and compulsory education for all children until they completed fourteen years of age. In *Unni Krishnan J.P. v. State of Andhra Pradesh*[*Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645 [164]–[176]] (1993) 1 SCC 645, the Supreme Court implied the right to education within Article 21, holding that a life of dignity necessarily encompassed the right to education as a precondition of meaningful human existence. The 86th Constitutional Amendment (2002) inserted Article 21-A, expressly constitutionalising free and compulsory education for children aged six to fourteen, operationalised by the RTE Act 2009.

The Honble Supreme Court in the case of *Lok Shikshana Trust (supra) Vs CIT*, relied upon by the Ld. AR, has been pleased to explain the meaning of the word education in the context of section 2(15) of the Act. As per this decision the education is the process of training and developing the knowledge, skill, mind and character of students by schooling by way of systematic instruction, schooling or training.

CIT(E) vs. NIIT Foundation[*CIT(E) v NIIT Foundation* (2024) (Delhi HC)] (2024): Expanded the meaning of education to include vocational and digital literacy as educational activities, challenging narrow interpretations.

Miss Mohini Jain vs State Of Karnataka And Ors on 30 July, 1992[*Miss Mohini Jain v State of Karnataka* (1992) 3 SCC 666 [15] [18]], "Right to life" is the comprehensive expression for all those rights that the Court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from the right to life. The right to life under Article 21 and the dignity of the individual cannot be assured unless they are accompanied by the right to education. The State Government is under an obligation to make an endeavour to provide educational facilities at all levels to its citizens.

Unni Krishnan, J.P. And Ors. Etc. Etc Vs. Respondent: State Of Andhra Pradesh And Ors. Etc. Etc 1993 Air 2178, 1993 Scr (1) 594.,[*Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645 [176]] No State would say that it needs not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State. Therefore, it is not correct to say that reading the right to education into Article 21, this Court would be enabling each and every citizen of this country to approach the courts to compel the State to provide him such education as he chooses. The right to free education is available only to children until they turn 14. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development.

The obiter dicta in the case of *Ashok Kumar Thakur v. Union of India* (2008)[*Ashok Kumar Thakur v Union of India* (2008) 6 SCC 1 [198] [202]] were that all children falling under the age group mentioned in the Article 21A must take schooling and education must be of a quality.

The proportionality doctrine articulated in *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1[*Alok Prasanna Kumar, 'Puttaswamy and Proportionality in Indian Constitutional Law'* (2018) 13(2) *Indian Journal of Constitutional Law* 1] provides the adjudicative structure within which Article 21-A falls to be assessed. Puttaswamy requires that State action affecting fundamental rights satisfy four cumulative requirements: legitimate aim, rational connection between means and ends, necessity in the sense of least restrictive alternative and proportionate balancing between the benefits of the measure and the rights costs it imposes. Applied to education law, this framework demands that the RTE Act be evaluated not merely for whether it pursues a valid constitutional objective, which it unquestionably does but for whether its means are rationally and necessarily connected to the production of genuine educational capability[*Alok Prasanna Kumar, 'Puttaswamy and Proportionality in Indian Constitutional Law'* (2018) 13(2) *Indian Journal of Constitutional Law* 1].

The constitutional design also reveals what this paper terms, Premature Constitutional Adulthood. A child who turns fourteen has, under Article 21-A, a fundamental right to education one day an no right the next, despite the fact that full legal

personhood, the franchise, and the capacity to enter binding contracts are all constitutionally calibrated to eighteen years. NEP 2020 explicitly defines school education as spanning ages three to eighteen[Ministry of Education (Government of India), National Education Policy 2020, para 1.1]. India's obligations under ICESCR Article 13(2)(b), interpreted in General Comment 13 para. 59[UNCESCR, 'General Comment No 13: The Right to Education (Article 13)' (1999) UN Doc E/C.12/1999/10, para 59] as imposing an immediate obligation to take deliberate, concrete and targeted steps toward the progressive realisation of secondary education, reinforces the constitutional argument for extension. The gap between fourteen and eighteen is not merely a legislative choice; it is a constitutional inconsistency.

V. Eight Minimum Educational Capability Guarantees

The constitutional right to education shall be deemed violated where the State fails to secure the minimum educational capabilities necessary for every child to function as an autonomous, dignified and participating member of society. Derived from Nussbaum's ten central capabilities and calibrated against the 4-A framework of General Comment 13 (Availability, Accessibility, Acceptability, Adaptability), the following eight guarantees constitute a constitutional threshold below which no child may fall.

