

Society for Unaided Private Schools of Rajasthan v. Union of India, (2012) 6 SCC 1

Constitution of India

Arts. 14, 15, 16, 19, 21, 21-A, Preamble and Pt. IV-A - Affirmative action - Criteria for - Non-discriminatory, non-divisive and group-neutral criteria - Economic or financial backwardness alone as criterion for reservation and affirmative action - Laudability of - 25% reservation for admission in Class I based on criterion of economic or financial backwardness, upheld (per curiam), in all government and aided schools (minority and non-minority), and upheld (per majority), in unaided non-minority schools as well, (2012) 6 SCC 1-A

Education and Universities

Right of Children to Free and Compulsory Education Act, 2009

Ss. 12(1)(c) & (b) r/w Ss. 2(n)(i) to (iv), S. 18(3), Preamble and Ss. 12(2), 3 to 6, 8, 9, 13, 15 to 17, 19, 21, 25, 26, 31, 35 & Sch. - Goal of Universal Primary or Elementary Education under - Right of every child of the age of 6 to 14 years to free and compulsory education in a neighbourhood school till completion of elementary education (i.e. Classes I to VIII) - Attainment of - Removal of all barriers (most prominent being financial) especially through reservation under Ss. 12(1)(c) & (b) and withdrawal of recognition under S. 18(3) upon non-compliance with specified norms and requirements, including non-compliance with Ss. 12(1)(c) & (b) - Extent of enforceability on non-State actors i.e. whether enforceable against: (a) unaided minority and non-minority schools, and (b) parents - Relevance of words shall provide free and compulsory education in Art. 21-A as against provide...for free and compulsory education in Art. 45 (before its substitution) - Ss. 12 and 18(3), held (per majority), are mandatorily enforceable against all types of schools under S. 2(n) except unaided minority schools - Thus reservation under S. 12(1)(c) and other provisions of RTE Act, 2009 are mandatorily enforceable against unaided non-minority institutions - Thus, by virtue of S. 12(1)(c) r/w Ss. 2(n)(iii) & (iv) of RTE Act, 2009, the State while granting recognition to private unaided non-minority schools may specify permissible percentage of seats to be earmarked for children who may not be in a position to pay their fees or charges - Principles of autonomy, voluntariness, cooperation/co-optation and anti-nationalisation of seats laid down in T.M.A. Pai Foundation, (2002) 8 SCC 481 and P.A. Inamdar, (2005) 6 SCC 537 do not apply in cases where a child seeks admission to Class I, when object of S. 12(1)(c) is to remove financial obstacles to universal access to primary or elementary education - However, the RTE Act, 2009, and in particular Ss. 12(1)(c) and 18(3), infringes fundamental freedom guaranteed to unaided minority schools under Art. 30(1) and, consequently, applying principle of severability, the said RTE Act, 2009 shall not apply to such schools - Further held (per curiam), this judgment would operate prospectively from academic year 2012-2013 - Hence, admissions given by unaided minority schools prior to pronouncement of this judgment shall not be reopened - Further held (per majority), RTE Act, 2009 is applicable only to day scholars, if any, in boarding schools and orphanages and not to the boarders - Government directed to issue S. 35 guidelines clarifying the issue regarding boarding schools and orphanages - Per Radhakrishnan, J. (partly dissenting), RTE Act, 2009 can be enforced against all types of schools under S. 2(n) except unaided schools (whether non-minority or minority) - As far as said unaided schools (whether minority or non-minority) are concerned, S. 12(1)(c) and rest of RTE Act, 2009 are directory and not mandatory, implying thereby that S. 12(1)(c) directions can be adopted by unaided schools only on principles of voluntariness, autonomy and consensus and not on compulsion or threat of non-recognition or non-affiliation - Making available neighbourhood schools as provided in S. 6 r/w Ss. 8 and 9 is primary responsibility of Government - Duty imposed on parents under S. 10 is also directory in nature - Ss. 4, 10, 14, 15 and 16 are directory in their content and application - As far as S. 21 is concerned, besides unaided schools (minority or non-minority) it is also not applicable to aided minority schools - Lastly, RTE Act, 2009 is not applicable to institutions which predominantly provide religious instruction like Vedic pathshalas and madrasas (as clarified by Central Government in exercise of powers under S. 35) - RTE Act, 2009 does not interfere with protection granted under Arts. 25 and 26, (2012) 6 SCC 1-B

