
Sudhir Krishnaswamy*

(Draft for Discussion Only)

Although the decision in Unnikrishnan gave new life to the debate over the limits of judicial review in India, the immediate effect of the decision was that any child below the age of fourteen who was denied the facilities of primary education could approach a court for a writ of mandamus for directing the authorities to initiate appropriate measures. This was a powerful weapon and members of civil society and non-governmental organisations began to utilize this decision as a strategic tool to push the executive and legislature toward serious action on primary education. ¹

V Sripathi and A. K. Thiruvengadam in this much cited article conclude that the Indian Supreme Court’s recognition of the fundamental ‘right to free and compulsory education in Unnikrishnan is ‘indispensable’ to achieving the education goals set forth in the Constitution. Most academic legal and social science analysis of the Indian Supreme Court adopts this view not only with respect to the right to education but in most areas of constitutional adjudication – thereby creating the image of the most progressive court in the developing world. In this view, the critical enquiry is with regard to the scope of the decision of the court, the doctrinal or philosophical justification for the decision and occasionally the scope and design of the remedy in the case. By not going beyond the courtroom and legal doctrine, Indian scholarship has for the most part failed to come to grips with how we may understand the impact of the court’s judgments on Indian society in multiple ways, whether this impact may be measured and if the court’s decisions have a causal effect on society leading to more progressive outcomes for marginalized communities.

In this paper, I ask whether the constitutional and legal form in which the education policy is encased has any significant impact on the achievement of educational outcomes in India. When posed in this fashion, the question hints at an easy answer. However, on closer examination we find that there is little evidence to propose that legal form has a significant impact on securing universal primary education in India. While a conclusive answer on legal form is not claimed

* Dolashree Mysoor provided valuable research assistance.

here, there is good evidence to show that the decisions of the Supreme Court have had little or no direct impact on securing universal primary education. The paper is organized into three parts. First, I briefly review the literature on the impact of legal form on the educational policy outcomes as well as the Indian literature on the impact of the Supreme Court. In the second part of the paper I will review the three legal and constitutional forms of commitment to securing universal primary education. I conclude in the final section with a summary of what I can show at this point and an overview of the further research necessary to deepen the enquiry.

I. Legal Form and Educational Outcomes

The blithe assumption that we may move from Supreme Court decisions to impute social outcomes was first challenged in the Indian legal academic literature by Baxi in 'Who Bothers About the Supreme Court? The Problem of Impact of Judicial Decisions.'\(^2\) This article developed on the work of Stephen Wasby to point out that it was essential to identify the social constituencies and state agencies that are impacted by the court, the processes through which the decisions of the court have impact and the relevant time period for such an assessment. It rightly points out that such an analysis would need to go beyond narrowly measuring compliance by legal and political institutions to wider impact on society and cultural meaning. Further, it identifies the complexity of untying the impact of legal decisions of the court from other legal, political and social factors that may all point in the same direction. However, it does not apply this nuanced theoretical framework to any concrete set of cases and has remarkably not spawned any further research or analysis along these lines in India.

However, remarkable work has been carried out on the effect of legal form on educational outcomes in the US. While this work ignores the effect of court decisions on securing universal education it offers us valuable insights on the potential for such research as well as the methodological rigour that causal claims would require. Landes and Solmon’s pioneering work examines the impact of compulsory schooling legislation during the 19\(^{th}\) and early 20\(^{th}\) century on differential levels of schooling across states and time. They conclude that compulsory schooling laws did not cause the observed increases in the levels of schooling and instead they argue that compulsory schooling laws were the result of relatively high levels of schooling.\(^3\) The

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\(^2\) 24 JILI (4) 848 (1982).
\(^3\) Landes and Solmon (1972)
problems of endogeneity and multicollinearity have been explored in subsequent work and it appears that only where we assume that legislation is exogenous does it have measurable impact on levels of schooling.\(^4\) Further work on effect of compulsory attendance laws on enrolment as well as other social, economic and cultural outcomes have been carried out with varied results. While there is no effort in this paper to develop an econometric model to estimate the nature of impact of legal instruments on social outcomes, we can learn develop suitable analytical frameworks to evaluate the more complex Indian legal environment.