(a) Safe Educational Access

GC13 Basis[UNCESCR, 'General Comment No 13: The Right to Education (Article 13)' (1999) UN Doc E/C.12/1999/10, paras 6(a), 31–37 and 41]: Availability (para. 6(a)) requires a 'safe physical environment'; non-discrimination under Accessibility (paras. 31–37) is immediate and absolute; para. 41 declares corporal punishment inconsistent with the dignity of the individual.

(i) Zero Corporal Punishment: No teacher or school employee shall subject any child to physical punishment or mental harassment in any form. Breach is established upon proof of a single incident without any progressive realisation defence. Constitutional anchor: Article 21 read with RTE Section 17[Right of Children to Free and Compulsory Education Act 2009, s 17 and Sch Para 10].

(ii) Structural Safety Certification: Every school building shall hold a valid structural safety certificate. Absence constitutes a per se violation regardless of whether harm has occurred.

Constitutional anchor: Article 21-A read with RTE Schedule, Para 2.

(iii) Protection from Identity-Based Violence: No child shall be subjected to exclusion, humiliation or harm on grounds of caste, gender, religion, disability or linguistic identity. A single proven incident of untouchability within a school constitutes a violation under Article 17 automatically attributable to the State's supervisory failure. Constitutional anchor: Articles 17, 15, and 21.

(iv) Digital Safety: Where technology-mediated instruction is employed, the platform shall comply with data protection standards applicable to minors. Constitutional anchor: Article 21 read with Puttaswamy.

(v) Mode-Neutrality of Capability Guarantees: No Minimum Educational Capability Guarantee shall be diminished, suspended, or applied at a lower threshold by reason only of the mode through which education is delivered. Where a parent or guardian exercises the constitutional choice of technology-mediated instruction, all eight guarantees with Edtech Specific Indicators shall apply and Indicator I.4 above shall constitute the primary safety standard governing that mode. Constitutional anchor: Article 21-A read with General Comment 13, para. 6(b)(ii).

Threshold Rule: Indicators (i) and (iii) are absolute, breach is established without inquiry into resource availability. Indicators (ii) and (iv) are subject to a reasonable compliance timeline, with the burden on the State to demonstrate active remediation. The Mode-Neutrality guarantee is structural rather than conduct-based: breach is established upon proof that a capability guarantee was applied at a diminished standard solely by reason of the chosen mode of delivery, without requiring the petitioner to separately re-establish the underlying indicator violation in each guarantee affect.

RTE Audit: Section 17 formally prohibits corporal punishment but without enforcement architecture. Psychological safety, identity-based violence monitoring and digital safety are entirely absent from the Act. The Act contains no provision recognising online or technology-mediated instruction as a constitutionally protected mode of delivery, no obligation to provide devices or connectivity to enable such a choice, and consequently no statutory counterpart to the Mode-Neutrality guarantee or to Indicator I.4 as the primary safety standard for that mode.

(b) Health and Well-Being

GC13 Basis[UNCESCR, General Comment No 13 (n 27)]: Availability (para. 6(a)) requires sanitation and safe drinking water; 2008 Concluding Observations on India specifically required separate toilet facilities for girls; economic accessibility (para. 6(b)(iii)) encompasses nutritional support as a precondition for effective learning.

(i) Clean Drinking Water: Every school shall provide access to potable drinking water during school hours. Absence on any school day constitutes a breach. Constitutional anchor: Article 21 read with PUCL v. Union of India and RTE Schedule.

(ii) Gender-Disaggregated Sanitation: Every school shall maintain separate, functional, enclosed toilet facilities for girls and boys. Absence of functional girls' toilets constitutes an independent constitutional violation because it operates as a bodily integrity and equality barrier that foreseeably causes female dropout[UNCESCR, 'Concluding Observations on India's Fifth Periodic Report' (2008) UN Doc E/C.12/IND/CO/5, para 28]. Constitutional anchor: Articles 21 and 15(3) read with RTE Schedule.

(iii) Nutritional Support: Every school enrolling children from economically disadvantaged backgrounds shall provide a cooked mid-day meal meeting National Food Security Act 2013[National Food Security Act 2013, s 5 and Schedule I] norms. Constitutional anchor: Article 21 read with PUCL v. Union of India mid-day meal orders[People's Union for Civil Liberties v Union of India WP(C) 196/2001 (Supreme Court of India), Order dated 28 November 2001].

(iv) Mental Health Support: Every upper primary school shall have access to trained counselling support. Constitutional anchor: Article 21 read with NEP 2020's holistic development mandate.