Education and Universities

Reservation of Seats/Quota/Exemption/Priority and Affirmative Action

Compulsory reservation in unaided non-minority schools for achieving Universal Primary or Elementary Education [as done under S. 12(1)(c), RTE Act, 2009] - Constitutionality of, considering: (a) nature of constitutional obligation of State and non-State actors in this regard, (b) effect of Constitution 93rd Amendment [which inserted Art. 15(5)] and Constitution 86th Amendment [which inserted Art. 21-A and substituted Art. 45], (c) necessity of constitutional amendments to achieve socio-economic justice when infringement of fundamental rights is involved, (d) principles laid down in T.M.A. Pai Foundation, (2002) 8 SCC 481 and P.A. Inamdar, (2005) 6 SCC 537, and (e) test of classification under Art. 14 - Held (per majority), S. 12(1)(c) is valid to the extent that State can make compulsory reservation in unaided non-minority schools but invalid in respect of unaided minority schools - Art. 21-A r/w Art. 21 casts an affirmative

burden on all stake-holders of civil society, both State and non-State actors - State therefore can make use of infrastructure of unaided non-minority schools along with aided minority schools - Such law enacted pursuant to Art. 21-A is saved by Art. 19(6) - Cumulative effect of Arts. 21-A, 21 and 45 is that State can remove all barriers which make right to education unaffordable - Fundamental rights have to be interpreted in the light of directive principles of State policy - Thus courts have to decide whether impugned law infringes a fundamental right within limits justified by directive principles or whether it goes beyond them - After Constitution 93rd Amendment [which inserted Art. 15(5)], reservation of seats can be made in unaided non-minority schools but no reservation can be made in unaided minority schools - Thus after said amendment, on this issue, T.M.A. Pai Foundation, (2002) 8 SCC 481 and P.A. Inamdar, (2005) 6 SCC 537 can no longer be made a basis to invalidate S. 12(1)(c) of RTE Act, 2009 - Lastly, S. 12(1)(c), RTE Act, 2009 satisfies test of reasonable classification under Art. 14 - Per Radhakrishnan, J. (dissenting), no constitutional amendment was passed to curtail rights of unaided non-minority institutions or unaided minority institutions so as to impose reservation as found in S. 12(1)(c), RTE Act, 2009 - Therefore, S. 12(1)(c), RTE Act, 2009 cannot be construed as imposing an obligation on unaided schools (whether non-minority or minority) - Parliament while enacting Art. 21-A never thought it fit to undo principles laid down in T.M.A. Pai Foundation, (2002) 8 SCC 481 and P.A. Inamdar, (2005) 6 SCC 537 - Principles laid down in said cases still hold good to the full extent - Private educational institutions have a right under Art. 19(1)(g) to make a reasonable profit so as to achieve economic security and stability - Imposition of quota or enforcing reservation policy are acts constituting serious encroachment on the right and autonomy of such institutions both minority (religious and linguistic) and non-minority, and cannot be held to be a regulatory measure in the interest of the minority within the meaning of Art. 30(1) or a reasonable restriction within Art. 19(6) - Such appropriation cannot be done merely on ground of charity or under the guise of "interest of the general public" or that such schools are entitled to reimbursement of fees for 25% reserved seats at Government school rates - Under the guise of social inclusiveness, legislation (in present case RTE Act, 2009) cannot (a) violate principles laid down by Constitutional Courts or (b) violate fundamental rights - Purpose of RTE Act, 2009 to achieve social inclusiveness in the field of primary education is laudable but the procedure employed to achieve the said objective is unconstitutional - Whenever Parliament wanted to enforce socio-economic rights in Pt. IV by removing obstacles in Pt. III, it has done so not by mere legislations but by bringing about constitutional amendments - Art. 21-A did not create any obligation on non-State actors or minorities, it only created an obligation on State to provide compulsory primary education - Of course, unaided institutions can voluntarily take up these responsibilities on principles of voluntariness, cooperation and concession, thus S. 12(1)(c) is directory - No doubt, along with positive obligation on State to provide children with said rights there is also a negative obligation on non-State actors not to interfere with realisation of said rights by not resorting to profiteering, excessive fee, capitation fee, maladministration or cross-subsidy etc. as laid down in T.M.A. Pai Foundation, (2002) 8 SCC 481 and P.A. Inamdar, (2005) 6 SCC 537, (2012) 6 SCC 1-C