II. The Changing Legal Environment and Enrolment in Education in India

There are three important legal modes through which education is regulated in India: first, the constitutional status of education as a principle or right; secondly, the statutory basis for the regulation and provision of basic education and thirdly, the executive competence to provide for basic education. In this section we explore whether the legal regulatory mode has any effect on Gross Enrolment Rates across India. I choose gross enrolment rates put out by the Ministry of Human Resource Development as the focus of most education law and policy has been on securing full enrolment. Attendance figures are not available either at the State or Union level and hence this cannot be the focus of analysis. This paper does not develop a sophisticated econometric specification to disentangle the various factors that may cause higher levels of educational enrolment. At this stage I set out the various legal environmental factors and the gross enrolment ratios in Table 1 and sketch an analysis of this data. I suggest in my brief conclusion how attributing a significant role to the Supreme Court is clearly a mistake as its intervention only begins once enrolment rates are already reasonably high. However, I suggest in my brief conclusion that one must provide a more sophisticated analysis to determine the effect of various other legal instruments on educational outcomes.


The Constitution of India, 1950, did not guarantee education as a fundamental right. Instead, it was included under Part IV\(^5\) as a welfare goal implementable within a time frame of 10 years under Article 45 (erstwhile). The Constituent Assembly Debates on the place of education in the

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\(^4\) Linda Edwards (1978)

\(^5\) Directive Principles of State Policy
Constitution confirm that it was the express intention of the makers of the Constitution to not include it as a fundamental right. However, this was not always the case. In 1947 the Sub-Committee on Fundamental Rights in its report recommended that education in Clause 23 should be an entitlement of every citizen. Draft Article 36, was phrased as a right and set out that: “Every Citizen is entitled as of right to free primary education and it shall be the duty of the State to…” In the ensuing debate Pandit Lakshmi Kanta Maitra objected to the coupling of a directive principle and a fundamental right in the same provision and suggested that Article 36 must be deleted from the list of fundamental rights. Instead he proposed that the Assembly adopt the provision as “The State shall endeavour to provide within ten years of commencement of this Constitution, for free and compulsory education to all children until they complete the age of fourteen years.” This amendment to the provision was adopted in the same session and it featured as a directive principle under Article 45, Constitution of India, 1950. Strictly speaking, the State was mandated to achieve the goal of universal elementary education by 1960!

The State’s were conferred with exclusive executive and legislative competence over primary education and the Union government merely exhorted the States to fulfil their social obligations. Several States enacted legislation to provide for primary education and for the regulation of private activity in this field. As different States enacted legislation in different years it is possible to exploit this variation to construct a statistical and econometric model to evaluate whether State legislation had an impact on differential enrolment rates in the States. However, the data sets for this analysis are yet to be prepared and can be the focus of future work.

At the aggregate national level, it is significant that the two highest percentage rises in enrolment in a decade after 1950 are in the periods 1950-1960 and 1960-1970 respectively. In this period the Supreme Court and the High Courts had not decided any case on the right to education and hence can potentially have not effect. It may be that the legal instruments that have an impact on these social outcomes are State statutes and executive orders. Potentially one

6 “Clause 23- Every citizen is entitled as of... right to free primary education and it shall be the duty of the State to provide within a period of ten years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of fourteen years.” Available at: http://righttoeducation.in/faq/category/frequently-asked-questions/history-act#t304n321. Last accessed February 28, 2013.

7 Pandit L. K. Maitra, November 23, 1947, Volume VII, Constituent Assembly Debates: “Part IV deals with directive principles of State policy, and the provisions in it indicate, the policy that is to be pursued by the future governments of the country. Unfortunately, in article 36, this directive principle of State policy is coupled with a sort of a fundamental right, i.e. “that every citizen is entitled....etc.” This cannot fit in with the others. Here a directive principle is combined with a fundamental right. Therefore, I submit that the portion which I have indicated, should be deleted.”

may explore the impact of State legislation on the inter-state variation of enrolment rates across time. As I am yet to secure access to this data, this study is yet to be carried out. It may well be the case that no legal factors explain or determine the inter-State variations in enrolment and we may have to negate the influence of legal environmental factors altogether in these developments.

The Constitution (42nd Amendment) Act, 1976 altered the basis of executive and legislative competence to permit the Union to exercise concurrent jurisdiction with the States. However, the Union did not enact any legislation and its executive role is modest. Significantly, after this amendment to constitutional competence the enrolment rates in primary education drops sharply from 38% in the previous two decades to just 5% in the next two decades. As the Union does not legislate, there is no legal reason for this remarkable drop in enrolment rates in this period.