Threshold Rule: Indicators (i), (ii), and (iii) are immediately enforceable, all three are already mandated by existing statutory and judicial instruments. State failure is a failure of enforcement, not resource allocation.

RTE Audit: Schedule provisions address drinking water, sanitation, and nutrition, partially fulfilled. Mental health support is entirely absent from every section of the Act.

(c) Foundational Learning

GC13 Basis[UNCESCR, General Comment No 13 (n 27)]: Acceptability (para. 6(c)) requires education of good quality directed toward the full development of the human personality; para. 57 imposes a minimum core obligation to ensure the most basic forms of education, interpreted to require functional literacy and numeracy as an irreducible floor; para. 49 requires transparent monitoring.

(i) Foundational Literacy Opportunity: The State shall ensure every child is provided educational opportunities reasonably capable of enabling grade-appropriate functional literacy by the end of Class 5, consistent with NIPUN Bharat benchmarks[Ministry of Education (Government of India), NIPUN Bharat: National Initiative for Proficiency in Reading with Understanding and Numeracy (Government of India 2021)]. Where ASER or equivalent evidence demonstrates more than twenty-five per cent non-attainment[ASER Centre, Annual Status of Education Report 2022 (New Delhi 2023) 50–65] in any school, district, or State, a rebuttable presumption of inadequate educational opportunity arises. The State may rebut by demonstrating either that non-attainment is attributable to documented individual conversion factors for which reasonable accommodation was provided, or that all measures reasonably within State capacity were adopted. Constitutional anchor: Article 21-A read with RTE Section 29(2)(c)[Right of Children to Free and Compulsory Education Act 2009, s 29(2)(c), (d), (f), (g)], NIPUN Bharat, and Puttaswamy proportionality.

(ii) Foundational Numeracy Opportunity: The

same structure applies to numeracy, functional arithmetic operations applicable to real-world problems by the end of Class 5. Constitutional anchor: Article 21-A read with RTE Section 29(2)(c) and NIPUN Bharat.

(iii) Comprehensible Medium of Instruction: Instruction at the primary level shall be delivered in the child's home language where the child belongs to a linguistic minority group. Where the medium of instruction is a proximate cause of learning failure, the State bears the burden of demonstrating an adequate alternative. Constitutional anchor: Article 350-A read with RTE Section 29(2)(e).

(iv) Continuous and Meaningful Assessment: Assessment shall identify learning gaps and trigger remedial support, not merely produce pass rates. Where a school's data consistently shows

grade-level non-attainment without corresponding remedial intervention, a presumption of breach arises. Constitutional anchor: RTE Section 29(2)(g) elevated to constitutional standard.

Threshold Rule: Indicators (i) and (ii) are opportunity obligations, not outcome guarantees. Systemic non-attainment above twenty-five per cent triggers a rebuttable presumption. Individual cognitive variation is a permissible rebuttal ground where adequate opportunity was demonstrably provided. Courts shall not hold the State liable for non-attainment attributable solely to irreducible individual conversion factors.

RTE Audit: Section 29 provides normative orientation without justiciable standards. No learning outcome requirements exist anywhere in the Act. ASER data establishes systemic national-level non-attainment constituting a prima facie minimum core violation under GC13 para. 57.

(d) Cognitive Development

GC13 Basis[UNCESCR, General Comment No 13 (n 27)]: Acceptability read with Article 13(1) requires education directed to the full development of the human personality enabling effective participation in a free society; para. 59 expressly identifies the use of curricula inconsistent with Article 13(1) objectives as a named Covenant violation.

(i) Prohibition on Examination-Only

Curriculum: No school shall restrict its entire instructional programme to examination preparation to the exclusion of inquiry-based or experiential learning. Where a school's timetable allocates no time beyond examination-oriented instruction, a breach is established[Katarina Tomasevski, *Education Denied: Costs and Remedies* (Zed Books 2003) ch 4]. Constitutional anchor: RTE Section 29(2)(d) elevated to constitutional standard.

(ii) Mandatory Provision for Creative and Expressive Activity: Every school shall allocate curriculum time to arts, sports, and creative expression consistent with RTE Schedule and NEP 2020 requirements. Constitutional anchor: Article 21 read with RTE Section 29(2)(g) and (h).

(iii) Freedom from Institutional Fear: No child shall be placed in an instructional environment characterised by institutionalised fear, shame, or punitive grading practices that suppress the child's willingness to question, reason, or express independent views. Constitutional anchor: RTE

Section 29(2)(f) elevated under Article 21.

