

Society for Unaided Private Schools v India

(Supreme Court of India; 2012)

Case at a glance

Full citation

[Society for Unaided Private Schools of Rajasthan v Union of India & Another \(2012\) 6 SCC; Writ Petition \(C\) No. 95 of 2010](#)

Forum

Supreme Court of India

Date of decision

12 April 2012

Summary of decision

In this decision, the Supreme Court of India upheld the constitutionality of section 12 of the [Right of Children to Free and Compulsory Education Act \(RTE Act\)](#), which requires all schools, both state-funded and private, to accept 25% intake of children from disadvantaged groups. However, the Court held that the RTE Act could not require private, minority schools to satisfy a 25% quota, as this would constitute a violation of the right of minority groups to establish private schools under the [Indian Constitution](#).

Significance to the right to education

This case affirms that the authority of the State to fulfil its obligations under the right to education can be extended to private, non-State actors. Because the State has the authority to determine the manner in which it discharges this obligation, it can elect to impose statutory obligations on private schools so long as the requirements are in the public interest.

Issues and keywords

Regulation of private schools; Public interest; Privatisation; Duties of non-State actors; Minorities; Equality and non-discrimination

This case-law summary is provided for information purposes only and should not be construed as legal advice.

Context

In 2009, the Indian Parliament enacted the [Right of Children to Free and Compulsory Education Act](#) (RTE Act), pursuant to Article 21-A of the [Indian Constitution](#) which requires the government to provide free and compulsory education to all children aged 6-14.

Section 12 of the RTE Act requires that all aided (state-run) and unaided (private) schools reserve 25% of their admissions for students from economically weaker and socially disadvantaged backgrounds.

Article 21-A of the Indian Constitution

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. "

Facts

The Society for Unaided Private Schools – an association of privately run schools – challenged the constitutionality of section 12 of the RTE Act on the basis that imposing regulatory requirements on private schools violated the right to practice any profession or occupation free from government interference under Article 19 of the Constitution, and the right of minority groups to establish and administer schools under Article 30 of the Constitution.

Issue

The main issue before the Court was the constitutionality of the RTE Act, with two primary questions:

1. Whether requiring private schools to satisfy mandatory quotas violated Article 19 of the Constitution, which guarantees the right to practise any profession or occupation.
2. Whether requiring minority private schools to satisfy quotas violates Article 30 of the Constitution, which protects the right of minority groups to establish and administer private schools.

Decision

In its majority decision, the Court upheld the constitutionality of the mandatory quota as it applies to private and state-run schools. Therefore, the Court decided that the government may constitutionally require private schools to reserve 25% of its admission places for students from disadvantaged backgrounds.

The Court reasoned that the RTE Act is “child centric and not institution centric”, meaning that the provision of education to all children is a priority, irrespective of the fact that it might burden private schools. The court reiterated the importance of Article 21-A, and found that the burden on private schools to satisfy the quota was irrelevant in light of the importance of the right to education.

“... the obligation is on the State to provide free and compulsory education to all children of a specified age. However, ... the manner in which the said obligation will be discharged by the State has been left to the State to determine by law. Thus, the State may decide to provide free and compulsory education to all children of the specified age through its own schools or through government aided schools or through unaided private schools.”

The Court reiterated that the State’s primary obligation is to provide for free and compulsory education to all children, particularly those who cannot afford primary education. Although there is a right to establish private schools under Article 19, which guarantees the right to practise any trade or profession, the Court held that this right only exists where the school remains charitable and not for-profit.

Because establishing a private school under Article 19 supplements the primary obligation of the State, the Court held that the State can regulate private schools by imposing reasonable restrictions in the public interest under Article 19(6). The Court further concluded that the 25% quota imposed on private schools is in the public interest and is a reasonable restriction for the purposes of Article 19(6). Therefore, the 2009 Act was deemed to be constitutional and enforceable against private schools.

However, the Court made a distinction between private schools and private minority schools, established under Article 30 of the Constitution, and held that the government cannot require private minority schools to satisfy a 25% quota. To do so would constitute a violation of the right of minority groups to establish private schools under Article 30. The court reasoned that Article 29(1) of the Constitution protects the right of minorities to conserve their language, script or culture, and Article 30(1) protects their right to establish and administer schools of their choice. Therefore, imposing a quota on such schools would result in changing their character and would therefore violate these rights.

Commentary

This case affirms that the authority of the State to fulfil its obligations under the right to education can be extended to private, non-State actors. According to the majority opinion, the State has an obligation to provide free and compulsory primary education, and to ensure educational equality. Because the State has the authority to determine the manner in which it discharges this obligation, it can elect to impose statutory obligations on private schools so long as the requirements are in the public interest.

The broad nature of the State's authority in this regard is demonstrated in the dissenting opinion of Judge Radhakrishnan, which found that the RTE Act should not apply to unaided private schools. The State has primary obligation to protect and fulfil the right to education and, according to the dissenting opinion, non-State actors merely have a negative duty not to violate the right to education.

Related Cases

[Miss Mohini Jain v State of Karnataka & Others \[1992\] AIR 1858](#)

In this decision, the India Supreme Court held that charging of a capitation fee by the private educational institutions violated the right to education, as implied from the right to life and human dignity, and the right to equal protection of the laws. The Court also held that private institutions, acting as agents of the State, have a duty to ensure equal access to, and non-discrimination in the delivery of, higher education.

[Environmental & Consumer Protection Foundation v Delhi Administration & Others \[2012\] INSC 584](#)

In this case, the India Supreme Court held that, under the Right of Children to Free and Compulsory Education Act of 2009 and the Indian, central, state and local governments have an obligation to ensure that all schools, both public and private, have adequate infrastructure.

Relevant Legal Provisions

National

- Article 21A, [Constitution of India](#)
- Section 12, [Right of Children to Free and Compulsory Education Act 2009](#)

International

- Article 26, [Universal Declaration of Human Rights](#)
- Article 28, [Convention on the Rights of the Child](#)
- Articles 13 and 14, [International Covenant on Economic, Social and Cultural Rights](#)

Pramati Educational and Cultural Trust & Others v Union of India & Others [Writ Petition No. 416 of 2012]

In this case, the India Supreme Court upheld the constitutionality of Articles 15(5) and 21-A of the Constitution of India, so far as they require unaided private schools to provide compulsory education for children aged 6-14. However, the Court further held that private schools, particularly private minority schools, could not be compelled to provide free, compulsory education to children belonging to disadvantaged groups, as this would constitute a violation of the right of minority groups to establish private schools under Article 30 of the Constitution.

Governing Body of the Juma Musjid Primary School & Others v Ahmed Asruff Essay N.O. & Others (CCT 29/10) [2011] ZACC 13; 2011 (8) BCLR 761 (CC)

In this case, the South African Constitutional Court held that where a public school is located on private land, the private landowner has a negative constitutional obligation not to impair the right to basic education under the South African Constitution.

Additional Resources

Prashant Narange with inputs from Minansa Ambastha. 25 per cent Reservation in Private Unaided Schools: Social Justice or Expropriation?

Khagesh Gautam, Comparative Constitutional Law and Administrative Law Quarterly (2014). Fundamental Right to Free Primary Education in India: A Critical Examination of Society for Unaided Private Schools of Rajasthan v. Union of India.

The Hindu (9 May 2014). Right to Education: neither free nor compulsory.

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