Education and Universities

Right of Children to Free and Compulsory Education Act, 2009

Ss. 12(1)(b) and 2(n)(ii) - Provision of reservation under S. 12(1)(b) in aided schools (minority and non-minority) - Validity of - Art. 29(2) confers a right of admission upon every citizen into a State-aided educational institution, thus RTE Act, 2009, held (per curiam), is applicable to all aided schools (whether minority or non-minority) - Thus, S. 12(1)(b) provisions with regard to aided educational institutions (minority and non-minority) are valid, (2012) 6 SCC 1-D

Constitution of India

Arts. 19(1)(g), 19(6), 14, 21-A, 21, 25, 26, 30, 29(2), 41, 45, 46 and 51-A(k) - Provision of Universal Primary or Elementary Education - Extent of obligation of unaided non-minority primary schools - Application of test of reasonableness - Reservation under S. 12(1)(c), RTE Act, 2009, whether (a) is reasonable because educational institutions are charitable, or (b) is unreasonable because unaided institutions have a right to make a reasonable profit for their economic security and stability - Held (per majority), Parliament under Art. 21-A r/w Art. 21 can by law determine the manner in which the obligation to provide primary education can be shared between State and non-State actors - Law made under Art. 21-A (i.e. RTE Act, 2009) enabling the State to provide access to private schools including unaided non-minority schools (though not unaided minority schools), therefore is not unconstitutional - Fundamental right to set up educational institutions under Art. 19(1)(g): (a) cannot go beyond charity into commercialisation, and (b) cannot be extended to a right to demand recognition and affiliation (recognition and affiliation is not a fundamental right but a mere statutory right) - Right under Art. 19(1)(g) to establish educational institutions supplements primary obligation of State under Art. 21-A - Further, S. 12(1)(c), RTE Act, 2009 satisfies test of reasonable classification under Art. 14 - Reservation of seats for children from financially weaker backgrounds under S. 12(1)(c), RTE Act, 2009 in unaided non-minority schools, therefore, cannot be termed as an unreasonable restriction and S. 12(1)(c) satisfies test of reasonableness - Per Radhakrishnan, J. (partly dissenting), though act of education is a charity, unaided schools have a right to make a reasonable profit for their economic security and stability - Considerable money by way of capital investment and overhead expenses go into establishing and maintaining good quality unaided educational institutions - Over a period of

time they build up their own reputation and goodwill, a quantifiable asset - Reservation under S. 12(1)(c) amounts to appropriation of their labour and would make inroads into autonomy of unaided institutions - S. 12(1)(c) has neither the constitutional support of Art. 21-A nor support of Arts. 41, 45 and 46 - Therefore, to achieve socio-economic right under Art. 21-A by restricting Art. 19(1)(g), would be unconstitutional, (2012) 6 SCC 1-E

Education and Universities

Right of Children to Free and Compulsory Education Act, 2009

S. 12(1)(c) r/w S. 2(n)(iv) - While applying reservation under S. 12(1)(c) whether unaided minority schools are to be treated differently from unaided non-minority schools - Held (per majority), after Constitution 93rd Amendment [which inserted Art. 15(5)], there is a distinction between unaided minority schools and unaided non-minority schools - Per Radhakrishnan, J. (dissenting), S. 12(1)(c) r/w S. 2(n)(iv) does not envisage any distinction between unaided minority schools and non-minority schools with regard to appropriation of quota by the State or its reservation policy under S. 12(1)(c), (2012) 6 SCC 1-F