(iv) Protection of Intellectual Autonomy: No school shall impose ideological uniformity through curriculum design in a manner that forecloses critical inquiry or suppresses independent judgment. Constitutional anchor: Articles 19(1)(a) and 25 read with Article 21-A.

Threshold Rule: Indicators (i) and (ii) are negatively defined; courts assess what has been withheld. Indicator (i) is established where timetables demonstrate no allocation to inquiry-based learning. Indicators (iii) and (iv) require a pattern of conduct before a violation is found.

RTE Audit: Section 29(2) is normatively sound but entirely non-justiciable. The examination-oriented pedagogical reality of most government schools constitutes a GC13 para. 59 named Covenant violation. The SMC under Section 21 monitors inputs, not pedagogical quality; its composition excludes assessment professionals and students entirely.

(e) Equal Inclusion

GC13 Basis[UNCESCR, General Comment No 13 (n 27)]: Non-discrimination under Accessibility (paras. 31–37) is an immediate,

absolute obligation not subject to progressive realisation or resource availability; para. 37 requires disaggregated educational data; Concluding Observations on India required effective measures against caste-based discrimination.

(i) Caste-Based Exclusion - Zero Tolerance[Sukhadeo Thorat and Paul Kumar, 'In Their Own Words: Discrimination on Campuses of Higher Learning - A Study of Scheduled Caste and Scheduled Tribe Students in Delhi' (2008) 43(23) *Economic and Political Weekly*]: No child shall be assigned tasks, seating, or activity restrictions reflecting caste hierarchy. A single proven incident of untouchability within a school constitutes a constitutional violation under Article 17 attributable to the State's supervisory failure regardless of whether a State actor was the direct perpetrator. Constitutional anchor: Articles 17, 15, and 21[The Constitution of India, arts 15(1), 15(3), 17 and 21].

(ii) Gender Parity in Participation: Where gender-disaggregated data shows a statistically significant gap in attendance, completion or learning outcomes between girls and boys, a rebuttable presumption of unconstitutional conversion barrier operation arises. Constitutional anchor: Articles 15(3) and 21-A[The Constitution of India, arts 15 and 21-A].

(iii) Disability Accommodation as a Constitutional Obligation: Every school shall provide reasonable accommodation to children with disabilities including physical accessibility, modified materials, and adapted assessment. The standard of reasonableness is determined by what accommodation would be necessary to enable the child to reach the capability thresholds in (c) and (d) not by administrative convenience. Constitutional anchor: Article 21-A read with RPWD Act 2016[Rights of Persons with Disabilities Act 2016, ss 16–17] and RTE Section 3.

(iv) Linguistic Inclusion: Where a significant proportion of children belong to a linguistic minority group and instruction is not in their home language, the State must demonstrate that adequate bridge measures have been adopted. Constitutional anchor: Article 350-A read with RTE Section 29(2)(e).

(v) Freedom from Economic Barriers: Where institutional practices, fee structures, or indirect financial requirements create disproportionate economic barriers affecting a child's effective access to and participation in education, the State and educational institutions must demonstrate that adequate measures have been adopted to prevent exclusion and ensure equal educational opportunity. Constitutional anchor: Articles 14, 21 and 21-A read with RTE Act, 2009.

Threshold Rule: Indicator (i) is absolute. Indicators (ii), (iii), (iv), and (v) operate through burden-shifting mechanisms; statistical evidence of disparity, structural exclusion, or disproportionate economic burden creates a prima facie violation, following which the burden shifts to the State or educational institution to demonstrate that targeted measures proportionate to the identified barrier have been adopted and that the impugned practice is

educationally necessary and non-exclusionary.

RTE Audit: Sections 12(1)(c), 3, and 13[Right of Children to Free and Compulsory Education Act 2009, ss 3, 12(1)(c) and 13] create a formal anti-exclusion architecture moderately fulfilled. However, de facto exclusion through social stigma, the fragmentation of disability accommodation obligations across RTE and the RPWD Act administered by separate ministries, and the absence of disaggregated monitoring obligations leave substantive inclusion structurally unaddressed. Further, although the constitutional and statutory framework seeks to secure universal educational access, indirect economic barriers arising through institutional practices, ancillary charges, or unequal dependence upon private educational provision may create a public-private divide capable of undermining substantive equality despite formal educational access.