Phase II: Supreme Court Fundamental Right and Concurrent Union and State Executive Competence (1992 – 2010)

The second phase of development of the legal environment in the field of primary education is marked by the intervention of the Supreme Court. Prior to the court’s intervention the failure of the Indian State to fulfil its obligation under Article 45 had become the focus of international and national civil society movements which demanded a the right to education. The Ramamurti Committee Report which reviewed the National Policy on Education, 1986 in 1990 observed that the “continued” failure of the State to realise the goals under Article 45 as a “teasing reality” and recommended the introduction of a fundamental right to education. The Supreme Court’s interventions in 1992 and 1993 realized this recommendation by declaring a right to elementary education.

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10Mohini Jain v State of Karnataka (1992) 3 SCC 666
11Unnikrishnan J. P. v State of Andhra Pradesh (1993) 1 SCC 645
While these decisions of the court have been celebrated in the academic literature the material impact on educational enrolment rates as well as the symbolic impact of the recognition of a new fundamental right to education on the normative framework of educational policy has been poorly understood. The Supreme Court first declared the right to education as a fundamental right in *Mohini Jain v State of Karnataka*. The petitioner was an aspiring medical student who challenged a Karnataka state government notification which allowed medical colleges to charge exorbitant capitation fees (donations). The Court refashioned the directive principle in Article 45\(^\text{12}\) into a right to education under the right to life under Article 21. This judgment was ambiguous to the extent that it did not elaborate on the scope of the right it declared and hence the remedies available to citizens to enforce such a right. Notably, the remedy sought by the petitioner had nothing to do with primary education or the scope of Article 45 or the newly declared right under Article 21. Not surprisingly, this decision evoked sharp criticism as the declaration of the new right without reference to how it was to be implemented rendered the decision impractical and could potentially corrode the legitimacy of the court.\(^\text{13}\)

Undeterred by this academic criticism the Supreme Court went further in *Unnikrishnan J. P. v State of Andhra Pradesh*\(^\text{14}\) and clarified that the right to education is available to all children below the age of 14 years. Once again the petitioner in this case had no material interest in primary education. Instead he represented the managements of privately owned medical and engineering colleges who argued that if they were prevented from collecting donations from students as set out in *Mohini Jain* these institutions would no longer be financially viable. Despite the fact that the petitioner’s argument had nothing to do with universal school education, Justice Jeevan Reddy clarified that the declaration of a right to education was warranted due to the failure of the State to realize the time bound obligations under Article 45:

"It is noteworthy that among several articles in Part IV, only Article 45 speaks of a time-limit; no other article does...Does the passage of 44 years more than four times the period stipulated under Article 45- convert the obligation created by the article into an enforceable right?"\(^\text{15}\)

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\(^{12}\) Article 45 (erstwhile), Part IV, Constitution of India: “The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.”

\(^{13}\) “Supreme Court on Right to Education” by S. P. Sathe, Economic and Political Weekly, August 29, 1992. Sathe notes: “To say that the right to education is a fundamental right would make the right so impracticable that it would lose all its force.”

\(^{14}\) *Unnikrishnan J. P. v State of Andhra Pradesh* (1993) 1 SCC 645

The nature of the Supreme Court’s intervention in this context needs careful attention. Both the *Unnikrishnan* and *Mohini Jain* judgments were disputes pertaining to higher education. *Unnikrishnan* in particular, resulted in a declaration of the right to primary or elementary education. This aberration was caused by the Pandora’s Box that was opened by the Court in *Mohini Jain*. Essentially, the *Mohini Jain* judgment declared the right to education for all and the right to education at all levels without examining the content of the right, the obligations of the state or the repercussions of such a judgment. In order to mitigate the damage that the judgment in *Mohini Jain* could cause the Court in *Unnikrishnan* overruled the judgment and narrowed the scope of the right to education:

“Hence, it would not be correct to contend that *Mohini Jain* was wrong insofar as it declared that “the right to education flows directly from the right to life”. But the question is what is the content of this right? ... The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principle in Part IV of the Constitution... Articles 45, 46 and 41 are designed to achieve the said goal among others. It is in light of these articles that the content and parameters of the right to education have to be determined... Right to education, understood in the context of Articles 41 and 45, means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.”

We find it important to examine the content of the Directive Principle under Article 45 (erstwhile) and the fundamental right under Article 21 A in order to understand the need for a ‘right to education’. Article 45 (erstwhile) of the Constitution cast a time-bound obligation upon the State to provide free and compulsory education to all children below the age of fourteen years. The Supreme Court has taken a limited view on the enforceability of Directive Principles of State Policy. It cannot be claimed that the obligation to provide free and compulsory education did not exist in the Constitution. By virtue of Article 37 which holds directive principles as fundamental to the governance of the nation, the obligation to fulfil their mandate is created. Unfortunately, this obligation was neglected for more than forty years.