Constitution of India

Arts. 13, 14, 19 and 21 - Test of reasonableness - Importance of and applicability - All tests (whether pith and substance test or nature and character or effect test) held (per Kapadia, C.J. for himself and Kumar, J.), have evolved as a matter of reasonableness - Test of reasonableness is applicable to statutory rights (like right of recognition and affiliation under RTE Act, 2009), (2012) 6 SCC 1-G

Education and Universities

Right of Children to Free and Compulsory Education Act, 2009

Title, Preamble, Statement of Objects and Reasons, S. 3 and Chs. II to IV - Goal of Universal Primary or Elementary Education under - Nature and object of RTE Act, 2009 and State duty under (per Kapadia, C.J. for himself and Kumar, J.) - RTE Act, 2009 is child-centric as distinguished from institution-centric - Its object is to: (a) strengthen social fabric of democracy by providing equal educational opportunities to all children, (b) to remove all barriers impeding right of access to primary education, and (c) to set up an intrinsic regime of providing said right - State's duty of micro-level financial planning to provide quality education by resorting to provisions of RTE Act, 2009, explained - Word free in long title stands for removal by the State of any financial barrier - Word compulsory in that title stands for compulsion on State and parental duty to send children to school, (2012) 6 SCC 1-H

Constitution of India

Pt. III, Arts. 13 & 245 - Nature and scope of fundamental rights (per Kapadia, C.J. for himself and Kumar, J.) - They are fetters on legislative power and provide conditions for fuller development of the individual and individual dignity, (2012) 6 SCC 1-I

Constitution of India

Arts. 19(1)(g) & (6) - Abridgement of fundamental right under Art. 19(1)(g) - Permissible scope - Per Radhakrishnan, J. (dissenting on this point), grounds specified in Arts. 19(2) to (6) are exhaustive and have to be strictly construed - Rights under Art. 19(1)(g) are fundamental, inherent, sacred, valuable and can be abridged only to the extent mentioned in the Art. 19(6) i.e. to ensure public peace, health and morality - Unaided private schools up to undergraduate level (whether non-minority or minority) have unfettered fundamental right to choose their students subject to methodology of selection being fair, transparent and non-exploitative, (2012) 6 SCC 1-J

Constitution of India

Art. 21-A - Legislative intent - Object behind non-insertion of Art. 21-A(3) as proposed in the Draft Bill - Per Radhakrishnan, J. (dissenting on this point), said non-insertion was because Parliament is presumed to be aware of the ratio of P.A. Inamdar, (2005) 6 SCC 537 and T.M.A. Pai Foundation, (2002) 8 SCC 481 and thus Art. 21-A did not create any legal obligation on unaided institutions (whether non-minority or minority) - Unaided institutions (whether minority or non-minority) have no obligation of seat sharing up to undergraduate level - Such regulatory measure can neither be held to be in the interest of minority within Art. 30(1) nor a reasonable restriction within Art. 19(6), (2012) 6 SCC 1-K

Constitution of India

Arts. 21-A, 45 and 51-A(k) - Right of access to education under Art. 21-A - Obligation to provide, whether is only on State or also on non-State actors - There being no express provision in Art. 21-A imposing said obligation on non-State actors rather expressions in Art. 21-A like State shall provide and such manner implies, per Radhakrishnan, J. (dissenting on this point) that constitutional obligation to provide primary education is on the State and not on non-State actors and that such obligation cannot be offloaded onto non-State actors, (2012) 6 SCC 1-L