(f) Meaningful Participation

GC13 Basis[UNCESCR, General Comment No 13 (n 27)]: Adaptability (para. 6(d)) requires education to respond to the needs of students in their social contexts; the Committee has held that School Management Committees must be genuinely functional; para. 59 identifies denial of academic freedom as a named violation.

(i) Procedural Safeguards Before Exclusion: No child shall be expelled or suspended without a prior hearing appropriate to the child's age, conducted in a language the child comprehends, with opportunity for parental representation. Constitutional anchor: Article 21's procedural due process dimension read with RTE Section 10.

(ii) Functional School Management Committees: Every school shall have an SMC with genuine parental and community representation. Where an SMC exists only on paper without meetings, records, or real deliberation, the participation capability is breached. Constitutional anchor: RTE Section 21 elevated to constitutional standard.

(iii) Accessible Grievance Mechanism: Every school shall have a grievance redressal mechanism accessible in the local language with defined timelines. Constitutional anchor: Articles 19(1)(a)

and 21 read with RTE Section 32.

(iv) Non-Retaliatory Student Voice: No child shall be penalised for expressing views about their educational experience. Constitutional anchor: Article 19(1)(a) read with RTE Section 29(2)(f).

Threshold Rule: Indicator (i) is procedurally absolute, exclusion without hearing is a per se violation. Indicators (ii) through (iv) require evidence of systematic non-functioning or inaccessibility rather than isolated failure.

RTE Audit: Weakly fulfilled, Section 21's SMC structurally excludes students — the persons whose educational experience it governs. Section 29(2)(f) is non-operative without a student voice mechanism. Socio-emotional development and play as capability receive no substantive statutory treatment.

(g) Right to Educational Continuity

GC13 Basis[UNCESCR, General Comment No 13 (n 27)]: Article 13(2)(b) requires secondary education to be made generally available by the progressive introduction of free education; para. 59 expressly identifies failure to take deliberate, concrete, and targeted measures toward the progressive realisation of secondary education as a named Covenant violation; GC13 para. 53 clarifies that the obligation to progressively realise higher levels of education carries immediate justiciable content in the form of non-retrogression and non-discrimination requirements; NEP 2020 defines school education as spanning ages three to eighteen[Ministry of Education (Government of India), National Education Policy 2020, paras 1.1, 3.1–3.3]; Unni Krishnan held the right to education implicit in Article 21 as a precondition of a life of dignity.

Article 21-A as presently enacted secures the right to education for children between six and fourteen years. However, the constitutional aspiration embedded in Article 21-A cannot be read in isolation from the State's obligations under Article 21, Article 41, and ICESCR Article 13(2)(b). Read together with NEP 2020's explicit recognition of school education as spanning ages three to eighteen, these provisions impose an immediately justiciable obligation of progressive realisation toward free and

compulsory education through Class 12. This guarantee does not assert that Article 21-A as presently enacted covers secondary education; it asserts that the State bears a constitutionally cognisable duty to take deliberate, concrete, and targeted steps toward that extension, and that failure to do so is judicially reviewable.

(i) Progressive Realisation Toward Secondary Education: The State shall take deliberate, concrete and targeted measures toward the progressive realisation of free and compulsory education through Class 12. This obligation is not contingent upon full fiscal capacity; it requires demonstrable forward movement including legislative planning, budgetary allocation and phased expansion of secondary infrastructure. Non-retrogression is absolute: no policy or budgetary measure shall reduce the accessibility of secondary education relative to the NEP 2020 baseline. Breach of non-retrogression is established without resource inquiry. Constitutional anchor: Articles 21, 21-A, and 41 read with ICESCR Article 13(2)(b) and GC13 para. 59.

(ii) Non-Discriminatory Access to Secondary Education: Even prior to the formal legislative extension of Article 21-A, no child shall be denied access to secondary education on grounds of caste, gender, disability, religion or socio-economic status. The progressive realisation framework does

not operate as a shield against discrimination in whatever secondary access presently exists. Constitutional anchor: Articles 14, 15(1), 15(3) and 21 read with GC13 paras. 31–37.

(iii) Legislative Duty to Extend the RTE Framework: Where the legislature has, for an extended period following NEP 2020, taken no step toward formally extending the Act's coverage to Classes 9 through 12, a court may issue a declaration of constitutional incompatibility directing the executive to place before the legislature a time-bound plan for extension. This indicator does not require courts to legislate; it requires courts to hold the State accountable for the absence of legislative deliberation. Constitutional anchor: Article 21-A read with Article 41, NEP 2020 and the doctrine of

constitutional compulsion established in *Unni Krishnan*[*Unni Krishnan JP v State of Andhra Pradesh* (1993) 1 SCC 645 [176]].