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Irrespective of whether these judgments articulate a sound constitutional justification for transforming a directive principle into a fundamental right, the rest of this section asks whether this transformation in constitutional form has any impact on securing universal primary education outcomes in India. First, it must be pointed out that the remedies in both cases had nothing to do with primary education as both petitioners were concerned about the appropriate regulation of higher education. Secondly, there are no reported cases where petitioners have approached the Supreme Court directly to implement the right to education in a manner that has any impact on the enrolment rates in primary education between 1993 and 2010.\textsuperscript{18} In the same period High Courts relying on the Unnikrishnan mandate have intervened in several issues pertaining to the right to education in this period but none directly implementing the right in a manner that secures universal primary education.\textsuperscript{19} Hence, there is little or no direct impact of the court on securing these educational outcomes through its orders.

However, educational enrolment which was at approximately 86\% when these decisions were announced climbed nearly 10\% in the next decade after these decisions. So there is a significant improvement on the growth in education enrolment between 1991-2001 when compared to the anaemic growth in the 1970s and 1980s. While a 10\% growth in enrolment is still less than the remarkable growth of 20\% and 16\% in the 1950s and 1960s respectively, we must explore whether any part of this growth in enrolment in the 1990s may be rightly attributed to the Supreme Court’s decision in Unnikrishnan.

While some scholars\textsuperscript{20} argue that Unnikrishnan shaped educational policy and the delivery of compulsory education for all, there is little evidence to support this view. The most significant

\textsuperscript{18}There are only 3 cases in which the Supreme Court has issued writs of mandamus in the context of the right to education. In Avinash Mehrotra v Union of India, (2009) 6 SCC 398, the Court held that the right to education means the right to safe education. In Election Commission of India v St Mary’s School (2008) 2 SCC 208 the Supreme Court held that the Election Commission must ensure that election duty for teachers must be restricted to non-teaching days and holidays. In State of Himachal Pradesh v H. P. Recognised and Aided School Management Committee & Ors. (1995) 4 SCC 507, the Supreme Court held that because the State is under an obligation to provide education to all children below the age of fourteen years, the State is therefore under an obligation to disburse grants-in-aid to middle school which are aided by the government.

\textsuperscript{19}High Courts have followed the Unnikrishnan judgment in adjudicating on the right to education and pertaining issues. In Parents Forum for Meaningful Education v Government of NCT Delhi AIR 2001 Delhi 212, the Delhi High Court banned the use of corporal punishment in schools holding that the education includes the right to learn with dignity. In Abu Zaid (Minor) and Ors. V Principal Madrasa Tul- islah1998 (3) AWC 2257, the Allahabad High Court held that children have the right to pursue education until completion, i.e., until the age of fourteen years.

\textsuperscript{20}Social Rights Litigation in India: Developments of the Last Decade by Jayna Kothari “Litigation in the Supreme Court has been one major cause of the right to education being declared as a fundamental right in the Constitution by the Eighty-Sixth Constitutional Amendment” in Exploring Social Rights: Between Theory and Practice, Ed. by Daphne Barak-Erez and Aeyal M Gros at p 186, Hart Publications 2007.
development in educational policy after *Unnikrishnan* was the introduction of the District Primary Education Programme (DPEP) by the Union government in 1993-94. This programme saw the first substantial intervention of the Union government in primary education as funded up to 85% of the expenditure on this programme. The programme was motivated by the adoption of a New Economic Policy in 1991 and supported substantially by international development institutions like the World Bank, DFID and UNICEF. A careful review of the concept note on the DPEP reveals that *Unnikrishnan* and the Supreme Court find no mention in the document. Instead the concept note draws attention to the World Declaration of Education for All (EFA), a result of the World Conference on Education for All organized by the UNESCO at Jomtien in 1990.\(^\text{21}\)

[Add para on Civil Society Mobilization – Commons Schools Movement]

In the absence of any material intervention by the court to secure universal primary education, substantial evidence that the funds and policy intervention of the Union government had significant impact on the rise in enrolment in primary education and sufficient evidence to suggest to show that this Union government programme was not motivated by the ongoing legal doctrinal developments, it is difficult to find support for the claim that the Indian Supreme Court had any indirect or symbolic effects shaping the achievement of primary educational outcomes in India. If any legal instrument may claim to have influenced educational enrolment in India in the 1990s, arguably the Constitution (76th Amendment) Act, 1977 which gave the Union government executive competence over primary education is a potential candidate. However, the delayed effect of this Amendment must be disentangled from the several other factors shaping enrolment in this period.