Constitutions, Constitutional Statutes and Orders

Constitutional Amendments

Generally - Nature and scope vis--vis pronouncements of Constitutional Courts - Interpretation of - Approach and presumptions permissible - Per Radhakrishnan, J., constitutional amendments are necessitated not to get over judgments of Constitutional Courts but to make law constitutional - Parliament must be presumed to be aware of law declared by Constitutional Courts - Thus while enacting Constitution (Eighty-sixth Amendment) Act, 2002 [inserting Arts. 21-A, 45 and 51-A(k)] Parliament must be presumed to be knowing the law laid down in P.A. Inamdar, (2005) 6 SCC 537 and T.M.A. Pai Foundation, (2002) 8 SCC 481, (2012) 6 SCC 1-M

Constitution of India

Arts. 145(3) and 141 - Constitutional Bench judgment (in this case rendered by 7 Judges) - If overruled/superseded by Constitutional Amendment - Power of a Bench not being a Constitution Bench (in this case a three-Judge Bench) to decide such question, (2012) 6 SCC 1-N

Constitution of India

Preamble, Pts. III and IV - Classes of rights - Civil and political rights (first generation rights) distinguished from socio-economic rights (second generation rights) per Radhakrishnan, J., (2012) 6 SCC 1-O

Constitution of India

Preamble, Pts. III and IV - Classes of rights - Socio-economic rights (second generation rights) - (a) Nature of and (b) manner in which can be achieved, stated - Socio-economic rights like those under Pt. IV of Constitution or under Art. 21-A, per Radhakrishnan, J., can be enforced only if there is constitutional and statutory sanction - Even in countries where socio-economic rights have been given constitutional status, they are available only against State and not against non-State actors (like private schools and private hospitals) - Further, State's responsibility is limited to taking reasonable legislative measures within its limited available resources to achieve progressive realisation of these rights - Beneficiaries of socio-economic rights should not make an inroad into the rights granted to other citizens like under Art. 19(1)(g) or Art. 30(1) - No doubt it is clear from Arts. 21-A, 45, 51-A(k) and S. 12, RTE Act, 2009 and various international conventions that an obligation is cast on non-State actors for realisation of children's rights - There is also no doubt that due to liberalisation and privatisation of State functions there is a shift in State functions to non-State actors in the field of health care, education, social services, etc. - Non-State actors are thus expected to protect rights of children granted under Art.

21-A and RTE Act, 2009 - But they cannot be expected to surrender their rights constitutionally guaranteed - Further, State cannot free itself from its obligation under Art. 21-A by offloading or outsourcing its obligation to non-State actors, (2012) 6 SCC 1-P

Education and Universities

Right of Children to Free and Compulsory Education Act, 2009

Ss. 13 to 19 and 23 to 30 - Reasonableness of and validity (as applicable to all schools other than unaided minority schools), upheld, per Radhakrishnan, J. -- Held (per majority), entire RTE Act, 2009 is inapplicable to unaided minority schools (in para 65), (2012) 6 SCC 1-Q

Education and Universities

Generally

Primary or elementary education - Drawbacks of present educational system despite there being a non-lapsable fund for the purpose, pointed out, per Radhakrishnan, J. - Quality education provided by private unaided institutions noticed - Need for a regulatory and adjudicatory mechanism, stressed, (2012) 6 SCC 1-R

Education and Universities

Right of Children to Free and Compulsory Education Act, 2009

Preamble, Statement of Objects and Reasons, S. 2 and Chs. II to IV - Rationale why unaided schools are roped in can be found, per Radhakrishnan, J., in: (a) their quality of teaching and performance of students in spite of lesser financial input as compared to Government and aided schools, and (b) growing preference for unaided private schools, (2012) 6 SCC 1-S

Constitution of India

Preamble and Arts. 25, 26, 19, 29 and 30 - Liberty of thought, expression, belief, faith and worship - Scheme of Constitution, to assure the same to all citizens, sketched (per Kapadia, C.J. for himself and Kumar, J.), (2012) 6 SCC 1-T

Constitution of India

Arts. 30(1) and 29(2) - Admission of non-minority members in minority educational institutions - Interplay of Arts. 30(1) and 29(2) and resultant legal position, (per Kapadia, C.J. for himself and Kumar, J.), reiterated, (2012) 6 SCC 1-U