(iv) Prohibition on Structural Dropout Between Fourteen and Eighteen Years: No child between fourteen and eighteen years shall be structurally induced to leave education by the design of the State's educational system. 'Structural inducement' includes: absence of a proximate secondary school, examination fees unaffordable for households below the poverty line, eligibility criteria excluding children who completed elementary education under the no-detention policy, and failure to provide a bridge pathway for children who have aged out of RTE coverage. Where UDISE data establishes a dropout rate in the fourteen-to-eighteen cohort exceeding twenty per cent, a rebuttable presumption of structural inducement arises[Ministry of Education (Government of India), Unified District Information System for Education Plus (UDISE+) 2021–22 (Government of India 2022) ch 3]. Constitutional anchor: Articles 21, 21-A, and 41 read with RTE Section 8(f).

Threshold Rule: This guarantee operates across two juridical registers. Indicators (ii) and (iv) generate immediately enforceable obligations. Indicators (i) and (iii) generate progressively realisable obligations with immediately justiciable content: courts cannot compel the legislature to enact an extended RTE in a single judgment, but can require the State to demonstrate deliberate, concrete, and targeted steps have been taken. Non- retrogression under indicator (i) is absolute and immediately enforceable without resource inquiry.

RTE Audit: Structurally absent beyond Class 8. Sections 1(1) and 3(1) confine all protection to ages six to fourteen. The Class 8–9 transition cliff, documented in UDISE data through sharp enrolment declines disproportionately affecting girls, SC/ST children, and rural populations, constitutes a prima facie breach of GC13 para. 59 as a named international law violation and is the guarantee most clearly requiring legislative remedy.

(h) Dignified Livelihood and Post-Educational Capability

GC13 Basis[UNCESCR, General Comment No 13 (n 27)]: Article 13(1) requires education to enable all persons to participate effectively in a free society; Adaptability (para. 6(d)) requires education to equip students for the world beyond schooling; GC13 paras. 15–16 establish that technical and vocational education constitutes an integral element of all levels of education and serves the Article 6 ICESCR right to work; GC18 on the Right to Work provides that the right to freely chosen dignified work is inseparable from the right to education enabling informed occupational choice[UN Committee on Economic, Social and Cultural Rights, 'General Comment No 18: The Right to Work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)' (6 February 2006) UN Doc E/C.12/GC/18, paras 6–12]; Nussbaum's Control over One's Environment in its material dimension requires individuals to be capable of holding property and seeking employment on equal terms.

Education that discharges all prior six capability guarantees yet systematically forecloses dignified employment, occupational autonomy and civic participation for identifiable groups of children has not fulfilled its constitutional purpose. *Olga Tellis v. Bombay Municipal Corporation*[*Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545 [32] [33]] (1985) 3 SCC 545 held that

livelihood is an inseparable component of the right to life under Article 21. Article 21-A must therefore be read as encompassing not only enrolment and attendance but the minimum post-educational capabilities required for a life of dignified, self-directed economic and civic participation.

(i) Non-Discriminatory Occupational Preparation: Where vocational, technical, or occupational education is provided, access shall not be determined by caste, gender, religion, disability status, or socio-economic background, whether formally or through the structural design of admission criteria, geographic placement of institutions or language of instruction. The State bears the burden of demonstrating, in any challenge to vocational stream allocation, that placement was based on informed, uncoerced individual preference and not on group identity.

Constitutional anchor: Articles 14, 15(1), 15(3), 17, and 21 read with ICESCR Articles 6 and 13(2)(b) and GC18.

(ii) Prohibition on Curriculum Design That Reproduces Occupational Subordination: No State curriculum shall be so designed as to systematically equip children from marginalised communities with skills calibrated exclusively to precarious, informal, or low-wage employment while equipping children from dominant communities with skills enabling formal, stable, or high-wage employment. Where a petitioner establishes, by reference to curriculum design, textbook content, or occupational outcome data disaggregated by caste, gender, or class, that the educational system is producing stratified occupational outcomes that track group identity, a rebuttable presumption arises that the curriculum has been designed or administered in a manner that reproduces structural subordination. Constitutional anchor: Articles 14, 15, and 21 read with the transformative constitutionalism principle in *State of Kerala v. N.M. Thomas* [*State of Kerala v NM Thomas* (1976) 2 SCC 310 [56]–[62]] (1976) 2 SCC 310 and Ambedkar's constitutional vision of annihilation of caste-based occupational inheritance.