III. Phase III: Constitutional Right to Education and the Right to Education Act 2009

The third phase in the development of the legal environment begins with the move to introduce a new constitutional amendment to recognize a fundamental right to education and a Union law to establish a uniform Right to Education Act for the entire country to co-exist with the various

\(^{21}\text{DPEP "Logic and Logistics" http://www.educationforallinindia.com/page91.html. Last accessed on January 25, 2013}\)
pre-existing State legislation. This phase of legal developments overlaps with Phase II discussed above, as proposals to amend the Constitution were first proposed in 1997. However, these proposals were finally realized by the amendment in 2002 and the legislation in 2009 and hence we may discern their impact in the first decade of the 21st century.

The first proposal to amend the constitution to introduce a new fundamental right to education came from the Saikia Committee Report.22 Significantly, the Saikia Report does cite Unnikrishnan as a reason to introduce such an amendment. However, it does simultaneously acknowledge the role of the existing education reforms civil society movement which existed prior to Unnikrishnan and in turn pays little attention to the Supreme Court in its mobilization and advocacy strategies.23 While the reference to a right to education in India can be traced all the way back to draft Article 36 in the Constituent Assembly Debates,24 the Saikia Report appears to have given the proposal for a constitutional amendment a fillip. As a result the Constitution (Eighty Third) Amendment Bill25 was introduced in 1997 to insert Article 21 A under Part III. So 5 years after Unnikrishnan it was expressly recognized in the Statement of Objects and Reasons as a motivation for the proposed right to education. However, this Bill lapsed as the coalition government that proposed the amendment lost its majority in Parliament.

The second proposal for a constitutional amendment to insert a right to education was through the Constitution (Ninety-Third) Amendment Bill, 2001 which explicitly makes references to Unnikrishnan. However, when the Bill was enacted as the Constitution (Eighty Sixth) Amendment Act, 2002 all references to Unnikrishnan were deleted.26 Significantly the 86th Amendment Act narrowed the scope of the fundamental right to education announced in Unnikrishnan by restricting Article 21A to children in the age group of 6 and 14 years. It simultaneously amended Article 45 to retain the State’s obligation to provide early childhood care and education to all children until the age of six years as a directive principle. By fragmenting the directive principle in Article 45 in this fashion Parliament arguably resurrects new constraints on the realization of pre-school education for children under the age of six.

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22 Saikia Committee Report in 1997 recommended the amendment of the Constitution to include the right to free and compulsory elementary education up to the age of fourteen years.

23 Sadgopal / Kiran Bhattty

24 Constituent Assembly Debates, Volume VII


while Unnikrishnan, narrowed the scope of the right to education articulated in Mohini Jain to children below the age of fourteen years, with the introduction of Article 21A children below 6 have now been excluded from the scope of the constitutional right to education. It is yet to be seen whether these legal changes have any impact on enrolment or other educational outcomes in the near future.

When Article 21A came into force in 2002 the gross enrolment rate in India was already 95.3%. While the enrolment rate does climb 9% points to 114% in 2009 when the Right to Education Act, 2009 is enacted there is no enforcement of Article 21A at the High Court or Supreme Court level to show that the consecration of a new constitutional right resulted in increased enrolment in primary education institutions across India. Significantly, the Union government launched a new programme titled Sarva Shiksha Abhiyan (Education for All) in 2002 which explicitly set out the realization of Article 21A as a key objective. Once again it appears that the executive programme would explain a major proportion of the enrolment increases after 2002 and there is little evidence to show that any court interventions aided this task. Arguably Article 21A does provide some symbolic and normative justification for the programme and to that extent is the only legal instrument that may potentially have effects in this period.