(iii) Foundational Labour Rights and Economic Citizenship Literacy: The State shall ensure that the school curriculum, by the completion of the eighteen-year schooling entitlement, has provided every child with foundational knowledge of their rights as a worker and economic citizen including the constitutional prohibition on forced labour under Article 23 [*The Constitution of India*, arts19(1)(c), 23 and 43-A], the right to minimum wage, the prohibition on child labour, the right to form associations under Article 19(1)(c), and the basic framework of consumer and contractual rights. A child who completes schooling without this knowledge has been deprived, through the design of the educational system, of the minimum informational precondition for non-exploitative labour market entry. Constitutional anchor: Articles 19(1)(c), 21, 23, and 43-A read with ICESCR Article 13(1).

(iv) Digital and Financial Literacy as Livelihood Preconditions: Where the State has

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deployed digital infrastructure as the primary medium for accessing [NCERT, National Curriculum Framework 2023 (Ministry of Education, Government of India 2023) ch 4

]government services, formal employment, financial systems, or civic participation, as it has done through Aadhaar-linked benefit delivery, UMANG, DigiLocker, UPI, and GST, it cannot simultaneously disclaim

constitutional responsibility for ensuring that every child completing the eighteen-year schooling entitlement possesses the foundational digital and financial literacy to navigate these systems without exploitation or exclusion. Constitutional anchor: Article 21 read with Article 21-A, Article 41, and the positive privacy dimension in *Puttaswamy*, which recognises informational self-determination as a component of dignity.

Threshold Rule: Indicator (i) is negatively defined, discriminatory vocational tracking is established by proof of group-correlated stream allocation without informed consent. Indicator (ii) requires systemic evidence: disaggregated occupational outcome data or curriculum content analysis establishing group-correlated skill stratification. Once established, the burden of rebuttal shifts entirely to the State. Indicators (iii) and (iv) are positively defined provision obligations, the State must demonstrate that foundational labour rights literacy and digital and financial literacy instruction were actually incorporated into the curriculum and made accessible to every child, with reasonable accommodation for conversion factors including disability and linguistic minority status.

RTE Audit: Entirely absent. No section of the Act addresses vocational preparation, labour rights literacy, digital literacy, financial literacy, or post-educational economic participation. Section 29(2)(a)'s requirement to conform to 'constitutional values' could theoretically encompass civic education but is without any specification of what this requires in practice.

VI. Judicial Enforcement: The Two-Step Capability Test

A rebuttable presumption of constitutional violation shall arise where the State fails to secure

any of the eight Minimum Educational Capability Guarantees. Once a petitioner establishes deprivation of any guarantee by reference to the applicable indicator and threshold rule, the burden of justification shifts to the State. The court proceeds in two steps.

At Step 1: the Capability Threshold Inquiry- the court asks whether the child has been deprived of any Minimum Educational Capability Guarantee. Where a threshold rule specifies an absolute obligation, breach is established upon proof of the relevant fact without inquiry into resource availability. Where a threshold rule specifies burden-shifting, statistical or systemic evidence creates a *prima facie* violation. If no deprivation is established, no constitutional violation arises.

At Step 2: the State Justification Inquiry - the State must demonstrate that any deprivation: (i) serves a legitimate constitutional[*Aruna Roy v Union of India* (2002) 7 SCC 368] objective; (ii) is rationally connected to that objective; (iii) is necessary in the sense that no less restrictive alternative was available; and (iv) strikes a proportionate balance between competing constitutional interests. If the State fails any stage, the right to education stands violated.

This test directly incorporates the proportionality doctrine from *Puttaswamy* into education-right adjudication, with the capability framework defining what the right requires and proportionality providing the adjudicative structure for enforcement. The test avoids the twin failures of the existing framework: it does not allow resource scarcity to excuse absolute obligations[UNCESCR, 'General Comment No 13: The Right to Education (Article 13)' (1999) UN Doc E/C.12/1999/10, para 57], and it does not hold the State liable for non-attainment attributable to irreducible individual conversion factors where adequate opportunity was demonstrably provided.

IV. Proportionality Review of the RTE Act 2009

The RTE Act satisfies the first limb of proportionality - legitimate aim[*Society for Unaided Private Schools of Rajasthan v Union of India* (2012) 6 SCC 1].

Universalisation of elementary education is a constitutionally mandated objective under Article 21-A, judicially endorsed as a compelling State interest in *Society for Unaided Private Schools of Rajasthan v. Union of India* (2012) 6 SCC 1.