The most recent development in the legal environment of primary education in India is the enactment by the Union government of The Right to Free and Compulsory Education Act, 2009 ("RTE Act") was enacted to “provide free and compulsory education to all children of the age of six to fourteen years” and thereby fulfil the mandate of Article 21 A of the Constitution of India. This legislation creates a new statutory right to free and compulsory education to all children between the ages of 6 and 14 years and imposes obligations on schools, parents and the State. It imposes a duty on the State to provide free and compulsory education to all children as well as a duty on parents to send their children to school. Teachers are obligated to complete curricula; maintain regularity and punctuality; conduct continuous and comprehensive evaluation of the child; assess the progress of children; and to engage with parents/guardians of children and inform them about the child's progress. Schools are mandated to accommodate

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27Preamble, Right of Children to Free and Compulsory Education Act, 2009
28 Article 21 A, Part III, Constitution of India – “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.”
29Section 3, RTE Act
30Section 10, RTE Act, 2009

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disadvantage\textsuperscript{31} (reservation and non-discrimination) and adhere to norms\textsuperscript{32} (regulation and standards). The Act imposes differential obligations on schools depending on the extent of state aid and control\textsuperscript{33} to provide free and compulsory education to disadvantaged children between the ages of six and fourteen years.\textsuperscript{34}

The constitutional validity of the Act was challenged before the Supreme Court in Society for Unaided Private Schools of Rajasthan v Union of India\textsuperscript{35} (hereafter the RTE case). In April 2012, a division bench comprising Chief Justice Kapadia, Justice Swatanter Kumar and Justice Radhakrishnan upheld the validity of the Act. The core of the challenge was the reservation and non-discrimination obligations and the regulatory standards imposed on private schools. The court upheld the plea of the minority unaided institutions by exempting them from the application of the Act. The Bench divided on the applicability of the Act to non-state actors: while the majority judgment of Justice Kapadia upheld the act and applied it to private non-minority schools, Justice Radhakrishnan in his elaborate dissent held that the Act was unconstitutional in so far as it applied to private non-state funded schools. It also exempted residential schools. However, private aided and unaided schools and minority aided schools failed to secure an exemption.

[Insert para on Pramati]

In 2009 when the RTE Act was enacted the reported Gross Enrolment in Primary Education in India was 113.8%. In subsequent it rose marginally to 115% in 2011 and subsequently fell to 106.5% in 2012. As the numbers suggest the RTE Act was enacted when enrolment in primary education is nearly universal in India and it is no longer meaningful to explore the extent to which the Act can contribute to this achievement. It appears that the Union legislation in the field to ensure universal primary education confirms Landes and Solmon’s claim that legislation is often enacted once the task of enrolment has already been achieved. So probably the meaningful way in which we may investigate the impact of the RTE Act and

\textsuperscript{31}Section 18 read with Section 19, RTE Act, 2009
\textsuperscript{32}Section 28, RTE Act, 2009
\textsuperscript{33} Section 2 (n), RTE Act. The Act recognizes four types of schools- (i) schools owned or established by the government, (ii) schools aided by the government but owned by non-state actors, (iii) schools belonging to the ‘specified category’, and (iv) unaided schools established by non-state actors.
\textsuperscript{34} Section 12, RTE Act, 2009
\textsuperscript{35}Society for Unaided Private Schools of Rajasthan v Union of India & Anr. (2012) 6 SCC 1
the implementation of the Act in the High Courts and the Supreme Court is to assess whether it contributes to achievement of other educational outcomes - compulsory attendance, graduation rates, learning outcomes - as well as other social, economic and cultural outcomes.

**Conclusion**

In this paper I challenge the claim that the Supreme Court's interventions on the right to education has prompted or secured universal primary education in India. I develop an analytical framework to assess the impact of the court by locating its interventions in the wider legal environment which shapes educational outcomes in India. I ask whether there is sufficient evidence to support the claim that the Indian Supreme Court in particular, and any other legal instrument in general, has led to a significant increase in rates of enrolment in primary education in India. I show that the sharpest increases in enrolment occurs in the early decades of India's post-Independence history where the court does not adjudicate on the right to education. Though the rate of enrolment slows down in the third and fourth decade, it is only in the fifth decade that the Indian Supreme Court declares a right to education. While there is no doubt that there are minimal direct effects of these decisions on the rate of enrolment it appears that there is very little evidence to support the claim that these decisions shaped the formulation of executive policy or civil society mobilization either. The adoption of a new constitutional amendment on the right to education and the enactment of a new Union Right to Education Law takes place when enrolment rates are close to or nominally exceed 100%. The decisions of the Supreme Court upholding and implementing the new RTE law may well have some significant educational, social, economic and cultural outcomes but these are unrelated to the primary task of securing universal primary education. So any claim that the law on education has helped shape and secure universal primary education in India will have to develop a model for testing whether legal instruments, apart from the Indian Supreme Court, has decisively shaped this outcome.
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