The Act satisfies the second limb, i.e. rational connection only at a formal level. Its mechanisms (enrolment requirements, infrastructure norms, teacher qualifications, the twenty-five per cent reservation under Section 12(1)(c)) are logically connected to the objective of universal access. However, the connection is procedural rather than substantive. The Act equates physical access with educational achievement without addressing the quality of the learning experience. ASER data documenting systemic non-attainment of basic literacy and numeracy across multiple years[ASER Centre, Annual Status of Education Report 2022 (New Delhi 2023) 4–12] establishes that the formal rational connection between the Act's means and the constitutional objective of meaningful education is, in substantive terms, severely attenuated.

The Act fails the necessity limb. Its highly standardised, input-driven regulatory model, mandating uniform infrastructure and operational norms regardless of context, has resulted in the closure of numerous low-cost schools serving marginalised communities[Jean Dreze and Amartya Sen, *An Uncertain Glory: India and its Contradictions* (Princeton UP 2013) chs 4–5]. Less restrictive alternatives capable of achieving the same objective, outcome-based accreditation, flexible delivery mechanisms, and recognition of digital and community-based learning were neither explored nor incorporated.

The Act fails the balancing limb. Its benefits, enhanced enrolment, legal enforceability of access, symbolic affirmation of education as a

completes Class 8 unable to read a simple paragraph has been in school but not in education. The right to dignity under Article 21, which *Puttaswamy* identifies as the core constitutional

value, requires that education translate into real freedom, not merely formal presence in an institution.

The conclusion is that the RTE Act is formally constitutional but substantively deficient: it passes the legitimacy and rational connection tests but fails the necessity and balancing tests. This is not a finding that the Act should be struck down, its access-securing provisions are constitutionally necessary. It is a finding that the Act requires transformation to fulfil the constitutional standard it was enacted to implement.

VII. Conclusion

The capability audit reveals a pattern that is constitutional in its significance. The RTE Act performs best in relation to guarantees addressable through physical infrastructure, formal institutional design, and anti-discrimination rules Safe Educational Access (a), Health and Well-Being (b), and Equal Inclusion (e). These correspond to GC13's Availability standard and the non-discrimination dimension of Accessibility, for which an access-based legislative model is structurally suited.

The Act performs poorly in relation to guarantees requiring attention to the quality of educational experience: Foundational Learning (c), Cognitive Development (d), and Meaningful Participation (f), corresponding to GC13's Acceptability and Adaptability standards. The Act is structurally absent on the two guarantees extending beyond elementary schooling: Right to Educational Continuity (g) and Dignified Livelihood (h), corresponding to India's progressive realisation obligations under ICESCR Article 13(2)(b).

The constitutional weakness of the Act is not primarily implementational but conceptual. The Act was designed to produce enrolment. A constitutional capability standard requires the production of capability. These are fundamentally different legislative objectives, and a framework designed for one cannot, without transformation, fulfil the other. Section

29's provisions gesture toward capability development but provide courts with no justiciable standard to enforce. The Schedule's infrastructure norms provide justiciable standards but measure inputs rather than capabilities.

The condition of premature constitutional adulthood in which individuals are formally vested with rights at eighteen but denied the educational foundation to exercise them, because the State's educational obligation terminated at fourteen is not a regrettable policy gap. It is a constitutional inconsistency that the interpretive logic of Unni Krishnan[], the progressive realisation framework of ICESCR Article 13(2)(b), and the domestic policy acknowledgment in NEP 2020 together compel the State to address. The eight Minimum Educational Capability Guarantees proposed in this paper, and the two-step judicial test for their enforcement, provide the framework through which courts can begin to discharge that constitutional responsibility

address directly.

In addition to the deficiencies already identified, the RTE Act contains a more basic omission that precedes any question of quality or capability: it does not contemplate technology-mediated instruction as a recognised mode of delivery at all. The Schedule's infrastructure norms, teacher-pupil ratios, and neighbourhood-school criteria are framed entirely around physical attendance, leaving no provision through which a parent's choice of online instruction could be brought within the Act's protective scope. This is a gap of omission rather than design failure — the Act was enacted before technology-mediated education attained its present scale, and its silence reflects that historical context rather than a considered constitutional judgement against modal choice. Nonetheless, the absence leaves a widening area of children's education entirely outside the Act's framework, a gap that becomes more consequential as EdTech's role in Indian education continues to grow, and one that any future amendment to the Act would need to

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